$~R-701

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

Decided on: 12th December, 2017

\+ MAC. APP. 1301/2012

M/S UNITED INDIA INSURANCE COMPANY LIMITED
..... Appellant
Through: Mr. Shoumik Mazumdar, Advocate

versus

GUL MOHD. @ GULLU & ORS. ..... Respondents
Through: Ms. Palak Rohmetra, Advocate for R-3/DTC.

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

JUDGMENT (ORAL)

1. The accident claim case (Suit No.152/11), was instituted on 08.07.2011, by the first respondent (claimant), seeking compensation for the injuries suffered by him in a motor vehicular accident that had occurred on 26.03.2011, due to negligent driving of motor vehicle described as bus, bearing registration No.DL-1PB-6654, of Delhi Transport Corporation (DTC), admittedly insured against third party risk for the period in question with the appellant (insurer). By judgment dated 27.08.2012, the tribunal accepted the said claim, returned a finding that the claimant had been rendered permanently disabled, his functional disability having been taken as 50% and granted award accordingly in the total sum of Rs.30,61,600/-,

fastening the liability to pay on the insurer with interest @ 9% per annum on Rs.12,41,600/-, calculating it thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Medicines expenses	10,000/-
2.	Artificial limb	18,20,000/-
3.	Pain and suffering	75,000/-
4.	Special diet, conveyance & attendant charges	57,000/-
5.	Loss of income	67,000/-
6.	Loss of future income	9,82,600/-
7.	Loss of amenities	50,000/-
	Total	30,61,600/-

2. The appeal at hand was filed by the insurer to submit that the award granted is excessive.

3. The appeal was put in the list of *'Regulars'* to come up on its own turn as per order dated 03.02.2016. When it is called out for hearing, there is no appearance on behalf of the claimant. The learned counsel for the insurer and DTC have been heard. Record perused.

4. The disability on which account loss of future income is sought to be compensated arises from amputation of the right lower limb below knee, the board of doctors of Pandit Madan Mohan Malaviya Hospital (Ex.PW-1/7) having assessed it to be 60% physical impairment in relation to the said right lower limb. The tribunal noted that the claimant was earning his livelihood as an electrician. It

assessed the functional disability as 50%. Grievance in the appeal is that no member of the board of doctors was examined.

5. In the given facts and circumstances, the evidence of any member of the board was not necessary, there being ample evidence to substantiate the plea of the claimant about the partial loss of the right lower limb. The argument of the insurer even otherwise cannot be accepted as the condition as described above should have resulted in evaluation of the functional disability to the extent of 60% [See: *MAC APP.563/2009,* titled *Oriental Insurance Company Limited vs. Smt. Sushila & Ors.,* decided on 23.08.2017].

6. On perusal of the record, this court finds that the tribunal also fell into error by adding the element of future prospects of increase in income to the income by 30% only. Given the fact that the claimant was a self-employed person, his income having been notionally assessed with minimum wages, given his age of 30 years, such element should have been to the extent of 40% [See: *National Insurance Company Ltd. vs. Pranay Sethi and Ors., SLP (C) 25590/2014,* decided on 31.10.2017 (Constitution Bench)].

7. Thus calculated, the loss of future income due to disability would work out as (7410 x 140/100 x 60/100 x 12 x 17) Rs.12,69,777.60 rounded off to Rs.12,70,000/-. This would mean that the award, instead of being decreased, would require to be enhanced by (12,70,000 (-) 9,82,600) Rs.2,87,400/-.

8. It is noted that the tribunal made provision for replacement of the artificial limb three times. The submission of the insurer at the hearing that only two replacements would have been sufficient, if accepted, would result in reduction in the award by Rs.4,55,000/- the net reduction being (4,55,000-2,87,400) Rs.1,67,600/-. But, it is noted that the awards under the head of loss of amenities and pain and suffering are grossly inadequate. If said non-pecuniary damages were to be suitably enhanced, the total award of compensation granted by the tribunal would need to be maintained.

9. In the above facts and circumstances, the appeal is dismissed.

10. By order dated 02.01.2013, the insurance company was directed to deposit the entire awarded amount and by subsequent order dated 11.03.2013, fifty per cent (50%) thereof was permitted to be released to the claimant. The balance lying in deposit shall also now be released to the claimant in terms of the judgment of the tribunal.

11. The statutory amount shall stand forfeited as costs in favour of Delhi High Court Legal Services Committee.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 12, 2017
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