$~R-655

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 6th December, 2017

\+ MAC.APP. 1186/2012

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

versus

ZILE SINGH AND ORS ..... Respondents
Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent (the claimant), had instituted an accident claim case (MACT No.316/11), on 26.09.2011, seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988, for injuries suffered by him in a motor vehicular accident, that occurred on 27.04.2011, due to negligent driving of Innova Car bearing registration No. DL-4CNE-0476, which was admittedly insured against third party risk for the period in question with the appellant (insurer).

2. After inquiry, the Tribunal, by its judgment dated 24.08.2012, awarded compensation in the total sum of Rs.20,89,444/- directing the insurer to pay with interest @ 12% per annum calculating it thus:-

A) Pecuniary damages (Special damages)	
a) Future Medical expenses	Rs.1,00,000/-
b) Special diet	Rs. 25,000/-
c) Conveyance charges	Rs. 25,000/-
d) Future Medical Expenses	Rs. 1,00,000/-
e) Loss of income	Rs. 46,956/-
f) Loss of future income	Rs.14,42,488/-
B) Non-pecuniary damages (General damages)	
a) Pain, sufferings, inconvenience and frustration	Rs.2,00,000/-
b) Loss of amenities and disfigurement	Rs.1,50,000/-
Total:	Rs.20,89,444/-

3. The appeal was filed by the insurer questioning the computation of compensation.

4. The matter was put in the list of "Regulars" by order dated 15.03.2016. When it is called out for hearing, in its own turn, there is no appearance for the claimant. Learned counsel for the insurer has been heard and, with his assistance, the record perused.

5. The claimant has proved before the Tribunal that he had suffered grievous injuries which included fracture in the right lower limb. The said injuries have rendered him permanently disabled as certified by a disability certificate (Ex.PW3/1), issued by a board of doctors of Dr. Baba Saheb Ambedkar Hospital. The disability certificate would state that he is a case of post-traumatic stiffness of the right hip, right knee and right ankle, the physical impairment being

64%. The claimant had stated before the Tribunal that he was working as a security guard in a private company.

6. The Tribunal has taken the functional disability as 64%, the same as the medical opinion. This Court agrees with the submissions of the insurer that the said assessment is excessive. In the given facts and circumstances, the functional disability is taken as 30%.

7. The error in inclusion of 50% towards future prospects of increase in income over and above the notional income (Rs.7826/-) which is the minimum wages for matriculate on the relevant date, also requires correction in view of 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.* Future prospects are reduced to 40%.

8. The loss of future income due to disability is re-computed as (7826 X 140/100 X 30/100 X 12 X 16) Rs.6,31,088.64 rounded off to Rs.6,31,089/-. Since the Tribunal has awarded Rs.14,42,488/- towards loss of future income, the compensation is to be reduced by (14,42,488 – 6,31,089) Rs.8,11,399/-.

9. It is noted that the Tribunal has added in the award Rs.1,00,000/- twice under the head "future medical expenses". The said amount is thus reduced by Rs.1,00,000/-.

10. Therefore, there has to be total reduction of (8,11,399 + 1,00,000) Rs.9,11,399/-. The award is reduced to (20,89,444 – 9,11,399) Rs.11,78,045/- rounded off to Rs.11,79,000/- (Rupees Eleven Lakhs Seventy Nine Thousand Only).

11. There are no special reasons set out for levy of interest at 12%

per annum, which is undoubtedly high. Following the consistent view taken by this Court, the rate of interest is reduced to 9% (nine percent) 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*.].

12. By order dated 16.11.2012, the insurance company had been directed to deposit 50% of the awarded amount with interest at 9% per annum with UCO Bank, Delhi High Court Branch, and out of such deposit, Rs. 2,00,000/- was permitted to be released to the claimant. The Registry will now calculate the balance amount payable to the claimant, in terms of the modification ordered above, refunding the excess in deposit, if any, to the insurance company. Conversely, if there is any deficiency, the insurance company will make it good by requisite deposit, before the Tribunal within 30 days.

13. The statutory amount shall be refunded to the appellant only after proof is shown of the award having been satisfied.

14. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 6, 2017
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