

\$~R-704-705

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

Decided on: 12th December, 2017

+ MAC APPEAL 1304/2012 and CM 21432/2012

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Ms. Shantha Devi Raman and
Mr. Arihant Jain, Advocates

Versus

NEHA WALIA & ORS. Respondents

Through: Mr. Nitinjya Chaudhary and
Mr. Rajiv Kumar Trivedi,
Advocates for R-1
Mr. Sameer Nandwani,
Advocate for R-2 & 3

+ MAC APPEAL 20/2013

NEHA WALIA Appellant

Through: Mr. Nitinjya Chaudhary and
Mr. Rajiv Kumar Trivedi,
Advocates

Versus

THE NATIONAL INSURANCE COMPANY LTD.
& ORS. Respondents

Through: Ms. Shantha Devi Raman and
Mr. Arihant Jain, Advocates for
R-1
Mr. Sameer Nandwani,
Advocate for R-2 & 3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Neha Walia (claimant), then aged 22 years, pursuing a course of study leading to graduation, statedly having worked as an associate

with a private entity (Wipro Spectramind) and as a Sales Consultant with another entity (M/s. Tecnovate eSolutions Pvt. Ltd.), was travelling as a passenger on the rear seat in Lancer car bearing registration no.DL-9CC-4214 driven at the relevant point of time by Mohit Badlani (driver), the car being registered in the name of Anil Moolchandani (registered owner) at whose instance it had been insured against third party risk with National Insurance Company Ltd. (insurer). The car met with an accident near Andheria More red light crossing, Subu House opposite Ambedkar Colony ending up striking against a tree, resulting in all the occupants of the car including the claimant suffering injuries. She instituted accident claim case (suit no.456/2010) on 20.11.2007 on the averments that the car had been driven in negligent manner by the aforementioned driver, this being the cause for the accident.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry into the claim petition which had been contested by the party respondents including the driver and owner, the defence taken being that the accident had occurred when the vehicle swerved in order to avoid a bullock cart which had suddenly come in the way from the wrong side. The tribunal, by judgment dated 01.09.2012, held that the accident had occurred due to negligent driving of the car by Mohit Badlani, a respondent in these appeals. It thus held him and the respondent / owner of the car, jointly and severally, liable to pay the compensation.

3. The insurer had raised the defence that there was a breach of the terms and conditions of the insurance policy as the car driver was

under the influence of alcohol. This plea was rejected by the tribunal primarily for the reason that mere reference to smell of alcohol appearing in the medical record (MLC) vis-à-vis the said driver was not sufficient, there having been no test undertaken to confirm the extent of alcohol in his blood or urine samples. The tribunal awarded compensation in the total sum of Rs.63,61,000/- calculating it thus :

Medical expenses	Rs.10,00,000/-
Pain & suffering & enjoyment of life	Rs.2,00,000/-
Special diet & conveyance charges	Rs.57,000/-
Nursing charges	Rs.2,00,000/-
Attendant charges	Rs.4,00,000/-
Future loss of income on account of permanent disability	Rs.43,29,000/-
Loss of amenities	Rs.2,00,000/-
Total	Rs.63,86,000/-
Less : interim compensation paid vide order dated 15.07.2008	Rs.25,000/-
Net amount	Rs.63,61,000/-

4. It directed the insurer to pay the above mentioned amount to the claimant with interest at the rate of 9% p.a.

5. Both the insurer and the claimant, having felt aggrieved, have come up with their respective appeals assailing the judgment of the tribunal. The insurer argues that mere reference to smell of alcohol in MLC should have been accepted as proof of not only rash driving but also of the driver being under the influence of alcohol referring in this context to the observations of the Supreme Court in *Alister Anthony Pereira Vs. State of Maharashtra*, (2012) 2 SCC 648. The insurer also questions the award on the ground that the income tax liability has not been deducted before calculating the loss of income and that the levy

of interest on the amounts payable in future was inappropriate, referring in this context to the decision in *R.D. Hattangadi Vs. Pest Control India Pvt. Ltd.*, 1995 ACJ (SC) 366.

6. *Per contra*, the claimant has argued that the award of compensation granted is deficient for the reason the actual medical expenditure though proved has not been taken care of; there is no proper consideration of the need for future medical expenditure; the inclusion of future prospects of increase to the extent of 30% is on the lower side; the awards under the non-pecuniary heads of damages are deficient; and that, the exclusion of interest for a certain period (11.05.2009 to 18.10.2011) was unfair.

7. The plea of the insurer about the breach of the terms and conditions of the insurance policy cannot be accepted. The tribunal has taken an appropriate view of the matter for returning the above finding on the plea about the driver being under the influence of alcohol within the meaning of the clause in the insurance policy so as to find him in breach, determination of the extent of consumption of such alcohol for which was necessary. In absence of any such inquiry or investigation, the finding returned by the tribunal on this issue would not call for any interference. [see *Jiju Kuruvila and Ors. Vs. Kunjujamma Mohan and Ors.*, (2013) 9 SCC 166]

8. On the issue of just compensation, after some hearing, the counsel for the claimant submitted that the matter would require further evidence. The tribunal has found that the claimant has been rendered totally paraplegic, her functional disability having been taken as 100%. It has been submitted on her behalf that the medical

expenditure has continued post-decision by the tribunal on the conclusion of the inquiry before it. It is the submission of the counsel representing her that such expenditure is extraordinarily huge and requires to be properly considered and taken care of.

9. In these facts and circumstances when major component i.e. future medical expenditure needs further probe, it is in the fitness of things that the matter is remitted to the tribunal for fresh determination, also in view of the fact that a Constitution Bench of the Supreme Court by its decision rendered on 31.10.2017 in SLP (C) 25590/2014, *National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* has recently spoken on the issue of future prospects, which will have to be borne in mind. For the foregoing reasons, the impugned judgment in so far as it determined the compensation payable to the claimant is set aside. The matter to that extent is remitted to the tribunal for further inquiry and fresh determination including on pecuniary or non-pecuniary heads of damages. During such further inquiry, all sides will be entitled to lead additional evidence, this beginning with the claimant followed by the others.

10. By order dated 03.01.2013 on MACA 1304/2012, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest with the UCO Bank, Delhi High Court Branch. By a subsequent order dated 15.02.2013, fifty percent (50%) of the deposited amount was permitted to be released to the claimant. The amount already received by the claimant shall be liable to be adjusted against the award that is granted by the tribunal in its fresh decision. The balance out of the amount deposited by the insurer in

terms of the interim directions shall be made over by the registry to the tribunal for being retained in interest bearing fixed deposit receipt taken out from a nationalized bank initially for a period of six months with provision for auto renewal. Such amount with accrued interest may be availed by the tribunal for satisfying the award that may be passed afresh. The contentions to above effect of both sides vis-à-vis the justification or otherwise of the award earlier granted are reserved and may be re-agitated before the tribunal.

11. The parties other than the owner and the driver are directed to appear before the tribunal on 16.02.2018.

12. Given the condition of the claimant, it is hoped and trusted that the tribunal will hold expeditious proceedings and reach its fresh decision at an early date.

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

14. Both the appeals and the pending application are disposed of in above terms.

DECEMBER 12, 2017

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R.K.GAUBA, J.