$~R-422

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

Decided on: 07th November, 2017

\+ MAC APPEAL 1054/2011

GAURI SHANKAR (THROUGH LRs) ..... Appellant
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

versus

JAGDISH SINGH & ANR ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. The original appellant Gauri Shankar was the claimant before the Motor Accident Claims Tribunal (Tribunal) in an accident claim case (MACT 658/2006) instituted by him on 14.11.2006. On the basis of inquiry held, the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 07.07.2011, held that he had suffered injuries in a motor vehicular accident that had occurred on 24.08.2006 due to the negligent driving of Tata Tempo bearing registration no. UP-85M-9242 by the first respondent, such vehicle being admittedly insured against third party risk with the second respondent (insurer) for the period in question.

2. The tribunal found, on the basis of evidence, that the claimant had suffered functional disability to the extent of 41%. It awarded compensation in the total sum of Rs.5,24,766/- calculating it thus :-

NON-PECUNIARY DAMAGES

Towards special diet	Rs.15,000/-
Towards conveyance allowance	Rs.15,000/-
Towards mental pain, agony, loss of amenities of life, happiness, frustration towards disfigurement and enjoyment of life keeping in view the age of injured	Rs.1,00,000/-

PECUNIARY DAMAGES

Towards functional disability	Rs.1,46,656/-
Towards medical expense	Rs.2,28,238/-
Towards not being able to do his duties for 6 months	Rs.19,872/-

3. The insurer has been burdened with the liability to pay the same with interest.

4. The appeal was filed seeking enhanced compensation. During the pendency of the appeal, however, the original claimant died on 21.06.2014 and has since been substituted by his legal representatives.

5. The appeal is pressed by the legal representatives of the original claimant pressing it on the ground that the income of the deceased was wrongly calculated with the help of minimum wages ignoring the Income Tax Returns (ITRs) which had been submitted on record. During the hearing, it was pointed out to the counsel for the appellants

that the award of Rs.1,00,000/- towards mental pain and agony, loss of amenities of life, etc. being personal in nature, will have to be discounted in re-calculation of the compensation since the appeal is in continuation of the proceedings arising out of the claim case. The learned counsel for the claimant while conceding to this position, submitted that the error in calculation of the loss of income which would now be a loss to the estate on account of functional disability, be corrected.

6. The claimant had submitted on record the copies of the ITRs for two assessment years, they being AY 2005-2006 and 2006-2007 (pages 92-93 of the tribunal's record). The said ITRs do reflect an income of Rs.53,441/- during AY 2005-2006 and Rs.86,257/- during AY 2006-2007 from business. It appears these documents escaped the notice of the tribunal. There is no good reason why they should be kept out from consideration. Having regard to the ruling of the 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*., the element of future prospects of increase to the extent of 10% would deserve to be added.

7. Thus, on the income of Rs.86,257/- for AY 2006-2007, the element of future prospects of increase to the extent of 10% is added and the compensation due to loss to estate on account of functional disability is calculated as [Rs.86,257/- x 110/100 x 41/100 x 9] Rs.3,50,117/-. Since the tribunal had awarded Rs.1,46,656/- under this head, the total compensation will need to be increased by [Rs.3,50,117/- (-) 1,46,656/-] Rs.2,03,461/-.

8. However, the amount of Rs.1,00,000/- as award under the head of non-pecuniary damages needs to be discounted and, therefore, the net increase would come to [Rs.2,03,461/- (-) 1,00,000/-] Rs.1,03,461/- (Rupees One Lakh three thousand four hundred and sixty one only).

9. The compensation is, thus, increased to [Rs.5,24,766/- + Rs.1,03,461/-] Rs.6,28,227/-, rounded off to Rs.6,29,000/- (Rupees Six Lakh and twenty nine thousand only). It is directed that the award shall carry interest as levied by the tribunal.

10. Since the original claimant had died, the balance of the amount which is to be paid now, shall be equally apportioned amongst his legal representatives.

11. The insurer is directed to satisfy the modified award by requisite deposit with the tribunal within 30 days.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 07, 2017
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