$~R-482 & 483

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

Decided on: 14th November, 2017

\+ MAC APPEAL 373/2012

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Manoj Ranjan Sinha and Ms. Mani Shandilya, Advocates

versus

HIMAYU ALI & ANR. ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-1

\+ MAC APPEAL 1047/2013

HIMAYU ALI & ORS. ..... Appellant
Through: Mr. S.N. Parashar, Advocate

versus

NATIONAL INSURANCE COMPANY LTD. ..... Respondent
Through: Mr. Manoj Ranjan Sinha and Ms. Mani Shandilya, Advocates

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

JUDGMENT (ORAL)

1. Himayu Ali (appellant in MACA 1047/2013 and first respondent in MACA 373/2012) suffered injuries in a motor vehicular accident that occurred on 22.01.2010 due to the negligent driving of a truck bearing registration no.HR-37-B-7755, it admittedly being insured against third party risk with National Insurance Company Ltd.

(appellant in MACA 373/2012 and first respondent in MACA 1047/2013).

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 18.02.2012, held that the said claimant had suffered injuries due to negligent driving of the truck. It found that the injuries suffered by the claimant included grievous hurt in the right ankle knee besides loss of toes of the right foot. The claimant had been examined by a board of doctors constituted by Chief Medical Officer, Bulandshahar which issued disability certificate (Ex. PW2/A) affirming that he has been rendered a case of permanent disability, his physical impairment being on account of post traumatic severe anklosis of right ankle, it being 75% in relation to the said lower limb. The tribunal took it to be a case of functional disability to the extent of 38%. It awarded compensation in the total amount of Rs.8,50,432/-, it having been calculated thus :-

Compensation towards pain and sufferings	Rs.1,00,000/-
Compensation towards loss of amenities and enjoyment	Rs.1,00,000/-
Compensation towards change of gait / disfigurement	Rs.75,000/-
Loss of earning capacity due to injuries	Rs.4,09,150/-
Loss of earning of petitioner for 12 months @ Rs.5,278/- per month	Rs.63,336/-
Expenses towards medical bills	Rs.2,946/-
Compensation towards marriage prospect	Rs.75,000/-
Compensation towards conveyance and special diet (without bills)	Rs.25,000/-
Total	8,50,432/-

3. The liability to pay the compensation was fastened on the National Insurance Company Ltd. (insurer) with interest at the rate of 7.5% p.a.

4. The insurer by its appeal (MACA 373/2012) has argued that the damages awarded are excessive. *Per contra*, the claimant by his appeal (MACA 1047/2013) has submitted that the tribunal fell into error by not including the element of future prospects of increase for compensating the loss of future income due to disability.

5. The contention of the claimant to above effect may be accepted in view of 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.* Since the income was assumed with the help of minimum wages (Rs.5278/- p.m.), the element of future prospects of increase to the extent of 40% are added. The loss of income due to functional disability correctly assessed at 38% on the multiplier of 17 (he being more than 26 years old) is, thus, re-computed as [Rs.5,278/- x 140/100 x 38 / 100 x 12 x 17] Rs.5,72,810.78, rounded off to Rs.5,72,811/- (Rupees Five lakh seventy two thousand eight hundred and eleven only). Since the tribunal had awarded Rs.4,09,150/- under this head, the compensation on this score would need to be enhanced by [Rs.5,72,811/- (-) Rs.4,09,150/-] Rs.1,63,661/- (Rupees One lakh sixty three thousand six hundred and sixty one only).

6. The compensation under the other heads of damages included in the award is found to be just and fair. Thus, the total compensation is

increased to [Rs.8,50,432/- + Rs.1,63,661/-] Rs.10,14,093/-, rounded off to Rs.10,15,000/- (Rupees Ten lakh and fifteen thousand only).

7. Following the consistent view taken by this court, the rate of interest is increased to 9% per annum (nine percent) 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.*].

8. By order dated 11.04.2012 in MACA 373/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General and, by subsequent order dated 07.12.2012, seventy five percent (75%) was permitted to be released to the claimant. Since the award has been increased, the Registry shall release the balance with accrued interest to the claimant. The insurance company will be obliged to deposit the balance of its liability under the modified award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

9. The statutory deposit of the insurance company shall be refunded, after proof of deposit is furnished.

10. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 14, 2017

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