

\$~R-427

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

Decided on: 07th November, 2017

+ **MAC APPEAL 1078/2011**

JYOTI

..... Appellant

Through: None

versus

HEM RAJ SINGH & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant, then aged 3 years old, was riding on the motor cycle bearing registration no.DL-3SZ-1080 with two other children, it being driven by her father Yogener Singh on 02.11.2008 when at about 10.00 p.m. it came to be involved in a motor vehicular accident with truck bearing registration no.HR-38D-7023 (the truck) and suffered injuries. The accident claim case (MACT no.11/08) was instituted on 20.11.2008 for and on her behalf by her father and natural guardian, impleading the driver, owner and insurer of the said truck as party respondents, they being the respondents in the appeal.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 07.05.2011, returned a finding that the accident had occurred due to the negligent driving of the truck,

causing injuries to the claimant. It awarded compensation in the total sum of Rs.1,62,500/-, calculating it thus :

PECUNIARY DAMAGES

(a). Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure	Rs.50,000/-
(b). Future medical expenses Non-pecuniary damages	Rs.25,000/-
(c). Loss of wages	Rs.37,500/-

NON-PECUNIARY DAMAGES

(a). Damages for pain, suffering and trauma as a consequence of the injuries	Rs.50,000/-
TOTAL	Rs.1,62,500/-

3. The liability to pay the said amount was placed at the door of the insurer (third respondent) with levy of interest at the rate of 7.5% p.a.

4. It may be mentioned here that the assessment of damages by the tribunal was, *inter alia*, on the facts that the injuries suffered by the claimant included multiple fractures of the pelvic bone. Though it was claimed on her behalf that her urinary and reproductive systems had also been damaged, no evidence affirming such injuries was adduced. The claimant had relied on the disability certificate (Ex. PW1/A) and also examined Dr. Rajat Mahajan, Senior Resident Orthopedic of Guru Tegh Bahadur Hospital (PW-1). As per the disability certificate, and the evidence of the said medical expert, the claimant suffers from

permanent locomotor impairment of her right lower limb to the extent of 12%.

5. The appeal was filed with the grievance that the compensation awarded is inadequate. It was submitted that the permanent disability would adversely affect the marriage prospects of the claimant and also cause dis-figurement for life. It was also submitted that the non-pecuniary damages and the rate of interest levied are deficient.

6. The appeal was admitted and put in the list of regular matters, to be taken up on its own turn as per order dated 04.02.2015. It was taken up twice thereafter in the effort to resolve the dispute amicably through the *Lok Adalat* but with no results. When it is taken up for hearing, there is no appearance on behalf of the appellants (claimants).

7. Having regard to the nature of the injuries and the disability suffered, this court accepts the plea that the award is inadequate. Since there has been no compensation granted towards loss of amenities of life, loss of marriage prospects and for dis-figurement, amounts of Rs.50,000/- each under the said three heads are added to the compensation raising it to [Rs.1,62,500/- + Rs.50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.3,12,500/-, rounded off to Rs.3,13,000/- (Rupees Three Lakh and thirteen thousand only).

8. 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.*]

9. The award is modified accordingly. The third respondent (insurer) shall be obliged to satisfy the enhanced award by requisite

deposit with the tribunal within 30 days making it available to be released to the claimants in the form of a fixed deposit receipt taken out from a nationalized bank for a period of seven years with provision for drawal of periodic interest.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 07, 2017

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