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

Decided on: 2nd November, 2017

\+ MAC.APP. 440/2017 & CM Nos. 17233-34/2017

NATIONAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

SUMIT SHARMA & ANR ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-1.

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

JUDGMENT (ORAL)

1. On the accident claim case (MACP No. 39/2016) instituted by the first respondent (claimant) on 27.11.2015, the Motor Accident Claims Tribunal, by its judgment dated 20.01.2017, awarded compensation in the total sum of Rs. 1,20,15,456/- on account of injuries and permanent disability suffered due to the motor vehicular accident that took place on 19.09.2015 at about 10.p.m., involving negligent driving of car bearing registration no. DL 4C ND 0153, admittedly insured against third party risk for the period in question with the appellant (insurer). The tribunal fastened the liability on the insurer to pay the said amount with interest @ 9% per annum, the amount inclusive of Rs. 16,28,640/- towards attendant charges.

2. Though the appeal was filed on various grounds, at the hearing it is pressed on two contentions viz. that income-tax liability was not deducted while calculating the loss of income for the period of treatment or loss of income on account of disability in future and that the attendant charges levied are excessive.

3. The tribunal has found that the claimant has been rendered permanently disabled, his impairment having been assessed to be 65% vide disability certificate (Ex.PW-3/1) issued by medical board of Dr. Ram Manohar Lohia Hospital, New Delhi on account of inability to walk independently and requiring assistance in day-to-day activities, the nature of impairment primarily being weakness and restrictions of movements of right knee, hip, elbow, ankle joints and right elbow. The tribunal has found the period of treatment to be 16 months and on that basis granted compensation for loss of income for such period at (45,466 x 16) Rs. 7,27,456/-. Since the functional disability has been assessed at 65%, the tribunal then added the loss of income in future due to disability, taking such loss to be Rs. 29,533/- it representing 65% of the emoluments earned.

4. Indeed, in both the above calculations, the income-tax liability had to be discounted. Since the accident had occurred on 19.09.2015, going by the prevalent rates of income-tax for the financial year 2015-16, the amount of Rs. 15,000/- is assessed as income-tax liability and, thus, the net annual income comes to (5,45,592 -15,000) Rs. 5,30,592/-, which would convert into monthly income of Rs. (5,30,592 ÷ 12) Rs. 44,216/-.

5. Thus, the loss of salary for the period of treatment for 16 months would need to be compensated by an amount of Rs. (44, 216 x 16) Rs. 7,07,456/-. Since the tribunal had awarded Rs. 7,27,456/-, the compensation under the said head is to be reduced by (7,27,456 – 7,07,456) Rs. 20,000/-. The loss of income on account of disability in future is similarly re-calculated as (44216 x 150 ÷ 100 x 65 ÷ 100 x 12 x 15) Rs. 77,59,908/-. The tribunal had awarded Rs. 79,79,400/- under this head. Therefore, the amount is to be reduced by (79,79,400-77,59,908) Rs. 2,19,492/-.

6. The tribunal has calculated the amount payable on account of attendant charges assuming that the claimant would need the services of attendant round the clock, This, in the opinion of this Court, was not correct. Since the need for assistance has been identified only in the normal day time activities, the learned counsel for the claimant fairly concedes that the amount may be treated as half of the attendant charges, such services to be engaged part time. In these circumstances, the amount of compensation is to be reduced by (16,28,640 ÷ 2) Rs. 8,14,320/-.

7. The total award is to be reduced by (20,000 + 2,19,492 + 8,14, 320) Rs. 10,53,812/-. The award of compensation payable to the claimant is, thus, reduced to (1,20,15,456 – 10,53,812) Rs. 1,09,61,644/-, rounded off to Rs. 1,09,62,000/- (Rupees One crore Nine lacs and Sixty Two thousand only). Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 09.05.2017, the insurance company had been directed to deposit the entire awarded amount with accrued interest

thereupon as a pre-condition to the stay against enforcement and 50% thereof was permitted to be released to the claimant, the balance kept in interest bearing fixed deposit account. The registry shall now calculate the balance payable to the claimant in terms of the modification ordered above refunding the excess in deposit to the insurance company with statutory amount.

9. This disposes of the appeal and the pending applications.

R.K.GAUBA, J.

NOVEMBER 02, 2017
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