$~12 to 14 *(common order)*

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

Decided on: 7th September, 2017

\+ MAC.APP. 424/2015

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. C.K.Gola, Advocate

versus

USHA RANI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Adv. for R-1.

\+ MAC.APP. 454/2015 and CM APPL.5256/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Brijesh Bagga, Adv.

versus

USHA RANI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Adv. for R-1. Mr. C.K.Gola, Advocate for R-4.

\+ MAC.APP. 455/2015 and CM APPL.5255/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Brijesh Bagga, Adv.

versus

SUBHASH CHANDER ALLAHBAD & ORS

..... Respondent

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Adv. for R-1. Mr. C.K.Gola, Advocate for R-4.

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

JUDGMENT (ORAL)

1. On 21.01.2009 Subhash Chander Allahbadi, (first respondent in MAC APP.455/2015) and his wife Usha Rani (first respondent in MAC APP.454/2015) had taken on hire a three wheeler scooter bearing registration No.DL-1RG-2867 (TSR) driven by Jitender Singh, (one of the respondents in these appeals) for journey from Paschim Vihar to Ambika Vihar at about 6:45 p.m. The TSR had reached the area of national market road, close to Gate No.7, Bhera Enclave, Delhi at about 6:50 p.m. when it was involved in a collision with Accent car bearing registration No.DL-6C-G-6837 (the car) driven by Sandeep Chaudhary (one of the respondents in these appeals). The TSR was concededly insured against third party risk with IFFCO TOKIO General Insurance Company Limited (insurer of TSR), it being appellant (in MAC APP.454-455/2015). The car, on the other hand, was admittedly insured against third party risk with United India Insurance Company Limited (insurer of the car), it also being appellant (in MAC APP.424/2015). As a result of the collision, both husband and wife suffered injuries. Accident Claim Cases (Suit No.693/2009 and 194/2010) were instituted by them on 14.09.2009 seeking compensation. In each case driver, owner and insurer of the

car and driver, owner and insurer of the TSR were impleaded as party respondents, the averments made being to the effect that the accident had occurred due to negligent driving of each of the said vehicles.

2. The tribunal clubbed both the cases and held inquiry on conclusion of which by judgment dated 23.02.2015, it returned a finding affirming the case of the claimants that the accident had occurred resulting in injuries being suffered by them making out a case for compensation due to negligence on the part of the drivers of both the vehicles and thereby apportioning the liability to pay compensation on the insurers of each in equal proportions.

3. In the claim case of Subhash Chander Allahbadi, compensation in the sum of Rs.1,80,680/- was awarded while in the case of Usha Rani compensation in the sum of Rs.26,13,544/- was awarded, the insurers being called upon to pay in equal shares with interest @ nine per cent (9%) per annum to the respective claimants. While the computation and compensation in the case of Subhash Chander Allahbadi has not been challenged by any of the parties who have been held liable, the compensation in favour of Usha Rani is questioned primarily on the ground that the assessment of her functional disability and consequent loss on account of future income due to such disability has been over assessed, the said amount calculated by the tribunal being in the sum of Rs.13,70,224/-.

4. The insurer of the TSR, by its appeals, also raises issue that its driver could not have been held responsible since he was not prosecuted in the corresponding criminal case, the evidence of the

investigating police officer of the corresponding FIR showing this to be the position.

5. Taking up the issue of the responsibility apportioned on the drivers of both the vehicles first, the evidence led on the record during inquiry upon perusal, shows that the tribunal has approached the issue correctly. It may be that the police in its investigation did not find sufficient evidence to send the TSR driver to prosecution, holding only the car driver to be culpable. But the conclusions in the inquiry before the tribunal have to be reached on the principle of preponderance of probabilities based on the evidence led before it. Usha Rani (PW-3) was categorical in her statement, through her affidavit (Ex.PW-3/A), to the effect that the TSR driver had also indulged in rash driving in that he was using excessive speed and moving his vehicle in a zig-zag manner. The evidence of the said witness and her husband clearly bring out the fact that the two vehicles had approached the scene from opposite directions, the road being one meant for traffic in each direction. These facts, by themselves, demonstrate that the two vehicles had collided against each other almost head-on. Having regard to the time of the day when the collision took place, and the layout of the road, the manner of the driving of the TSR narrated by Usha Rani in her deposition establishes that the TSR driver was using uncontrollable speed which is also the reason why he was unable to avoid the head-on collision.

