$~R-584

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

Decided on: 29th November, 2017

\+ MAC APPEAL 936/2012 and CM 14760/2012

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

Through: Mr. Sameer Nandwani, Advocate

versus

SATPAL & ORS. ..... Respondents

Through: Mr. Sanjeev Srivastava, Adv. for R-1

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

JUDGMENT (ORAL)

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that took place on 25.02.2008 due to negligent driving of a motor vehicle described as Tata Sumo bearing Registration no.DL-3CW-6021 which was admittedly insured against third party risk for the period in question with the appellant (insurer). On his accident claim case (MACT 894/2008), instituted on 09.04.2008, the tribunal awarded compensation in the sum of Rs.6,49,041/-, by judgment dated 12.07.2012, and directed the insurer to pay with interest at the rate of 7.5% p.a. The said amount having been calculated thus :-

Loss of income on permanent disability	Rs.3,96,724/-
Medicines and treatment	Rs.1,52,317/-
Pain and suffering	Rs.50,000/-
Special diet and conveyance	Rs.25,000/-
Loss of amenities	Rs.25,000/-
TOTAL	Rs.6,49,041/-

2. The loss of income due to permanent functional disability is assessed on the evaluation that the claimant suffered from permanent disability in the right lower limb to the extent of 65%.

3. The insurer by the appeal at hand questions the said evaluation arguing that it could not be more than 50%.

4. The learned counsel for the claimant at the hearing conceded that the loss of future income due to functional disability may be awarded on the evaluation of functional disability restricted at 50%. He, however, submitted that the awards under the non-pecuniary heads of pain and suffering and loss of amenities are inadequate and that there is deficiency in the award since there is no compensation granted for loss of disfigurement and the rate of interest levied being low.

5. It is noted that the tribunal has committed an error by not including the element of future prospects which will have to be factored in on account of the ruling of a Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* to the extent of 25%.

6. The disability emanates from shortening of the right leg. Having regard to the nature and extent of such disability, the joint submission of both sides about the functional disability is accepted and the award for loss of income on this account is accordingly re-computed as [Rs.3,633/- x 125/100 / 2 x 12 x 14] Rs.3,81,465/-.

7. Having regard to the nature of the injuries sustained, the permanent disability suffered and the prolonged treatment undertaken, the awards under the heads of pain and suffering and loss of amenities are increased to Rs.75,000/- each. Besides the said awards, an amount of Rs.75,000/- is added towards dis-figurement.

8. Putting together all the heads of damages including on other counts granted by the tribunal, the total compensation in the case comes to [Rs.3,81,465/- + Rs.1,52,317/- +Rs.75,000/- + Rs.25,000/- + Rs.75,000/- +Rs.75,000/-] Rs.7,83,782/-, rounded off to Rs.7,84,000/- (Rupees Seven lakh and eighty four thousand only).

9. As pointed out by the counsel for the claimant, the rate of interest is on the lower side. Following the consistent view taken by this Court, the rate of interest is increased to 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 v. Sangeeta Devi & Ors*.]

10. In the above facts and circumstances, the award instead of being decreased deserves to be increased. Ordered accordingly.

11. By order dated 27.08.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch and by a subsequent order

dated 07.12.2012, seventy five percent (75%) was permitted to be released to the claimants. The balance lying in deposit with accrued interest shall also be released to the claimant. The insurance company is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days.

12. The statutory amount shall be forfeited as costs in favour of Delhi High Court Legal Services Committee and shall be accordingly made over.

13. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 29, 2017
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