$~R-425 &426

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 8th November, 2017

\+ MAC.APP. 1074/2011

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. A.K.Soni, Adv.

versus

SANGEETA NANDA & ORS. ..... Respondents

Through: None.

\+ MAC.APP. 1168/2011

SANGEETA NANDA & ORS. ..... Appellants

Through: None.

versus

BRIJESH KUMAR & ORS. ..... Respondents

Through: Mr. A.K. Soni, Adv. for R-3.

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

JUDGMENT (ORAL)

1. Sangeeta Nanda (the claimant), then aged about 39 years, working as personal assistant to Chief Manager of Indian Oil Corporation, was riding on the motorcycle bearing registration no. DL 4S AC 5241, with her husband on 19.09.2006 when at about 9.05 a.m. it came to be involved in a motor vehicular accident with bus bearing registration no. DL 1PA 5675 (the bus), and suffered injuries, both her legs being crushed under the wheels of the bus and eventually being

amputated rendering her permanently disabled. Accident claim case (suit no. 386/2011) instituted on 04.06.2007 on her behalf, resulted in inquiry, which culminated into judgment dated 12.09.2011, holding the bus driver negligent and responsible for the occurrence. The tribunal awarded compensation in the total sum of Rs. 42,38,000/-, calculating it thus:-

S.No.	Heads	Compensation
1.	Medicines and medical treatment	Nil
2.	Loss of wages	Rs. 3,32,000/-
3.	Loss of future prospects	Rs. 2,00,000/-
4.	Loss of earning capacity due to disability	Rs. 34,86,000/-
5.	Pain and suffering	Rs. 1,00,000/-
6.	Conveyance	Rs. 10,000/-
7.	Special diet	Rs. 10,000/-
8.	Loss of amenities of life	Rs. 1,00,000/-
9.	Artificial limb	Nil
	Total	Rs. 42,38,000/-

2. The liability to pay the above said amount with interest @ 7.5 % was fastened on Oriental Insurance Company Ltd. (insurer) which had admittedly issued an insurance policy covering third party risk in respect of the bus.

3. The insurer, by its appeal (MAC Appeal no. 1074/2011), questions the award on the ground that since the claimant had

continued to be in service of Indian Oil Corporation, there was no loss of earnings and, thus, the award under the head of loss of earning capacity due to disability could not have been calculated with reference to the date of the accident. The insurer also questions the inclusion of Rs. 2,00,000/- under the head of loss of future prospects submitting that it is unfounded and uncalled for. On the other hand, the claimant by her appeal (MAC Appeal No. 1168/2011), has submitted grievance about inadequacy of the awards granted under various heads.

4. Both appeals were admitted and directed to come up in their own turn as per orders dated 28.01.2016. When they are taken up for hearing, there is no appearance on behalf of the claimant. The matter has been heard with the assistance of the counsel for the insurer and by perusal of the record.

5. The claimant had proved by evidence the disability certificate (Ex.PW-1/4) that she has been rendered permanently disabled, her disability having been assessed by a board of doctors of Deen Dayal Upadhyay Hospital of Govt. of NCT of Delhi to be to the extent of 85.5%. The evidence shows that 1/3rd of her lower limbs suffered amputation. The tribunal has taken the functional disability to the extent of 70%. In the opinion of this court there was no justification for such conclusion. Having regard to the legislative prescription, as reflected by entry at serial no. 11 in the second part of the first schedule appended to Employees' Compensation Act, 1923, the functional disability in such case ought to be assessed as 90% (ninety per cent) affecting the earning capacity. The compensation payable on

account of loss of income in future due to such disability will have to be reworked accordingly.

6. There is merit in the plea of the insurer that the loss of future income due to disability cannot be pegged at the date of the accident since concededly the claimant has continued to be in the same service. In normal course, she would retire at the age of 60 years. It is at that stage that the loss would incur. Thus, the calculation for such purposes will have to be made on the multiplier of 9, rather than 15. But for appropriate calculations, the element of future prospects of increase in income will have to be added so that the loss is properly calculated with reference to the date of eventual retirement from present engagement. Since the claimant was 39 years old, such factor would be to the extent of 50%.

7. The tribunal has found from the evidence that the annual income of the claimant during financial year 2006-2007 was Rs. 3,50,708/- and, after deduction of income-tax, the net annual income would come to 3,32,000/-. The notional income for purposes of calculating the loss of future income due to disability is, thus, calculated as (3,32,000 x 150÷ 100) Rs. 4,98,000/-. The loss of income due to disability post retirement is, therefore, computed as (4,98,000 x 90 ÷ 100 x 9) Rs. 40,33,800/-. The tribunal having calculated the amount under this head in the sum of Rs. 34,86,000/-, the award needs to be enhanced on this score by (40,33,800 – 34,86,000) Rs. 5,47,800/-.

8. The exception taken to the inclusion of Rs. 2,00,000/- on account of loss of future prospects is incorrect. It appears that the

tribunal has not properly expressed the head of the award. It was intended to cover the loss of promotional avenues. Therefore, there is no reason for this Court to disturb the same.

9. The tribunal declined to make any award under the head of artificial limb taking note of the fact that all medical expenditure incurred by the claimant, including on account of artificial limb, were covered by the reimbursements she received from the employer. Undoubtedly, she also admitted that she would receive such reimbursements even in future. But then, this would not take care of the replacement of the artificial limb post retirement.

10. The evidence led by Shri Dhanjay Kumar (PW-5), Prosthest and Orthotist, Otto Bock Health Care India Pvt. Ltd. had established before the tribunal that the expenditure on artificial limb is in the region of Rs. 4.5 or 5 lakhs approximately, such arrangement requiring replacement after four to five years. In order to take care of future needs post retirement on this account, an amount of Rs. 5,00,000/- deserves to be added to the compensation. Ordered accordingly.

11. Having regard to the nature of disability suffered, where both the lower limbs have been lost, the awards in the sum of Rs. 1,00,000/- each under the head of pain & sufferings and loss of amenities of life are found to be inadequate. The said awards are increased to Rs. 2,00,000/-each. Thus, there shall be further increase in the award by net amount of Rs. 2,00,000/-.

12. The awards under the other heads of damages is found to be just and adequate. Thus, there is total increase in the award by (5,47,800 + 5,00,000 +2,00,000) Rs. 12,47,800/-.

13. The total award is accordingly increased to (42,38,000 + 12,47,800), Rs. 54,85,800/-, rounded off to Rs. 54,86,000/- (Rupees Fifty Four Lakhs Eighty Six Thousand only). It is directed that the enhanced portion of the award shall carry interest @ 9% (nine per cent) per annum from the date of filing of the petition.

14. By order dated 01.12.2011 in MAC Appeal no. 1047/2011, the insurer had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch. From out of such deposit Rs.5,00,000/- was permitted to be released to the claimant, the balance directed to be kept in interest bearing fixed deposit account. Since the award has been increased, the registry shall now release the balance lying in deposit with accrued interest to the claimant in terms of the impugned judgment. The insurer will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within thirty days. The said amount shall be released to the claimant in the form of interest bearing fixed deposit receipt taken out from a nationalized bank in her name initially for a period of ten years with right to draw periodic interest.

15. The statutory amount shall be refunded to the insurance company.

16. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 08, 2017/nk