$~R-395 & 396

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 3rd November, 2017

\+ MAC.APP. 843/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Ms. Suman Bagga, Adv.

versus

MAHESH KUMAR & ORS ..... Respondents
Through: None.

\+ MAC.APP. 255//2012

MAHESH KUMAR & ORS ..... Appellants
Through: None.

versus

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
..... Respondents
Through: Ms. Suman Bagga, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mahesh Kumar, the claimant, now appellant in MAC Appeal 255/2012, then aged 27 years, employed as an executive in Human Resource Department of Amar Ujala Publications, suffered injuries in motor vehicular accident that occurred on 18.03.2008 upon being hit by Honda City Car bearing registration no. DL 7CF 4391, driven

negligently by respondents Suleman Khan (the driver), it being registered in the name of Reliance Retail Ltd. (registered owner) and admittedly insured against third party risk with ICICI Lombard General Insurance Company (insurer), the appellant in MAC Appeal No. 843/2011. He instituted accident claim case (280/08) on 21.04.2008 which was decided by the tribunal, by judgment dated 18.03.2011, the tribunal returning a finding on the basis of evidence tendered, accepting the case of the appellant that injuries had been sustained by him due to negligent driving of the car in question and, thus, holding the owner and driver jointly and severally liable to pay compensation. It computed compensation in the sum of Rs. 6,71,200/, directing the insurer to pay the same with interest calculating it thus:-

S.No.	Heads	Compensation
1.	Medical charges	Rs. 15,000/-
2.	Conveyance and special diet	Rs. 10,000/-
3.	Leave	Rs. 25,000/-
4.	Prospective Loss of Income	Rs. 4,21,200/-
5.	Attendant charges	Rs. 50,000/-
6.	Pain & sufferings	Rs. 50,000/-
7.	Curtailment of complete enjoyment of life	Rs. 1,00,000/-
	Total	Rs. 6,71,200/-

2. The insurer, by its appeal, submits that the tribunal had assessed the functional disability to the extent of 15% and has granted

compensation on account of prospective loss of income on such account by multiplier of 18 which was incorrect as there is no actual loss of income, or employment, there being neither any claim made nor proof adduced to such effect.

3. The claimant, on the other hand, by his appeal, contends that his functional disability should have been taken as 28% as had been certified (Ex.PX) by a board of doctors of Dr. Lal Bahadur Shastri Hospital of the Govt. of NCT of Delhi, he having been found to be a case of old, united and operated fracture of shaft of the right femur bone. The claimant has also submitted by his appeal that the tribunal has not awarded just compensation since the element of future price rise affecting the income has not been considered; the loss of earnings for the period of leave of absence for five months, and 12 days, has not been compensated; and the awards under the non-pecuniary heads of damages being inadequate.

4. The appeals were put in the category of 'regulars', to come up on their own turn by order dated 21.01.2016. When the matters are taken up, there is no appearance on behalf of the claimant. They have been heard with the assistance of the counsel representing the insurer and by perusal of the tribunal's record.

5. Having regard to the nature of injuries on which account the claimant suffered permanent physical impairment in respect of which opinion of board of doctors has been relied on, as indeed the nature of job performed, the assessment of functional disability to the extent of 15%, as concluded by the tribunal, is found to be just and proper.

6. There is, however, merit in the plea raised in the appeal of the claimant that the element of future prospects should have been factored in [see Constitution Bench judgment dated 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.]*.

7. The contention of the insurer about the method of calculation also is correct as in absence of any proof of loss of employment, the multiplier of 18 could not have been applied. In normal course, the present employment would assumably continue till the claimant reaches the age of 60 years. In these circumstances, the loss of future income due to disability would need to be calculated with the multiplier of 9.

8. The prospective loss of income due to disability is re-calculated as (13000 x 150/100 x 15 /100 x 12 x 9) Rs. 3,15,900/-. Since the tribunal has awarded Rs. 4,21,200/- under this head, the award would need to be reduced by (4,21,200 – 3,15,900) Rs. 1,05,300/-.

9. The tribunal concluded in (para 13 of) the impugned judgment that the claimant was constrained to be on leave of absence from duty for five months 12 days but it proceeded to award Rs. 25,000/- under this head of leave which should actually represent the loss of income equivalent to the leave salary. Since the total emoluments earned by the claimant at that point of time were Rs. 13,000/- per month, this was inappropriate. The amount on account of loss of leave of absence is, thus, recalculated, taking it to be a case of five and half months at (13000 x 5.5) Rs. 71,500/-. Thus, the award

under this head would need to be increased by (71,500 - 25,000) Rs. 46,500/-

10. Having regard to the nature of injuries sustained and the disability suffered, the awards under the other heads are found to be just and proper.

11. In above view, the total compensation needs to be reduced by (1,05,300 – 46,500) Rs. 58,800/-. Thus, the total compensation is reduced to (6,71,200 – 58,800) Rs. 6,12,400/-, rounded off to Rs. 6,13,000/- (Rupees six lakhs thirteen thousand only).

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

13. By order dated 02.11.2011 in MAC Appeal No. 843/2011, the insurance company had been directed to deposit the entire awarded amount with interest in UCO bank, Karkardooma Branch, Delhi. As observed in the subsequent order dated 27.02.2012, the amount had already been deposited accordingly with the claims tribunal and 50% had been released to the claimant. The court had restrained any further release during the pendency of the appeal of the insurance company.

14. The tribunal is directed to calculate the amount payable to the claimant in terms of the modification ordered above, and release the balance to him from out of remainder in deposit, refunding excess, if any, to the insurance company. Conversely, if any further amount

requires to be paid to the claimant, the insurance company will be obliged to deposit the same with the tribunal making it available to be released to the claimant.

15. Both appeals are disposed of in above terms.

16. The statutory amount of the insurance company shall be refunded.

R.K.GAUBA, J.

NOVEMBER 03, 2017
nk