$~R-603

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

\+ MAC. APPEAL No.1009/2012

TIM RAJ SINGH ..... Appellant

Through: Mr. O.P. Mannie, Advocate

versus

INDER & ORS .….Respondents

Through: Mr. Pankaj Seth, Advocate for R-3.

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

JUDGMENT (ORAL)

1. On the accident claim case (Suit No. 316/04, old suit No. 1572/2000), instituted on 11.02.2000 by the appellant (claimant), the Tribunal rendered its judgment on 13.12.2007, awarding total compensation of Rs.90,000/- with interest at 9% per annum for the injuries suffered by him in a motor vehicular accident that occurred on 21.06.1999 due to negligent driving of bus bearing registration No. DL-1P-6491, which was admittedly insured against third party risk with the third respondent (insurer) for the period in question, the said amount inclusive of Rs.50,000/- for pain and suffering, Rs.20,000/- towards special diet and Rs.20,000/- on account of conveyance/transportation charges.

2. The claimant had later moved an application for review which was decided by the Tribunal, by order dated 25.03.2008, adding

Rs.50,000/- along with interest @ 9% per annum to the compensation as a lump sum amount payable for loss of income due to functional disability suffered it being assessed at 20%. It appears the liability to pay was initially fastened against the owner of the vehicle (the second respondent), who moved another application for review in the course of execution proceedings (Ex.70/08) which was decided by order dated 27.03.2012 whereby such liability was shifted on to the insurer.

3. The appeal at hand is pressed to argue that the loss of future income due to disability has not been properly calculated and that loss of income during the period of treatment was also not taken care of. It is further pointed out that the medical expenditure proved before the Tribunal was Rs.1,61,572/- out of which Rs.96,806/- had been reimbursed by the employer (Delhi Transport Corporation), there being no provision in the award for the balance of Rs.64,746/-.

It is noted that the claimant was employed with Delhi Transport Corporation as a conductor during the relevant period, the emoluments at that point of time being in the sum of Rs.6,849/- per month. He was 45 years old at the relevant date (his date of birth being 20.01.1954). It is admitted that there was no immediate loss of earning or income as the claimant had continued to be in the service of DTC. The loss of future income would occur when he would retire on attaining the age of superannuation (60 Years). In these circumstances, the loss of future income due to functional disability of 20% would need to be re-calculated, after factoring in the element of future prospects of increase to the extent of 30%, following the ruling of 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., as (6,849 X 130/100 X 20/100 X 12 X 9) Rs.1,92,319.92 rounded off to Rs. 1,93,000/-.

4. Since the Tribunal has granted a lump sum amount of Rs.50,000/- under this head, the award needs to be increased by (1,93,000-50,000) Rs.1,43,000/-.

5. The record shows that the claimant had remained under treatment for a period of eight months. The corresponding loss of value of leave availed also has to be added to the compensation. This is computed as (6,849 X 8) Rs.54,792/- rounded off to Rs.55,000/-.

6. There was no reason why the balance medical expenditure of Rs.64,746/- could not have been included in the compensation. The same is added by rounding it off to Rs.65,000/-.

7. The compensation, thus, deserves to be increased by (1,43,000 + 55,000 + 65,000) Rs.2,63,000/-. The award is increased to (1,40,000 + 2,63,000) Rs.4,03,000/- (Rupees Four Lakhs and Three Thousand Only). Needless to add, the enhanced amount shall carry interest as levied by the Tribunal.

8. The Insurance Company is directed to satisfy the entire award by requisite deposit before the Tribunal within 30 days thus, making it available to be released to the claimant.

9. The appeal stands disposed of accordingly.

R.K.GAUBA, J.

NOVEMBER 30, 2017
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