$~13

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

Decided on: 27th September, 2017

\+ MAC.APP. 892/2014 and CM 16464/2014

BHARTI AXA GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Navneet Kumar and Mr. Vikas Bhadana, Advocates

versus

RAM KUMAR ..... Respondent

Through: Mr. Amit Kumar Gupta, Advocate

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

JUDGMENT (ORAL)

1. The appellant has been held liable to pay the compensation determined in the total sum of Rs.34,08,612/- by the Motor Accident Claims Tribunal (Tribunal), by judgment dated 15.07.2014, on the claim case (suit no.391/2012) of the first respondent (claimant) on account of injuries suffered by the latter in a motor vehicular accident that occurred on 06.06.2012 due to the negligent driving of a truck bearing registration no.HR-38L-4698 admittedly insured against third party risk with the appellant / insurance company (insurer). The claimant was around 20 years old at the relevant point of time. The Tribunal awarded the said compensation which includes Rs.23,48,612/- towards loss of future earning capacity on account of disability which was assessed to the extent of 85%.

2. The appellant questions the evaluation of the functional disability to the extent of 85% and the invocation of minimum wages of skilled worker (Rs.8,528/- p.m.) as also the element of future prospects of increase in income to the extent of 50% in computing the said amount. The evidence on record clearly shows that the right lower limb above knee of the claimant was amputated due to the injuries suffered. The medical opinion as per disability certificate (Ex. PW1/4) confirmed that the permanent physical impairment is to the extent of 85% in relation to the said limb.

3. In identical fact-situation, by decision of this court dated 24.08.2017 in MACA 1068/2016, National Insurance Company Ltd. Vs. Priti Gupta and Ors., such disability was taken as 80% (eighty percent) functional disability. The learned counsel for the insurer and the claimant fairly concede that similar assessment will have to be made in the present case. Thus, the functional disability of the claimant is taken as 80%.

4. The claimant had testified that he was working as a welder to earn his livelihood. It is on that basis that the tribunal took him to be a skilled worker. In order to be treated as a skilled worker, however, the claimant had to show some special training. In absence of any such proof, going by the experience that he would have gained, he could have been treated as a semi-skilled worker and thus, minimum wages of Rs.7748/- p.m. would apply.

5. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will

not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

6. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.01.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

7. Since there is no cogent proof of regular employment much less of any progressive rise in income, the element of future prospects is kept out. The loss of earnings due to functional disability of 80% is re-calculated as [Rs.7,748/- x 80/100 x 12 x 18] Rs.13,38,854/-. This would mean the award will have to be reduced by [Rs.23,48,612/- (-) 13,38,854/-] Rs.10,09,758/-.

8. The award is thus reduced to [Rs.34,08,612 (-) Rs.10,09,758/-], Rs.23,98,854/-, rounded off to Rs.23,99,000/- (Rupees Twenty three

lakh and ninety nine thousand only). Ordered accordingly. Needless to add, it shall carry interest as levied by the tribunal as 9% p.a. (nine percent) from the date of filing of the appeal till realization.

9. By order dated 30.09.2014, the Insurance Company had been directed to deposit the entire awarded amount with interest and from out of such deposit, sixty percent (60%) was allowed to be released to the claimant. The Registry shall now calculate the balance payable to the claimant and release the same from the remainder refunding the excess in deposit to the insurer with statutory deposit.

10. The appeal and the pending application are disposed of in above terms.

11. Dasti.

R.K.GAUBA, J.

SEPTEMBER 27, 2017
yg