$~R-646

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th December, 2017

\+ MAC.APP. 1163/2012

RELIANCE GENERAL INSURANCE CO LTD..... Appellant
Through: Mr. A.K. Soni, Advocate.

Versus

INDER SINGH AND ORS ..... Respondents
Through: Mr. O.P. Mannie, Advocate for R-1.

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

<u>JUDGMENT (ORAL)</u>

1. On the accident claim case (MACT No. 747/10/08) of the first respondent (the claimant), for injuries suffered by him in a motor vehicular accident that occurred on 25.09.2008, due to negligent driving of motor vehicle described as Tata 407 Tempo bearing registration No. HR-46A-3813, the Tribunal, by its judgment dated 27.08.2012, awarded total compensation in the sum of Rs.8,43,699/-, the amount having calculated it thus:-

A) **Pecuniary damages (Special damages):**	
a) Medical expenses	Rs. 10,000/-
b) Special diet	Rs. 25,000/-
c) Conveyance charges	Rs. 25,000/-
d) Loss of Income	Rs. 49,284/-
e) Loss of future income	Rs.3,84,415/-
B) Non-Pecuniary damages (General	

damages):	
a) Pain, sufferings and inconvenience	Rs.1,00,000/-
b) Loss of amenities and shortening of life	Rs.1,50,000/-
c) Disfigurement of face	Rs.1,00,000/-
Total:	Rs.8,43,699/-

2. The liability to pay the compensation was fastened on the appellant (insurer) with interest @ 12% per annum. By the appeal at hand the insurer argues that since the vehicle in question was a goods carriage, the travel therein by the claimant was unauthorised and, thus, liability cannot be fastened on the insurer. The calculation of loss of future income due to disability is also questioned on the ground that the claimant was more than 50 years' old and, thus, the future prospects of increase to the extent of 50% over and above the notional income assessed with the help of minimum wages and the invocation of multiplier of 13 was incorrect. Exception is also taken to the non-pecuniary heads of damages. The insurer is further aggrieved by the rate of interest submitting that it is unduly high.

3. The evidence led before the Tribunal proved that the injuries suffered by the claimant included fracture of left styloid process of ulna, injury on the forehead and scalp besides damage to the right eye, the last having led to optic atrophy which, along with post-traumatic stiffness in the left wrist, has rendered him permanently disabled, the physical impairment having been assessed by a board of doctors of Dr. Baba Saheb Ambedkar Hospital of Government of NCT of Delhi, by disability certificate (Ex.PW5/A), to be 40%. Having regard to the

said facts, the assessment by the Tribunal of functional disability to the extent of 40% is found to be just and proper.

4. There is no material on which it could be said that the age of the claimant on the relevant date was more than 50 years. In these circumstances, the multiplier of 13 has been correctly applied. However, following the ruling of 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 will have to be restricted to 25%. Thus, the loss of income in future due to functional disability is re-calculated as (4107 X 125/100 X 40/100 X 12 X 13) Rs.3,20,346/-. Since the Tribunal has awarded Rs.3,84,415/- under this head, the total award has to be reduced by (3,84,415 – 3,20,346) Rs.64,069/-. [Rupees Seven lacs and eighty thousand only]

5. In the given facts and circumstances, the non-pecuniary damages awarded by the Tribunal are found to be just and proper and, therefore, there is no case for any interference in that regard.

6. The total compensation is thus, reduced to (8,43,699 – 64,069) Rs.7,79,630/- rounded off to Rs.7,80,000/- (Rupees Seven Lacs and Eighty Thousand Only).

7. There is no special reason set out in the impugned judgment about the levy of interest of 12% per annum. Following the consistent view taken by this Court, the rate of interest is decreased 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.*].

8. The contention about the unauthorized travel in the vehicle must be rejected in view of the fact that in the evidence it is clearly shown that the claimant was travelling with his own goods.

9. By order dated 06.11.2012, the insurance company had been directed to deposit 40% of the awarded amount with interest at 9% per annum with UCO Bank, Delhi High Court Branch. By order dated 11.04.2013, the said deposited amount with accrued interest was permitted to be released in favour of the claimant. The insurance company will now discharge balance of its liability under the modified award as above by requisite deposit before the Tribunal within 30 days, making it available to be released to the claimant.

10. The statutory amount shall be refunded to the insurance company after proof of award having been satisfied is shown.

11. The appeal stands disposed of.

R.K.GAUBA, J.

DECEMBER 6, 2017
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