

\$~R-605

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

+ MAC. APPEAL No.1194/2012 & CM 9021/2014

NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate.

versus

PAMELA ROOKS AND ORS Respondents
Through: Mr. Navneet Goyal, Advocate
for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (Suit No. 711/10) was originally filed by Pamela Rooks (the deceased first respondent) seeking compensation for injuries suffered by her in a motor vehicular accident that occurred on 25.11.2005, proved during the inquiry before the Motor Accident Claims Tribunal to have been caused due to negligent driving of Alto car bearing registration No. DL-3CM-8934, which was admittedly insured against third party risk for the period in question with the appellant (insurer). Interestingly, the vehicle in which the claimant was travelling, it being Land Cruiser bearing registration No. HR-26M-3591 was also insured against third party risk with the same insurance company, during the relevant time.

2. Pamela Rooks died on 01.10.2010 during the pendency of the claim case, the record clearly showing that after the accident, which is a subject matter of these proceedings, she had been rendered comatose, she having never revived or regained consciousness, the death having occurred during the course of treatment which had continued throughout.

3. After, the original claimant had died, her son Ryan Rooks took over the claim case as per order dated 23.10.2010. The Tribunal, by its judgment dated 31.05.2012, awarded compensation in the sum of Rs.1,03,10,300/- directing the insurer to pay with interest at nine per cent (9%) per annum, the said amount having been calculated thus:-

Medical expenses	Rs. 63,40,500/-
Attendant & Conveyance Charges	Rs. 8,78,300/-
Physiotherapy	Rs. 50,000/-
Special diet	Rs. 75,000/-
Loss of Dependency	Rs. 29,31,500/-
Loss of Love and Affection	Rs. 25,000/-
Funeral Expenses	Rs. 10,000/-
Total:	Rs.1,03,10,300/-

4. The insurer presses its appeal to argue that there was no post mortem examination of the dead body of the original claimant and, therefore, there is no proof of any nexus between the injuries suffered in the accident and the event of death. It further argued that the award of medical expenses is improper as the amount of Rs.4,96,534/- received by the claimant in terms of mediclaim policy was liable to be deducted, reference being made to the additional evidence led during

the pendency of this appeal by examining Mr. N. Jeyachandran (AW1) Senior Divisional Manager of New India Insurance Company Limited.

5. Having heard the learned counsel for both sides and having gone through the record, this Court finds no merit in the above-noted first contention. The mere fact that the claimant was rendered in a vegetative state, totally unconscious after the accident, she having remained under hospital treatment till her death, brings out the nexus between the injuries suffered in the accident and the event of death. In such cases, insistence that there should have been a post mortem examination on the dead body is uncalled for. The medical records speak for themselves and do confirm that the death was not for any reasons other than the injuries sustained in the accident.

6. The second contention must be accepted in view of the evidence of AW-1. The claimant had received under the mediclaim policy an amount of Rs.4,96,534/-which was on account of medical treatment undertaken for the injuries suffered in the accident. This amount is thus, liable to be deducted.

7. The award is thus reduced to (1,03,10,300 – 4,96,534) Rs.98,13,766 rounded off to Rs.98,14,000/- (Rupees Ninety Eight Lakhs Fourteen Thousand Only). Ordered accordingly.

8. Needless to add, the modified award shall carry interest as levied by the Tribunal.

9. By order dated 26.11.2012, the insurance company had been directed to deposit 70% of the awarded amount with up-to-date proportionate interest with the Tribunal within the period specified, such amount directed to be released in the form of fixed deposit

receipt in favour of the claimant. The insurance company will now satisfy the balance of its liability as per the modified award by making requisite deposit with 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 in above terms.

NOVEMBER 30, 2017

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R.K.GAUBA, J.