

\$~R-683

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

Decided on: 11th December, 2017

+ MAC. APP. 1259/2012 & CM No.20748/2012

M/S THE UNITED INDIA INSURANCE COMPANY
LIMITED

..... Appellant

Through: Mr. D.D. Singh, Advocate with
Mr. Navdeep Singh, Advocate

versus

HEM RAJ @ RAHUL & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (MACT No.951/10), instituted on 07.07.2010, by the first respondent (the claimant) resulted in judgment dated 01.09.2012 being passed by the motor accident claims tribunal, awarding compensation in the total sum of Rs.15,60,302/- in his favour with interest @ 9% per annum, fastening the liability on the appellant (insurer) to pay, it concededly being the insurer against third party risk in respect of the truck bearing registration No.DL-1GB-4247 the negligent driving of which has given rise to the cause of action.

2. The compensation was calculated thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Medical expenses	18,092/-
2.	Loss of future income etc.	12,32,010/-
3.	Special diet	20,000/-
4.	Conveyance Expenses	20,000/-
5.	Loss of income for 12 months	70,200/-
6.	Pain and sufferings & trauma	1,00,000/-
7.	Loss of amenities & enjoyment of life	1,00,000/-
	Total	15,60,302/-

3. The insurer by the appeal at hand has questioned the calculation of loss of income in future due to functional disability assessed at 65%, primarily on the ground that there was no basis on which the notional income could be arrived at since the claimant was hardly 13 years old at the relevant point of time and that the functional disability has been taken the same as the permanent disability evaluated by the medical board (Ex.PW-1/3) of the board of doctors of Dr. Baba Saheb Ambedkar Hospital, Govt. of NCT of Delhi, which it is argued, has resulted in excess award being granted. The insurer also submits that it should have been exonerated, since truck was used for carrying gas cylinders, a hazardous substance and for such purposes the driver did not have the requisite endorsement on his licence in terms of Rule 9 of Central Motor Vehicles Rules, 1989.

4. During the course of hearing, it was pointed out to the counsel for the insurer that the calculation of loss of income in future due to

functional disability is indeed erroneous but, the error is against the claimant having resulted in inadequate award being granted and that re-consideration of the award would result in enhancement of the compensation. The matter was passed over so that the counsel for the insurer could seek appropriate instructions. When it is taken up for hearing, the counsel insists that the contentions urged in the appeal may be examined and that the compensation deserves to be reduced.

5. Reliance on decision of this Court in MAC.APP.554/2010, *Chetan Malhotra v. Lala Ram*, decided on 13.05.2016 is not correct. The said case relates to compensation in case of death of a child. In the present case, the claim is on account of injuries resulting in permanent disability. It is noted from the evidence that the left upper limb below elbow of the claimant was amputated. The board of doctors evaluated his permanent disability to be 65% in relation of that part of the body (Ex.PW-1/3). The third entry of second part of the first schedule of the Employees' Compensation Act, 1923 squarely covers the case at hand. The functional disability should have been taken as 70%, instead of being reduced to half of 65% as is sought.

6. While it may be correct that on the date the accident occurred the claimant was not an earning hand. But then, what he faced is functional disability affecting his capacity to earn his livelihood in future after attaining adulthood. In that view of the matter, the proper course would have been to assess the income notionally at the age when he would turn eighteen (18). Therefore, the calculation for loss of income in future due to functional disability should have been made

with the notional income of Rs.9048/- per month. Further, given 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.*, the element of future prospects of increase in income to the extent of 40% would deserve to be added. The loss of future income due to disability is recomputed as $(9048/- \times 140/100 \times 70/100 \times 12 \times 18)$ Rs.19,15,280.64 rounded off to Rs.19,15,281/-. Thus, award under this head needs to be increased by $(19,15,281 (-) 12,32,010)$ Rs.6,83,271/-.

7. The award under the other heads of damages granted by the tribunal being just and adequate, the just compensation to be awarded to the first respondent is worked out as $(15,60,302/- + 6,83,271/-)$ Rs.22,43,573/- rounded off to Rs.22,44,000/- (Rupees Twenty Two Lakhs Forty Four Thousand Only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. The insurance company made no efforts during the inquiry to call upon the driver or the owner of the offending vehicle to bring on record the endorsement in terms of Rule 9 of Central Motor Vehicles Rules, 1989. In these circumstances, the plea for exoneration cannot be allowed.

9. By order dated 14.12.2012, the insurance company was called upon to deposit 50% of the award with upto date proportionate interest with the tribunal which was permitted to be released to the claimant. The insurance company will be obliged to deposit balance of its liability under the modified award with the tribunal within thirty days.

The entire enhanced portion of the award along with accrued interest would be released to the claimant in the form of interest bearing fixed deposit receipts to be taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

10. The statutory amount deposited by the insurance company stands forfeited as costs in favour of Delhi High Court Legal Services Committee.

11. The appeal along with pending application stand disposed of in above terms.

DECEMBER 11, 2017
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R.K.GAUBA, J.