$~R-665 & 666

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 7th December, 2017

\+ MAC.APP. 1207/2012

ICICI LOMBARD GENERAL INSURANCE CO LTD.

..... Appellant

Through: Ms. Suman Bagga with Ms. Anjali Chawla, Advocate.

versus

RAJ SINGH & ORS. ..... Respondents

Through: Mr. S.N. Parashar with Ms. Pankaj Kumari, Advocate for R-1.

\+ MAC.APP. 1223/2012

RAJ SINGH ..... Appellant

Through: Mr. S.N. Parashar with Ms. Pankaj Kumari, Advocate for R-1.

versus

BHAGAT SINGH & ORS ..... Respondents

Through: Ms. Suman Bagga with Ms. Anjali Chawla, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (Suit No. 260/11) was filed by Raj Singh (the claimant) on 14.11.2008, seeking compensation for injuries suffered by him in a motor vehicular accident that occurred on 10.09.2008, it involving collision between two vehicles, one a

motorcycle bearing registration No. DL-3S-AH-4319 (the motorcycle) and, the other, a Truck bearing registration No. MP-06-E-5582 (the Truck). While the claimant was riding the motorcycle, the Truck was proved at the inquiry before the Tribunal to have been driven in a negligent manner by Bhagat Singh (driver). Since the Truck was registered in the name of and owned by Anita Chaudhary (owner), both the said driver and owner were held, jointly and severally, liable to pay compensation.

2. By judgment dated 28.06.2012, the Accident Claims Tribunal awarded compensation in the total sum of Rs.12,57,950/- fastening the liability on ICICI Lombard General Insurance Co. Ltd. (insurer), it admittedly having issued an insurance policy covering third party risk in respect of the Truck for the period in question.

3. The amount of compensation awarded by the Tribunal was calculated, thus:-

Medicines and Medical treatment	Rs.4,81,150/-
Pain and suffering loss of amenities of life	Rs.70,000/-
Conveyance ad Special Diet	Rs.25,000/-
Loss of Income and loss of Future Prospects	Rs.6,31,800/-
Loss of Expectation of Life	Rs.50,000/-
Total:	Rs.12,57,950/-

4. The insurer while contesting the claim case before the Tribunal had taken the defence that there was neither a valid or effective driving licence held by the driver of the truck nor any permit obtained

by the owner of the truck. The plea of the insurance company, however, was rejected and it was called upon to pay the compensation.

5. The insurer came with the appeal (MAC. Appeal No. 1207/2012) and presses it only to seek recovery rights against the driver and the owner of the truck. The claimant, on the other hand, also came with appeal (MAC. Appeal No.1223/2012) submitting that the award granted by the Tribunal is deficient. In the said appeal, it was brought out that post decision of the claim case by the Tribunal, the treatment of the claimant had to continue, in that he had developed certain ulcers in the injured lower limb and, during the surgical procedure that was advised, his left leg below knee had to be amputated. On the request made by him, the Court granted liberty for additional evidence to be adduced and pursuant to such opportunity given, he examined Mohd. Basim, Medical Record Technician of Saket City Hospital as additional witness on 01.08.2014, to prove the medical records of further treatment.

6. The driver and the owner of the truck, who were party respondents in these appeals, in spite of notice, have failed to come up at the time of final hearing. The learned counsel for the insurer and the claimant have been heard and, with their assistance, the record has been perused.

7. The injuries suffered in the accident included crushed left lower limb. During the course of inquiry before the Tribunal, evidence was led through Dr. Sumant Sinha (PW-3), who proved disability certificate (Ex.PW3/1) as issued by medical Board of Pandit Madan Mohan Malviya Hospital, affirming that the claimant has been

rendered permanently disabled, his physical impairment being assessed as 50% in relation to the left lower limb. The Tribunal took note of the fact that the claimant was in a clerical job in a private entity (S.K. Styles Pvt. Ltd.). The Tribunal assumed the functional disability to be 30% and granted the award under head of loss of future earning capacity accordingly. Keeping in view the subsequent developments, wherein on account of further surgical procedure, the left leg below knee has been amputated, the extent of functional disability has to be revisited. Following the ruling in a similarly placed case, which was subject matter of *MAC. Appeal No. 563/2009, Oriental Insurance Co. Ltd. v. Smt. Sushila & Ors., decided on 23.08.2017*, the functional disability of the claimant is taken as 60%.

