$~R-648 and R-649

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

Decided on: 06th December, 2017

\+ MAC APPEAL 1170/2012 and CM 18939/2012

NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocates

versus

ASHWINI @ SONU & ORS. ..... Respondents
Through: Mr. O.P. Mannie, Adv. for R-1

\+ MAC APPEAL 589/2013

ASHWINI @ SONU & ORS. ..... Appellants
Through: Mr. O.P. Mannie, Advocate

versus

NEW INDIA ASSURANCE COMPANY LTD. ... Respondent
Through: Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocates

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

JUDGMENT (ORAL)

1. Both these appeals arise out of the judgment of the Motor Accident Claims Tribunal (Tribunal) dated 23.03.2012 on accident claim case (MACT no.367/10/06) instituted on 31.03.2006 by

Ashwini @ Sonu, appellant in MACA 589/2013 and first respondent in MACA 1170/2012 (hereinafter referred to as the "claimant"). By the said judgment, the tribunal awarded compensation in the total sum of Rs.7,29,181/- in favour of the claimant for the injuries suffered by him in a motor vehicular accident that occurred on 17.02.2006 due to negligent driving of a truck bearing registration no.HR-39-3351 which was admittedly insured against third party risk for the period in question with New India Assurance Company Ltd., appellant in MACA No.1170/2012 and first respondent in MACA No.589/2013 (hereinafter, referred to as the "insurer").

2. The liability to pay the above mentioned amount was fastened on the insurer with interest at the rate of 7.5% p.a. levied, the amount having been calculated thus :-

A. PECUNIARY DAMAGES (SPECIAL DAMAGES)	
Medical Bills & Expenses	Rs.14,885/-
Special diet	Rs.10,000/-
Conveyance charges	Rs.10,000/-
Loss of Income	Rs.22,314/-
Future loss of income	Rs.4,81,982/-
B. NON PECUNIARY DAMAGES (GENERAL DAMAGES	
Loss of amenities and enjoyment of life	Rs.50,000/-
Loss of marriage prospects and shortening of life	Rs.70,000/-
Pain and suffering, inconvenience, frustration, hardship and trauma	Rs.70,000/-
TOTAL	Rs.7,29,181/-

3. The insurer, by its appeal (MACA No.1170/2012), questions the award on the grounds that the compensation granted is excessive as future prospects have been wrongly added, the functional disability assessed is unduly high and that non-pecuniary heads of damages included in the award are excessive.

4. *Per contra*, the claimant, by his appeal (MACA No.589/2013) argues that the award is inadequate as the income has been wrongly assessed with the help of minimum wages and it should have been accepted at Rs.5,000/- p.m. The claimant also submits that the award should have included attendant charges and suitable provision for surgical procedure, the rate of interest levied being unduly low.

5. It is noted that the injuries included amputation of great toe and loss of soft skin of the left ankle and right leg. The claimant was examined by a board of doctors of Babu Jagjeevan Ram Memorial Hospital, Jahangir Puri of the Govt. of NCT of Delhi, which certified (Ex. PW3/1), he to have been rendered a permanently physical disabled person, the physical impairment being 40% in relation to the said parts of the body. The tribunal has taken the functional disability at 40%.

6. It is noted that the claimant had pleaded before the tribunal that he was in a private service, earning Rs.5,500/- p.m. No evidence worth the name in support of such claim was adduced. In these circumstances, the tribunal was constrained to go by the minimum wages of an unskilled worker (Rs.3,719/-).

7. In terms of the prescription against entry no.39 in the second part of first schedule appended to Employees' Compensation Act,

1923, the loss of the great toe of one foot is to be treated as loss of earning capacity to the extent of 14%. Taking note of the other factors particularly the loss of soft skin of the areas around the foot in question, the functional disability undoubtedly has been over assessed by the tribunal. It is therefore treated as functional disability to the extent of 20%. The loss of future income on such account thus will have to be re-calculated.

8. The computation of income also requires suitable correction in that the element of future prospects will have to be restricted in the case at hand to 40%, given the ruling 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.*

9. Thus, the loss of future income is re-calculated as [Rs.3,719/- x 140/100 x 20/100 x 12 x 18] Rs.2,24,925.12, rounded off to Rs.2,24,925/-. Since the tribunal calculated the amount under this head at Rs.4,81,982/-, it needs to be reduced by [Rs.4,81,982/- (-) Rs.2,24,925/-] Rs.2,57,057/-.

10. It is noted that the treatment had continued for a prolonged period. In this view, the attendant charges in the amount of Rs.30,000/- are added.

11. The deficiency in the award on account of absence of provision for future medical treatment also needs to be taken care of. It is noted that Deepak Bhardwaj (PW-4) had been examined to prove the advice for surgical procedure wherein attempt would be made for reconstruction of the left heel pad, this requiring an estimated expenditure of Rs.25,350/-. The said orthopedic surgeon had deposed

before the tribunal on 12.10.2007. Having regard to the time gap, an amount of Rs.50,000/- towards future medical treatment is added.

12. The awards under the other heads of damages are found to be just and adequate.

13. Thus, the compensation would need to be reduced by [Rs.2,57,057/- (-) Rs.30,000/- (-) Rs.50,000/-] Rs.1,77,057/-.

14. The total compensation in the case is, therefore, reduced to [Rs.7,29,181/- (-) Rs.1,77,057/-] Rs.5,52,124/-, rounded off to Rs.5,53,000/- (Rupees Five lakh and fifty three thousand only).

15. It is noted that the rate of interest is on the lower side. 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*.]

16. By order dated 07.11.2012 on MACA 1170/2012, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch and from out of such deposit, fifty percent (50%) was allowed to be released to the claimant. The Registry shall calculate the balance of the amount payable to the claimant in terms of the modification ordered above and release the same from the remainder held back in deposit refunding the excess, if any, to the insurer. If there is any deficiency in the deposit, the insurer will be obliged to deposit the same with the tribunal within 30 days making it available to be released to the claimant.

17. The statutory amount paid by the insurer shall be refunded after proof is shown of the award having been satisfied.

18. Both appeals and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 06, 2017
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