$~R-612

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

Decided on: 01st December, 2017

\+ MAC APPEAL 1068/2012 and CM 16918/2012

NATIONAL INSURANCE COMPANY LTD. ... Appellant
Through: Mr. L.K. Tyagi, Advocate

versus

SHWETA SHARMA & ORS ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. The appeal at hand challenges the award of compensation granted by the Motor Accident Claims Tribunal (Tribunal) in favour of the first respondent (claimant) by order dated 05.07.2012 in her accident claim case (suit no.841/2008) instituted on 18.07.2006 for the injuries sustained and the permanent disability suffered in the consequence, in a motor vehicular accident that had occurred on 08.08.2004 due to the negligent driving of a motor vehicle described as a bus bearing registration no.DL-1PB-0660 admittedly insured against third party risk with the appellant (insurer) for the period in question.

2. After some hearing, the counsel for the appellant was told that in the opinion of this court, instead of being reduced, the compensation in the case, as granted by the tribunal, is found to be

grossly deficient and therefore, it may be increased. The counsel, however, insisted that the appeal may be considered on the contentions urged.

3. The claimant had proved through evidence that the accident had occurred due to the negligence on the part of the bus driver which finding has attained finality. She has proved that the injuries suffered by her were grievous in nature, they including degloving injuries of the left thigh with fractures of shaft femur (left) and clavicle right besides almost complete loss of skin over whole of thigh and upper leg and other injuries all over the body. She also proved that she had undergone prolonged treatment which included several surgical procedures, she even having developed debridment of the skin of the thigh and leg, the procedure underwent including interlocking nailing for left fracture shaft femur and split skin grafting over whole thigh and upper leg. In the course of the treatment, the claimant developed infection which added to her agony. She lost muscles and skin in the entire pelvic region and other parts of the leg rendering her prone to infection. She was aged 17 years, a student of 12th standard, when the injuries were suffered. The treatment having continued for two years, she was constrained to miss out on the school leaving examination (12th standard) held in March 2005 pushing her life back.

4. The claimant was examined by doctors of Pt. Madan Mohan Malviya Hospital, Govt. of NCT of Delhi which issued a disability certificate dated 13.05.2010 affirming her permanent physical impairment to be 22% in addition to left lower limb. In the course of her testimony, she examined Dr. Nikunj (PW-3) of the Department of

Orthopedic of the said hospital who, while proving the disability certificate also affirmed her claim that she is unable to squat and thus is denied a normal life. Dr. Mahesh Mangal, Chairman of the Department of Plastic Surgery of Sir Ganga Ram Hospital was examined by the tribunal on 03.09.2011 when he deposed that walking triggers pain in the left thigh and unstable scars on the lower limb result in frequent ulceration causing swelling, she requiring reconstructive surgery, cost whereof assessed at that stage was in the region of Rs.5.5 Lakhs.

5. Against the above backdrop, the tribunal has included, by the impugned judgment, an amount of Rs.7,56,000/- as loss of income in future assuming her income at the relevant point of time at Rs.9,000/- p.m. and income loss due to disability assessed at Rs.3,500/- p.m. It is clear that the tribunal has not actually made any assessment of the functional disability suffered by the claimant. But from the calculations, it appears to have proceeded on the assumption that the disability is 39% which, in the opinion of this court, is inadequate.

6. Having regard to the medical conditions noted above, the functional disability is taken as 50%. While the claimant was entitled to compensation for loss of two years of study, she would be entitled to loss of future income to be calculated accordingly. It is noted that the award granted by the tribunal only covers the head of loss of future income. In absence of any other suitable benchmark, the loss of two years of study is compensated on the basis of notional income of a matriculate, as on the date of the accident, such amount being in the

sum of Rs.3,342/-, rounded off to Rs.3,400/- p.m., the loss is computed as [Rs.3,400/- x 24] Rs.81,600/-.

7. Coming to the loss of future income due to functional disability, the element of future prospects of increase to the extent of 40% will also have to be factored in. [see judgment 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.*]. On the multiplier of 18, such loss is computed as [Rs.3,400 /- x 140/100 /2 x 12 x 18] Rs.5,14,080/-.

8. It is noted that the tribunal awarded Rs.50,000/- towards pain and suffering and Rs.2,00,000/- towards loss of marriage prospects. Having regard to the suffering undergone, the first mentioned head of damages has not been properly covered, the same is increased to Rs.2,00,000/-. Further, the deficiency in the award on account of loss of amenities of life needs to be compensated. The amount of Rs.1,00,000/- under the said head is added.

9. Putting together all the other heads of damages granted by the tribunal, the total compensation is calculated as [Rs.2,00,000/- + Rs.2,00,000/- + Rs.1,00,000/- + Rs.16,941/- + Rs.20,000/- + Rs.20,000/- + Rs.5,14,080/- + Rs.81,600/- + Rs.5,05,000/-] Rs.16,57,621/-, rounded off to Rs.16,58,000/- (Rupees Sixteen lakh and fifty eight thousand only). Thus, the award instead of being decreased is liable to be increased. Ordered accordingly.

10. 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*.]

11. In terms of order dated 10.10.2012, the insurance company had been directed to deposit sixty percent (60%) of the award amount with up-to-date interest which was held back in a fixed deposit receipt for a period of six months. The amount retained in fixed deposit receipt with accrued interest shall be released to the claimant in terms of the judgment of the tribunal. The insurance company is directed to satisfy the enhanced award by requisite deposit of the balance of its liability with the tribunal within 30 days whereupon it shall be released to the claimant in the form of fixed deposit interest bearing receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

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

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

R.K.GAUBA, J.

DECEMBER 01, 2017
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