8. It is noted, however, that the Tribunal having reached the conclusion that the net income (after deduction of Income Tax liability) during the relevant period was Rs.1,62,000/- failed to factor in the element of future prospects of increase. Given the age (47 years) of the claimant at the relevant point of time and the fact of he being in a permanent job such element will have to be added to the extent of 30% as per 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.*

9. The loss of income in future due to above mentioned functional disability is, thus, re-computed as (1,62,000 X 130/100 X 60/100 X 13) Rs. 16,42,680/-.

10. The claimant has also shown from the record that the claimant had to bear additional medical expenses to the tune of Rs.50,000/-

approximately in the further surgical procedure undergone which needs to be added to the compensation. Allowed accordingly.

11. The grievance about the inadequacy of non-pecuniary damages under the heads of pain and suffering and loss of amenities of life at Rs.70,000/- are found to be correct. In the given facts and circumstances, separate amounts under the head of pain and suffering on one hand and loss of amenities of life on the other in the amounts of sum Rs.1,50,000/- each are added.

12. Putting together all the heads of damages, including those awarded by the Tribunal under different heads, the total compensation in the case is re-calculated as (4,81,150 + 50,000 + 1,50,000 + 1,50,000 + 25,000 + 16,42,680 + 50,000) Rs.25,48,830/- rounded off to Rs.25,49,000/- (Rupees Twenty Five Lakhs Forty Nine Thousand Only). The award is modified accordingly. It shall carry interest as levied by the Tribunal.

13. The insurer, during the contest before the Tribunal, had examined Shri Vivek Yadav (R3W1), its Manager (Legal) to prove, *inter alia*, report (Ex.R3W1/1) obtained under Right to Information Act, from the transport authority, Agra (U.P.) dated 23.05.2009, to the effect that the document purporting to be a driving licence bearing registration No. DL-23968/AG/01 dated 31.12.2001, as had been relied upon by the driver of the truck involved in the case, was a fake document. This report obtained under the Right to Information Act had been collected by the investigator engaged by the insurance company, whose report (Ex.R3W1/3) was also submitted by some witness. The witness of the insurance company also proved that it had

issued a notice under Order XII Rule 8 of Code of Civil Procedure, 1908 (CPC) to the owner of the truck in question calling upon her to produce the relevant documents. The copy of the said notice (Ex. R3W1/5) and the postal receipt (Ex.R3W1/6) besides courier receipt (Ex.R3W1/7) established that the insurance company had issued such a notice under Order XII Rule 8 CPC to the registered owner. The witness of the insurer (R3W1) had also testified that the owner had not responded to the said notice under Order XII Rule 8 CPC. The said evidence remained unchallenged and unimpeached as there was no contest put in by the owner or the driver from the inquiry. The situation remains the same during the pendency of these appeals. No documents showing the existence of any valid driving licence of the driver or permit in respect of truck has been brought on record. The natural inference from such facts and circumstances is that the driver and owner of the offending vehicle are unable to show any such document.

14. Consequently, the insurer must be held to have brought home its case of breach of terms and conditions of the insurance policy. Hence, it is granted recovery rights against the driver and owner.

15. By order dated 23.11.2012 (in MAC. Appeal No.1207/2012), the insurance company had been directed to deposit 75% of the awarded amount with up to date interest with the Tribunal and upon such deposit being made, the amount was permitted to be released. The said order was partially modified by subsequent orders dated 21.11.2013 and 24.02.2015. Since the compensation has been enhanced, the entire balance held in deposit shall be released to the

claimant in terms of the directions in the judgment of the Tribunal. The insurance company will be obliged to satisfy the enhanced amount by requisite deposit with the Tribunal within 30 days. The amount now payable under the modified award shall be released to the claimant in the form of fixed deposit interest bearing receipt taken out from a nationalized bank in the name of the claimant for a period of five years with right to draw periodic interest.

16. The statutory deposit made by the insurance company will be refunded after proof of award having been satisfied is shown.

17. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 7, 2017
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