$~R-446 & 447

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

Decided on: 9th November, 2017

\+ MAC APPEAL No. 50/2012 and CM 739/2012

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

PAWAN KUMAR SHARMA & ORS. ..... Respondents
Through: Mr. Manish Maini, Adv. for R1

\+ MAC APPEAL No. 414/2015

PAWAN KUMAR SHARMA ..... Appellant
Through: Mr. Manish Maini, Advocate

versus

SHRIRAM GENERAL INSURANCE CO. LTD. & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for R-1

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

JUDGMENT (ORAL)

1. Pawan Kumar Sharma (appellant in MACA 414/2015), he also being a respondent in the connected appeal (MACA 50/2012) had instituted accident claim case (suit no.405/10) on 23.07.2010 seeking compensation for injuries suffered in a motor vehicular accident that had occurred on 05.06.2010, statedly due to the negligent driving of

three wheeler scooter bearing registration no.UP-16T-1227 (TSR) by Brijesh Kumar Tiwari, a respondent in these appeals.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 25.08.2011, accepted the evidence regarding negligence on the part of the TSR driver to be the cause for accident. The tribunal found that the injuries suffered by the claimant had rendered him permanently disabled, his functional disability being assessed to the extent of 25%. The claimant had pleaded that he was earning his livelihood by running a stationery shop. He, however, could not produce any documentary evidence in this regard in corroboration. He had also shown by evidence that he was pursuing a course of study leading to award of graduation degree from University of Delhi. The tribunal assessed the income on the basis of minimum wages (Rs.6448) payable to a matriculate during the relevant period and calculated the compensation accordingly. It awarded total amount of Rs.4,43,944/-, the same having been calculated thus :-

Medical expenses	Rs.30,888/-
Conveyance	Rs.5,000/-
Special diet	Rs.5,000/-
Loss of income	Rs.12,896/-
Prospective loss of income	Rs.2,90,160/-
Pain and sufferings	Rs.50,000/-
Curtailment of enjoyment of life	Rs.50,000/-
TOTAL	Rs.4,43,944/-

3. The liability to pay the compensation with interest at the rate of 7.5% p.a. was placed at the door of Shriram General Insurance

Company Ltd. (insurer) which had issued the insurance policy in respect of the TSR covering the period in question.

4. The insurer, by its appeal (MACA 50/2012), raises two points at the hearing, namely, that the finding on the issue of negligence on the part of the TSR was incorrect and, second, that the functional disability has been over rated.

5. *Per contra*, the claimant, by his appeal (MACA 414/2015), submits that the functional disability should have been assessed at a higher level given the nature of injuries suffered.

6. It is noted that the claimant had appeared as his own witness (PW-1) on the strength of his affidavit (Ex. P1) wherein he had narrated the sequence of events leading to the mishap. According to his version, he was travelling as a passenger in the TSR, the driver whereof had driven with excessive speed which was the cause for its collision against another vehicle (Tempo), this inspite of caution administered by him to the driver during the course of journey, to be careful. None of the respondents in the inquiry before the tribunal made any effort to examine the TSR driver or, for that matter, the driver of the Tempo which is the other vehicle involved in the collision. In these circumstances, the evidence of PW-1 having gone virtually unassailed and unimpeached, there is no good reason why the finding on the issue of negligence should be disturbed.

7. The evidence would show that the claimant had suffered fracture of the shaft of the left humerus bone. The treatment that was undertaken included surgical process wherein a screw fixation was done and limb repaired accordingly. The claimant proved the

disability certificate (Ex. PX) issued by the board of doctors of Lal Bahadur Shastri Hospital of the Government of NCT of Delhi affirming that he has been rendered permanently physically disabled in the left upper limb on account of the said implant, the physical impairment having been assessed to the extent of 61% in relation to that part of the body. Having regard to the nature of injuries suffered and the disability which has followed, as indeed the nature of avocation in which the claimant stated he was engaged, the functional disability is found to have been over rated. It is assessed by this court to the extent of 10% (ten percent).

8. There is, however, an error on the part of the tribunal in not taking into account the element of future prospects while calculating the loss of income due to functional disability in future. Following the dispensation in the judgment 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.*, the said element to the extent of 40% (forty percent) will have to be added.

9. The tribunal adopted the multiplier of 15. Since the claimant was 31 years old on the relevant date, the appropriate multiplier would be 16.

10. Thus, the loss of future income due to disability is re-computed as [Rs.6,448 x 140/100 x 10/100 x 12 x 16] Rs.1,73,322.24, rounded off to Rs.1,73,323/-. Since the tribunal has awarded Rs.2,90,160/- under this head, the compensation would deserve to be reduced by [Rs.2,90,160/- (-) 1,73,323/-] Rs.1,16,837/-. The awards under the

non-pecuniary heads of damages granted by the tribunal are found to be just and appropriate.

11. The award is, thus, reduced to [Rs.4,43,944/- (-) Rs.1,16,837/-] Rs.3,27,107/-, rounded off to Rs.3,28,000/- (Rupees Three lakh and twenty eight thousand only).

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

13. By order dated 13.01.2012 in MACA 50/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General. In terms of order dated 29.01.2013, seventy five percent (75%) of the said amount was permitted to be released to the claimant. The Registry shall calculate the amount payable to the claimant in terms of the modification ordered above and release the balance, if any, refunding the excess in deposit to the insurance company. Conversely, if there is any deficiency in the deposit, the insurance company will make it good within 30 days by requisite deposit with the tribunal and further if the claimant has received in excess of his entitlement, he shall be liable to refund it through the tribunal to the insurance company within the same period.

14. The statutory amount deposited by the insurance company shall be refunded.

15. Both appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 09, 2017/yg