$~R-622

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

Decided on: 01st December, 2017

\+ MAC APPEAL 1102/2012

RAJA RAM SINGH ... Appellant

Through: Ms. Harsh Lata, Advocate

Versus

RAJ KUMAR & ORS. ..... Respondents

Through: Mr. L.K. Tyagi, Advocate for R-3.

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

JUDGMENT (ORAL)

1. The appellant was the claimant before the motor accident claims tribunal, in accident claim case (Suit No.860/2009), seeking compensation for the injuries sustained and the disability consequently suffered, in a motor vehicular accident that had taken place on 20.10.2006, due to negligence on the part of driver of tempo bearing registration No.DL-1LF-5093, admittedly insured against third party risk for the period in question with the third respondent (insurer). The claimant proved that he, then aged of 48 years, had been rendered permanently disabled on account of amputation of his right leg above knee, the medical opinion in which regard is that the physical impairment is 80% in relation to said lower limb (Ex.PW-1/11). The

tribunal took the functional disability as 60% and on such basis, awarded loss of future income, calculating the total compensation in the sum of Rs.4,56,166/- as under:-

Sl. No.	**Head**	**Amount (in Rs.)**
1.	Medical expenses	5,000/-
2.	Travelling expenses	10,000/-
3.	Loss of future income	3,06,166/-
4.	Special diet expenses	10,000/-
5.	Non pecuniary as above	1,25,000/-
	Total	4,56,166/-

2. The liability to pay was fastened on the insurer with interest @ 7.5% per annum, it (the insurer), however, having been granted recovery rights against the driver-cum-owner of the offending vehicle.

3. The appeal at hand is pressed with the grievance that the assessment of functional disability is deficient and that the award is inadequate for the reason that in the name of non-pecuniary damages, the tribunal has granted only Rs.75,000/- for pain and suffering and Rs.50,000/- towards disfigurement, there being no award under the head of loss of amenities of life and the rate of interest levied being low.

4. In a similarly placed case of amputation of lower limb in MAC APP.1068/2016, titled *National Insurance Company Ltd. v. Priti*

Gupta & Ors., decided on 24.08.2017, the functional disability was taken as 80%. Following the said dispensation, similar award deserves to be made in the present case.

5. It is noted that the tribunal had assumed income of the claimant at Rs.3271/- during the relevant period on the basis of minimum wages. Adding the element of future prospects of increase in income to the extent of 25%, the compensation for loss of future income due to functional disability is computed as (3271/- x 80/100 x 125/100 x 12 x 13) Rs.5,10,276/-. The tribunal awarded Rs.3,06,166/- under this head. The award needs to be increased by (5,10,276/- - 3,06,166/-) Rs.2,04,110/-.

6. Non pecuniary heads of damages are indeed deficient. Having regard to the dispensation in similarly placed other cases, the damages under the head of pain and suffering and disfigurement are increased to Rs.1,50,000/- each and further amount of Rs.1,00,000/- is added for loss of amenities of life. Thus, there would be net increase in the award by (2,04,110/- + 75,000/- +1,00,000/- + 1,00,000/-) Rs.4,79,110/-. The award is increased to (4,56,166/- + 4,79,110/-) Rs.9,35,276/- rounded off to Rs.9,36,000/- (Rupees Nine Lacs Thirty Six Thousand Only).

7. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (9%) 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. vs. Sangeeta Devi & Ors.]*.

8. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days.

9. The entire amount now to be paid shall be released to the claimant in the form of interest bearing fixed deposit receipt, to be taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

10. Needless to add, the recovery rights of the insurer are not disturbed.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 01, 2017
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