

\$~16 & 17 (*common order*)

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

Decided on: 2nd August, 2017

+ MAC.APP. 1095/2016

DR SANGEETA GUPTA Appellant

Through: Mr. L.K.Singh, Advocate with
Mr. Raj Kumar &
Ms. Saira Parveen, Advs.

versus

TATA AIG GENERAL INSURANCE CO LTD & ORS

..... Respondent

Through: Ms. Vandana Kahlon, Adv.
with Mr. Rudra Kahlon, Adv.
for R-1.
Mr. Pankaj Seth, Adv. for NICL

+ MAC.APP. 61/2017 and CM APPL.1896/2017 (stay)

TATA AIG GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Vandana Kahlon, Adv.
with Mr. Rudra Kahlon, Adv.
for R-1.

versus

SANGEETA GUPTA AND ORS (NATIONAL INSURANCE
CO. LTD) Respondents

Through: Mr. L.K.Singh, Advocate with
Mr. Raj Kumar &
Ms. Saira Parveen, Advs for
R-1.
Mr. Pankaj Seth, Adv. for NICL

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

JUDGMENT (ORAL)

1. Dr. Sangeeta Gupta (the claimant), appellant in MAC APP.1095/2016, then 32 years, a highly educated person having attained the degree of Ph.D., working as Reader in Harsaran Dass Dental Medical College, Ghaziabad with past experience of teaching in the capacity of Lecturer in Bio-chemistry in the Institute of Higher Learning, NIMS, Jaipur was travelling as a passenger of Maruti Van bearing registration No.DL-2CE-0600 (hereinafter, "the Maruti Van") with five students on 22.08.2003, at about 8:15 a.m., when the said vehicle met with an accident with a Santro car bearing registration No.UP-Z-001-9121 (hereinafter "the Santro car"). Due to the collision, the Maruti van turned turtle and fell into a ditch on the roadside resulting in all its occupants including she (the claimant) suffering injuries, the injuries sustained by her primarily affecting the head region.

2. The claimant had initially instituted accident claim case before the Motor Accident Claims Tribunal at Meerut, U.P. on 12.08.2004 but, after some inquiry, it was returned by the said Tribunal for it to be instituted afresh before the Tribunal at Delhi. She brought her claim petition (MAC No.1161/2010) before the Tribunal at Delhi on 04.10.2016 in which she impleaded Satish Kumar, one of the respondents herein, he being the driver of the Santro car and M/s. TATA AIG Insurance Company Limited (appellant in MAC

APP.61/2017) as respondents. She also impleaded Raj Rani, owner of the Maruti van and M/s. National Insurance Company Limited (insurer of the said vehicle), both being reflected in the array before the tribunal as third and fourth respondents respectively, they being party respondents to these appeals.

3. The claim case resulted in inquiry in the course of which evidence was led by both sides. On the conclusion of the said inquiry, the Tribunal, by its judgment dated 05.09.2016, upheld the case for compensation on the principle of fault liability holding the driver of the Santro car responsible. The Tribunal assessed the compensation in the sum of Rs.13,24,473/- and directed the insurer of the Santro car (appellant in MAC APP.61/2017) to pay the same with interest @ 12%, from the date of filing of the petition till realization.

4. The compensation was computed by the tribunal under various heads as under:-

Sl.No.	Head	Amount in (Rs.)
1.	Compensation towards pain and suffering	80,000/-
2.	Compensation towards medical bills	50,1113/-
3.	Loss of earning capacity due to disability	7,83,360/-
4.	Loss of earning for a period of 12 months	2,04,000/-
5.	Attendant charges for 12 months	42,000/-
6.	Special diet and conveyance	15,000/-
7.	Compensation towards loss of amenities and enjoyment	50,000/-
8.	Compensation towards disfigurement	50,000/-

9. Compensation towards loss of marriage prospects 50,000/-

Total 13,24,473/-

5. It may be mentioned here that the tribunal found, on the basis of proof adduced to that effect, that the claimant had suffered disability to the extent of 34%. It also found that she had suffered loss of income for the period of treatment and consequent to the disability factor, she was also held entitled to compensation for loss of earning capacity in future, this having been calculated, with the multiplier of 16, on the basis of notional income to Rs.12,000/- per month.

6. The insurer of the Santro car has come up in appeal (MAC APP.61/2017) questioning the impugned judgment primarily on the subject of computation of compensation but also raising the issue that the Maruti van driver was responsible for the accident, in that it is he who had taken a sudden turn, through a cut in the central divider, thereby coming in the path of the Santro car which was moving in exercise of its right of way.

7. The contention of the insurer of the Santro car on the issue of negligence has to be appreciated in the light of evidence led by both sides. It is clear from the deposition of the claimant (PW-1), as indeed of the driver of the Santro car (R1W1), that both vehicles had approached the scene from different directions on the road which was divided into two carriage-ways, each side meant for movement of the traffic in the opposite directions. The accident occurred when the Maruti van had taken a U-turn, through a cut in the central verge, in an

attempt to merge into the traffic moving on the other side. The evidence of PW-1 clearly shows that the Santro car had come at fast and uncontrolled speed. Though R1W1, in the course of his testimony, would claim that he was moving at a speed of 40-50 kms per hour, he conceded during his cross-examination that when the Maruti van was taking a turn, having emerged from the cut in the central verge, he was unable to avoid the collision even though he had applied brakes “very hard”. The negligence on the part of Santro car driver is writ large in this admission. Moving on a busy road, where he admits there were many vehicles in motion at the relevant point of time, knowing fully well the presence of the cut in the central verge, it was his responsibility to ensure that there was no collision with any other vehicle on the road, such collision easily avoidable by keeping the speed of the vehicle under proper check.

