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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th November, 2017

\+ MAC.APP. 511/2016

NATIONAL INSURANCE CO.LTD. ..... Appellant

Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Adv.

versus

HUDA PARVEEN (MINOR) & ORS. ..... Respondents

Through: Mr. Neeraj Kumar Jha, Adv.

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

JUDGMENT (ORAL)

1. The accident claim case (MACT no. 370/2012) was instituted on behalf of the first respondent (the claimant) on 16.10.2012 by her father (natural guardian) seeking compensation under Section 166 of the Motor Vehicles Act, 1988, for injuries suffered in a motor vehicular accident that had occurred on 19.04.2012 involving negligent driving of vehicle TATA 407 (offending vehicle) bearing registration no. UP 24D 7186. It appears that a number of persons had suffered injuries, some of whom had died in the same accident. Therefore, other claim petitions had also come up before the accident claims tribunal which clubbed all the claim petitions including the claim case of the first respondent for purposes of inquiry. The said cases were decided by common

judgment dated 30.03.2016, returning a finding that the accident had occurred due to negligent driving of the offending vehicle by its driver (the second respondent). Thus, the second respondent (the driver) and the third respondent (the owner) were held liable, jointly and severally, to pay compensation. The liability to pay, in turn, fell on the shoulders of the insurer (appellant) as the offending vehicle was insured against third party risk with the appellant (insurer) for the period in question.

2. The findings on the issue of involvement of the offending vehicle and the negligence on the part of the driver (the second respondent) have attainted finality as it was not challenged by any of the contesting respondents.

3. On the question of compensation, it was claimed before the Tribunal on behalf of the first respondent that she had suffered injuries in the head and, consequently, she had been rendered temporarily disabled to the extent of 52.22%. Reliance was placed on disability certificate (Ex-PW6/1) issued to her after examination by a board of doctors of the Institute of Human Behaviour and Allied Sciences (IHBAS), of the Govt. of NCT of Delhi. It is noted in (page 22 of) the impugned judgment of the tribunal that the counsel representing the claimant had submitted that the injured was in need of money and, therefore, she could not wait for reassessment as was mentioned in the disability certificate (Ex-PW6/1) issued by IHBAS in November 2015. The condition requiring reassessment is described as head injury with

left semiparesis with left facial palsy. The tribunal, however, proceeded to conclude that the claimant suffers from total functional disability (to the extent of 100%) and has awarded compensation inclusive of loss of future income on such basis.

4. It is mentioned here that the compensation awarded in the total sum of Rs.27,27,743/- in favour of the claimant includes damages under the heads of pain and sufferings, disfiguration/ amenities of life, loss of marital prospects, loss of study/education, loss of future income due to permanent disability, special diet, medical bills, special treatment/ aid for rest of her life, expenditure towards conveyance and expenditure towards salary of attendant. It was pointed out at the hearing by the counsel for the insurer (the appellant) that some of the awards are overlapping giving double advantage, reference in particular being made to the provision for attendant charges which is covered under the head of special treatment/ aid for rest of life. The tribunal has also levied interest over and above the compensation awarded, the grievance in appeal being that such levy against the provision made for future treatment was unjustified.

5. After some hearing, the counsel for the claimant fairly conceded that in absence of proper evaluation of the nature and the extent of disability suffered, the conclusion that the claimant has been rendered functionally disabled to the extent of 100% for rest of her life is unsubstantiated. He submitted that in this view the impugned judgment may be set aside but with request that the

matter may be remitted to the tribunal for further inquiry so that proper evaluation of disability can be secured, in the face of recommendation of 2015 by IHBAS for a review after one year and fresh decision be taken on basis of such medical opinion.

6. In the foregoing facts and circumstances reserving all the contentions of the insurer as noted above, the impugned judgment is set aside. The claim case of the first respondent is remanded to the tribunal for further inquiry and fresh adjudication. Needless to add, the tribunal shall seek the claimant to be evaluated by a board of doctors for the evaluation of her condition. The opinion shall be in the form of final opinion on the condition of the claimant for the rest of her life. The claimant will be entitled to lead further evidence, should it be required, whereafter opportunity shall also be given to the contesting parties to lead evidence in rebuttal, if any. It is made clear that tribunal shall take a fresh call on the question of 'just compensation', not feeling bound by the view in the judgment which is set aside.

7. The parties are directed to appear before the tribunal on 18th December, 2017 before the tribunal.

8. In terms of the order dated 19.07.2016, the insurance company had been directed to deposit the entire amount awarded by the tribunal in the impugned judgment within upto date interest @ 9% per annum with UCO Bank, Delhi High Court Branch within specified period. By the same order, 10% of the said deposited amount was allowed to be transferred into the Savings Bank

account of the first respondent (the claimant), further directions being for the amount of Rs. 10,00,000/- to be released in ten different FDRs of varying durations and the remainder amount to be kept in fixed deposit for the period(s) specified. By order dated 08.12.2016, an FDR of amount of Rs.2,50,000/- was additionally released to the claimant.

9. By order dated 28.04.2017, further amount of Rs.10,00,000 was released to the claimant. The entire amount presently lying in fixed deposit for various periods with accrued interest shall presently be refunded to the insurance company along with the statutory deposit made by it. The amounts already received by the claimant, shall be liable to be adjusted against the fresh adjudication to be made by the tribunal.

10. The appeal is disposed of in above terms.

11. *Dasti.*

R.K.GAUBA, J.

NOVEMBER 16, 2017
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