$~R-656 & 657

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

Decided on: 06th December, 2017

\+ MAC APPEAL 1187/2012 and CM 19216/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

SURINDER PAL @ SURINDER KUMAR & ORS. ..... Respondents

Through: None

\+ MAC APPEAL 832/2013

SURINDER PAL @ SURINDER KUMAR ..... Appellant

Through: None

versus

THE NEW INDIA ASSURANCE COMPANY LTD. ... Respondent

Through: Mr. Pankaj Seth, Advocate

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

JUDGMENT (ORAL)

1. The first respondent in MACA 1187/2012 (claimant) was travelling as a passenger in three wheeler scooter bearing registration no.DL-1RB-5604 on 10.10.1997 when it came to be involved in an accident turning turtle resulting in he suffering injuries. The accident

claim case (suit no.227/2011/1998) was instituted with all promptitude on 25.03.1998 on his behalf by his wife claiming herself to be the next friend describing him to have been rendered mentally unstable at that stage, the claim being on the averments that the TSR driver Ashok Kumar had been negligent.

2. The tribunal's record reveals that there was utter neglect on the part of the counsel representing the claimant in proper prosecution, the petition being suffered to be dismissed in default on 12.07.2005. On the basis of application later moved, it, however, stood revived. The case took its own time in reaching a logical conclusion by the judgment dated 07.08.2012 whereby the case that the accident had occurred due to negligent driving of the TSR was accepted, this primarily on the word of the claimant (PW-2), he having assumably regained the capacity to depose and having testified on the strength of his affidavit (Ex. P2).

3. The claimant was evaluated by a board of doctors of Safdarjung Hospital, which issued disability certificate (Ex. PW2/A) affirming that he is a permanently disabled person due to post head injury right hemiparesis, the said physical impairment having been taken as 40% in relation to the right upper and lower limbs. The claimant had stated that he was earning his livelihood as a grocer before the accident. The tribunal took his permanent disability as total (100%) and by the impugned judgment dated 07.08.2012 awarded compensation in the sum of Rs.6,64,338/- adding the element of interest at the rate of 9% pa.. calculating the award thus :-

Treatment expenses	Rs.322/-
Pain and suffering	Rs.1,00,000/-
Diet and conveyance	Rs.1,25,000/-
Attendant's charges	Rs.42,816/-
Loss of income	Rs.23,400/-
Disability & Loss of amenities	Rs.3,97,800/-
Total	Rs.6,89,338/-
Less interim award	Rs.25,000/-
Balance amount payable	Rs.6,64,338/-

4. The insurer came up with the appeal (MACA 1187/2012) taking objection to the finding on the issue of connection between the accident and the disability suffered. It also took exception to the assessment of functional disability submitting that the awards under various heads are excessive.

5. *Per contra*, the claimant by his appeal (MACA 832/2013) has sought enhancement of the compensation.

6. Both appeals were put in the list of 'Regulars', to come up on their own turn, as per orders dated 13.07.2017 and 29.02.2016. When they are called out for hearing, there is no appearance on behalf of the claimant. The matter has been heard with the assistance of the counsel for the insurer.

7. On first blush, it does appear to be a case with gap in the evidence with regard to the injuries suffered in the accident and the treatment undertaken. It also does appear that as per the record of the corresponding police case, the first information report (FIR)

no.1037/1997 registered on 15.10.1997 was sought to be cancelled. It was on the basis of a complaint lodged at the instance of the claimant on 24.10.2005 that the said proceedings were revived, the said FIR eventually having resulted in a charge-sheet being presented in the court of the Metropolitan Magistrate on 02.01.2008 for prosecution of the TSR driver for offences punishable under Sections 279, 338 of Indian Penal Code, 1860.

8. It has, however, to be borne in mind that the injuries suffered included in the head region. The police record shows that the claimant when approached for taking of statement by the investigating police officer was reported to be unfit for such purpose. The record would confirm that he remained in mentally unstable condition due to the disability as it also turns out form the fact that the accident claim case had been filed on the basis of such facts in March 1998. It is the neglect on the part of the counsel prosecuting the case for and on behalf of the claimant, acting through his next friend, and also possibly on the part of the investigating police that the entire chain of documents could not be gathered and preserved as evidence.

9. Be that as it may, the evidence led particularly through official witnesses of Safdarjung Hospital (PW-3), Ram Manohar Lohia Hospital (PW-6) and Institute of Human Behaviour and Allied Sciences (PW-7) does help in completing the picture to the extent possible and bringing out the fact that throughout the period of inquiry before the tribunal, the claimant had been under intensive treatment for the head injuries suffered. The connection between the said

injuries and the condition on the basis of which he has been found to be rendered permanently disabled, thus stands established.

10. In the given facts and circumstances, having regard to the condition to which the claimant was reduced, this court declines to interfere with the finding on the issue of functional disability. The award granted by the tribunal is found to be just and adequate. The grievance in the appeal of the claimant that the expenditure on account of treatment undertaken is deficient cannot be accepted as no proof in this regard was adduced, the treatment apparently having been availed primarily free of cost.

11. In above facts and circumstances, both appeals and the pending application are dismissed.

12. By order dated 19.11.2012 on MACA 1187/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest and from out of such deposit, some amount was directed to be released by orders dated 19.11.2012 and 24.05.2017. The balance with accrued interest shall also be released to the claimant.

13. The statutory amount shall be refunded to the insurer after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

DECEMBER 06, 2017
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