$~R-620

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

Decided on: 01st December, 2017

\+ MAC APPEAL 1091/2012

RAJ RANI ... Appellant

Through: Nemo.

Versus

SURESH KUMAR GUJAR & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate

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 (MACT No.633/2008) instituted by her on 28.07.2008, which after inquiry was decided by the tribunal, by judgment dated 30.04.2008, holding that she had suffered injuries in the motor vehicular accident that had occurred on 28.03.2008 due to negligent driving of motor vehicle described as bus, bearing registration No.RJ-14-PA-1733, admittedly insured against third party risk for the period in question with the third respondent (insurer). It was proved before the tribunal that the injuries suffered were in the nature of amputation of second and third toe of the left foot. The disability certificate (page 157 of the tribunal's record) indicated the medical opinion that the physical impairment is to the extent of nine

per cent (9%). The tribunal, however, declined to grant any award under this head for the reason there was no proof that the claimant was working for gain. It awarded total compensation in the sum of Rs.95,000/-, calculating it thus:-

Sl. No.	**Head**	**Amount (in Rs.)**
1.	Compensation for pain and suffering	40,000/-
2.	Compensation for expenses incurred on medical treatment	8,000/-
3.	Compensation for special diet	5,000/-
4.	Compensation for conveyance charges during medical treatment	3,000/-
5.	Compensation on account of attendant charges	9,000/-
6.	Compensation for loss of enjoyment of amenities of life on account of permanent disability	15,000/-
7.	Compensation on account of inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.	15,000/-
	Total	95,000/-

2. The Tribunal directed the insurer to pay with interest though also granting it recovery rights against the driver and owner of the offending vehicle.

3. The appeal was filed with the grievance that the award is inadequate as the functional disability has not been assessed or covered by compensation.

4. On the request of the claimant, she was granted opportunity to lead additional evidence during the inquiry before this Court. It may be added that she had earlier examined herself (as PW-1) during the inquiry before the tribunal on the strength of her affidavit (Ex.PW-1/A). During the appeal proceedings, she examined Renu (PW-2) and Shashi Katiyar (PW-3) on the basis of their respective affidavits (Ex.PW-2/A and Ex.PW-3/A).

5. The appeal was put in the list of *'Regulars'* to come up on its own turn by order dated 11.07.2017. When it is called out for hearing, there is no appearance on behalf of the appellant.

6. The learned counsel for the insurer has been heard, there being no appearance on the part of other respondents at this stage.

7. It was not correct on the part of the tribunal to say that the claimant was not entitled to any damages on account of loss of capacity to earn in future. Having regard to the nature of injuries suffered, the functional disability to the extent of 5% deserves to be granted, in view of entry no.43 in the second part of the first schedule appended to Employees' Compensation Act, 1923. The claimant (as PW-1) had testified that she was earning livelihood by undertaking sewing and stitching work. This is affirmed by her additional witnesses (PW-2 and PW-3). Since the accident had occurred on 28.03.2008, the minimum wages of a semi-skilled worker (Rs.3799/-) are taken as the benchmark. The claimant was 51 years old on the relevant date and, therefore, the multiplier of 11 is applied.

8. The loss of income in future due to functional disability, after factoring in the element of future prospects to the extent of 10% in view of 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*. is, thus, calculated as (3799/- x 110/100 x 5/100 x 12 x 11) Rs.27,580.74 rounded off to Rs.28,000/- (Rupees Twenty Eight Thousand Only).

9. The award under the other heads is found to be just and adequate. The compensation in favour of the claimant is, thus, increased by Rs.28,000/-. The insurance company is held liable to satisfy the enhanced award by requisite deposit including the corresponding interest with the tribunal within thirty days making it available to be released to the claimant.

10. Needless to add, this does not disturb the recovery rights granted to the insurer.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 01, 2017
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