6. Noticeably, neither the car driver nor the TSR driver was called upon by any of the parties contesting the cases before the tribunal to step into the witness box to narrate their respective versions.

7. In above facts and circumstances, there is no reason why the evidence of the claimants demonstrating negligence on the part of both the drivers should be disbelieved or the finding returned by the tribunal apportioning the liability equally, should be disturbed.

8. The compensation on account of loss of future income due to disability has been based on the assessment of the tribunal that the functional disability of the claimant Usha Rani was 59%, this on the basis of disability certificate (Ex.PW-6/1) proved on record by Dr. Naresh Chander, one of the members of the board of doctors of Guru Gobind Singh Govt. Hospital, Govt. of NCT of Delhi, the certificate having been issued on 24.08.2012. It does appear that the claimant had been earlier examined by board of doctors of Deen Dayal Upadhyay Hospital, Govt. of NCT of Delhi on 10.10.2011 when her disability was assessed as 38% (Ex.PW-4/1). This, however, does not mean that the tribunal was expected to go by the previous assessment of disability. The earlier disability certificate clearly shows the board of doctors was of the opinion that the condition might improve. The subsequent disability certificate dated 24.08.2012 rather shows that the disability had worsened, the claimant Usha Rani being found to be a case of post traumatic stiffness of both keen joints, her physical disability being 59% and permanent in nature not likely to improve.

9. In above facts and circumstances, the acceptance of the subsequent disability certificate as the medical opinion by the tribunal cannot be faulted. But then, in the facts and circumstances, having regard to the nature of injuries suffered and the situs thereof and the

work in which the claimant was engaged (that of tutor), the medical opinion about the disability in relation to the part of the body cannot be equated with the functional disability in relation to the whole body. In the opinion of this court, the functional disability in the above facts and circumstance cannot be more than thirty per cent (30%). The compensation thus has to be calculated accordingly.

10. The tribunal accepted the evidence about the income on the basis of income tax returns (ITRs) for three consecutive assessment years, *i.e.,* 2008-2009, 2009-2010 and 2010-2011 (Ex.PW-3/9 collectively). It rightly took the income declared for the assessment year 2009-2010 as the bench mark. Since the said income irrefutably shows progressive rise in income in relation to the income declared in the preceding year, the element of future prospects has been correctly added. Thus, the progressive rise in the income to the extent of fifteen per cent (15%) has been correctly added.

11. The compensation on account of loss of future income due to disability is re-computed as (2,11,128.5 x 11 x 30/100) Rs.6,96,724/-. This would mean the compensation awarded by the tribunal is to be reduced by (13,70,224/- - 6,96,724/-) Rs.6,73,500/-. The award is, thus, modified to (26,13,544/- - 6,73,500/-) Rs.19,40,044/-, rounded off to Rs.19,41,000/- (Rupees Nineteen Lakhs Forty One Thousand Only). Needless to add, the award shall carry interest as levied by the tribunal.

12. By order dated 25.05.2015 (in MAC APP.454/2015), the insurer of the TSR had been directed to deposit the entire awarded amount

with up-to-date interest with the Registrar General of this Court and the same was directed to be kept in fixed deposit. The registry shall calculate the amount payable to claimant Usha Rani in terms of the award modified as above to the extent of liability of the insurer of the TSR from out of said deposit, refunding the excess, if any, to it with statutory deposit.

13. By order dated 28.05.2015 (in MAC APP.424/2015), the insurer of the car had been directed to deposit seventy per cent (70%) of the awarded amount with proportionate interest with UCO Bank, Delhi High Court Branch and from out of the said deposit Rs.5,00,000/- (Rupees Five Lakhs Only) was allowed to be released to the claimant Usha Rani, the balance amount kept in fixed deposit receipts. The registry shall calculate the balance of the amount payable to claimant Usha Rani on account of liability of the insurer of the car and release the same from out of the balance kept in fixed deposit, refunding the excess, if any, to the insurer of the car with statutory deposit.

14. By order dated 25.05.2015 (in MAC APP.455/2015), the insurer of the TSR had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General and such deposit was directed to be kept in fixed deposit receipt. The registry shall now release the amount payable to the claimant Subhash Chander Allahabadi from out of such deposit on account of liability of the insurer of the car.

15. The statutory amount deposited by each of the insurer/appellant shall be refunded.

16. The appeals along with accompanying applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 07, 2017
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