$~R-250 & 251

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

Decided on: 21st September, 2017

\+ MAC APPEAL 670/2010

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Ms. Harsh Lata for Ms. Shantha Devi Raman, Advocate

Versus

ALBERT PETER (SINCE DECEASED THROUGH LRs) & ANR. ..... Respondents
Through: Mr. S.N. Parashar and Ms.Pankaj Kumari, Advocates

\+ MAC APPEAL 669/2011 and CM 25202/2015

ALBERT PETER (SINCE DECEASED THROUGH LRs) ..... Appellant
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

Versus

NATIONAL INSURANCE CO. LTD. & ANR ..... Respondents
Through: Ms. Harsh Lata for Ms. Shantha Devi Raman, Advocate

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

JUDGMENT (ORAL)

1. Albert Peter, then aged about 54 years, working as Printing Plates Maker with Hindustan Times, suffered injuries in a motor

vehicular accident that occurred on 30.06.1998 due to the negligent driving of Tata Sumo bearing registration no.DL-7C-6634, admittedly insured against third party risk with National Insurance Co. Ltd. (appellant in MACA 670/2010). Due to the injuries suffered by him, part of his right leg was amputated, he being rendered permanently disabled, his disability having been evaluated by a board of doctors of Lok Nayak Jai Prakash Narayan Hospital of the Govt. of NCT of Delhi vide disability certificate (Ex. PW-1/A) to be to the extent of 40%. It may be added here that upon attaining the age of superannuation, he was retired by the employer on 21.02.1999, the last salary having been proved to be in the gross sum of Rs.9,814/-, as per the salary slip (Ex.PW4/27). He (Albert Peter), for reasons which cannot be fathomed, filed an accident claim case on 04.03.2005, almost seven years after the accident impleading the owner and insurer of the offending vehicle.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 24.07.2010 accepted the case for compensation holing the driver of the offending vehicle responsible for the mishap. The compensation in the total sum of Rs.2,33,780/- was awarded in favour of the claimant / Albert Peter, the liability having been fastened on the insurer to pay the same with interest at the rate of 7.5% p.a.

3. During the contest, the insurer had raised the defence that there was a breach of the terms and conditions of the insurance policy as the driver of the offending vehicle was not holding a valid or effective

driving licence, the document presented by him to such effect having been found upon verification to be fake. The Tribunal, however, accepted the word of the owner of the offending vehicle to the effect that there had been due diligence and following the ruling of the Supreme Court in *United India Insurance Company Ltd. V. Lehru & Ors.,* (2003) 3 SCC 338 declined to grant ay relief to the insurer.

4. The insurer came with the appeal (MACA 670/2010) assailing the impugned judgment of the tribunal, it being pressed at the hearing to seek recovery rights against the owner of the offending vehicle on the ground that the stand taken by him was false.

5. The claimant, on the other hand, also came with his cross appeal (MACA 669/2011) seeking enhancement of compensation. During the pendency of these appeals, the claimant, however, died on 29.08.2013. On the application moved by his legal heirs, they have since been substituted in these matters and are allowed to prosecute the interest of the original claimant on behalf of his estate.

6. The appeal of the claimant is pressed only to seek compensation on account of the loss of earnings due to disability, the said component not having been covered by the award granted by the tribunal. Given the nature of the injuries sustained and the disability suffered and their aftermath, having regard to the medical opinion, the functional disability is assessed at 40%. The claimant had continued to be in the employment of the same entity till he attained the age of superannuation in February 1999. Since he would have gone beyond the age of 55 years, the loss of future earning due to disability is

calculated, with the multiplier of 9, as [Rs.9,814/- x 40 / 100 x 12 x 9] Rs.4,23,964.8, rounded off to Rs.4,24,000/- (Rupees Four lakh and twenty four thousand only).

7. The award is, thus, increased by Rs.4,24,000/- (Rupees Four lakh and twenty four thousand only). The enhanced portion of the award shall carry interest at the rate of 9% p.a. from the date of filing of the petition till realization. The insurance company is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, the entire balance including the balance from out of the award earlier granted to go to Smt. Augusta Peter, wife of late Albert Peter.

8. By order dated 07.10.2010 on MACA 670/2010, the insurance company had been directed to deposit the entire amount awarded by the tribunal and from out of the same, 50% (fifty percent) was allowed to be released to the claimants. The balance initially kept in fixed deposit was also permitted to be released by subsequent order dated 12.07.2013.

9. Coming to the appeal of the insurance company, it being pressed to seek recovery rights, all that needs to be observed is that the view taken by the tribunal against the backdrop of the deposition of the owner (R1W1) is in accord with the ruling of the Supreme Court in *United India Insurance Company Ltd. V. Lehru & Ors.* (supra).

10. The plea of the insurer for recovery rights, is thus, rejected.

11. The statutory deposit of the insurance company shall be refunded.

12. Both the appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 21, 2017
yg