8. In above facts and circumstances, this court is not inclined to disturb the finding returned by the tribunal placing the responsibility for the collision on the Santro car driver.

9. The evidence adduced before the tribunal clearly shows that the claimant had suffered head injury which resulted in prolonged treatment. She remained in coma during in-door treatment in Sarvodaya Hospital, Ghaziabad from where, under medical advice, she was shifted to AIIMS for surgery. She underwent surgery in Department of Neurosurgery, AIIMS. This was followed by another operation on 02.10.2003. She remained confined to bed till March,

2004 when she was able to move around, though with support of the family members.

10. On her request, by order dated 16.09.2015, the claimant was referred to Medical Superintendent of GTB hospital of the Govt. of NCT of Delhi for evaluation of her medical condition. Pursuant to the said directions, she was examined by doctors of Neurosurgery Department of GTB hospital from where she was referred for neuropsychological assessment in IQ by the Institute of Human Behaviour and Allied Sciences (IHBAS) and, on the basis of advice received, the medical board of the GTB hospital of the Govt. of NCT of Delhi issued a disability certificate dated 27.04.2016 stating that she suffers from mental disability to the extent of 34%, such condition being permanent. The disability certificate is available (at page 821) in the tribunal's record. The disability is described by the claimant as loss of memory. This indeed has had an impact on her capacity to continue as an academician in the subject in which she had been qualified and engaged till date of the accident.

11. It was pointed out during the course of arguments by the counsel for the insurer of Santro car, that during the inquiry before the tribunal at Meerut, U.P., by her evidence (recorded on 11.05.2005), the claimant had deposed that she had been working in Harsaran Dass Dental Medical College, Ghaziabad since 2002, her initial appointment being to the post of senior lecturer at a salary of Rs.14,000/- per month, she having been later promoted to the level of Reader where she was still continuing at the time of such deposition.

A copy of the said statement before the tribunal at Meerut recorded on 11.05.2005 has been submitted as Annexure 'D' (to the MAC APP. 61/2017). It was further pointed out by the counsel for the insurer of the Santro car that the claimant, having filed the accident claim case afresh before the tribunal at Delhi, had submitted her affidavit (Ex.PW1/1), sworn on 13.04.2009, on the basis of which she testified on 23.02.2011 when she was subjected to cross-examination. Copies of the affidavit, and the statement recorded in the tribunal, have been submitted with appeal (MAC APP.61/2017) as Annexure 'F' and 'H' respectively.

12. The counsel for insurer (appellant) pointed out that even on 23.02.2011 the claimant had continued to be in employment of the same college and, thus, argued that there has been no loss of employment. His argument is that since the claimant did not suffer any loss of job, there could not have been any compensation awarded on account of loss of income as has been included in the award, it being under the head of loss of earning for the period of twelve months. He also submitted that since the claimant had actually been promoted from the post of lecturer to the post of Reader, after the accident, there cannot be a finding returned that she had suffered financially or would suffer loss of earning capacity due to disability.

13. On the other hand, it was argued on behalf of the claimant that what is sought by the claimant was not compensation on account of loss of employment but compensation for the period of absence from duty for which there would be no salary received. It was also argued

that given the nature of the injuries suffered and the effect it has had on the mental faculties of the claimant, the functional disability would undoubtedly affect her future capability to earn for which appropriate award deserves to be added, as has been rightly so done by the tribunal.

14. It is noted that though the claimant admitted at the time of her deposition before the tribunal on 23.02.2011 that she had continued to be in the same job in which she was employed at the time of accident, it is clear that, notwithstanding the change of the post she held earlier, she has not earned any incremental progressive rise in income. Her income virtually remained frozen since 2003 at the same level it was at least till 2011 when her statement was recorded. This, in the given facts and circumstances, must be construed as attributable to the fact of mental faculties having been adversely affected due to the injuries suffered in the head region. The testimony of the claimant, as PW-1, about she not having been able to resume duties for three years due to the injuries suffered and the consequent hospitalization or on account of medical treatment has remained unimpeached. In these circumstances, the loss of income during the period of treatment should have been compensated equivalent to the salary she was drawing for a period of thirty six (36) months rather than restricted to twelve months as factored in by the tribunal.

15. This court accepts the submissions of the insurer of the Santro car that since the claimant had continued to be in the same job, the loss of earning capacity due to disability could not have been pegged

to the date of the accident. Such loss would accrue at the time when she would reach the age of superannuation which, in absence of any formal proof to the contrary, may be assumed to be the age of 60 years. But, for such purposes, the notional income which the claimant would reach by such age will have to be computed and then the multiplier of 9 applied for fair assessment.

16. It is noted that the tribunal assessed the income of the claimant at Rs.12,000/- per month without any basis. It appears this was done on the wrong assumption that her salary was reflected by the certificate (Ex.PW-4/4) which was issued on 28.02.2004. The evidence of the claimant that she was earning Rs.14,000/- per month at the relevant point of time could not have been ignored. Therefore, the loss of income during the period of treatment is calculated as $(14,000/- \times 36)$ Rs.5,04,000/-. This would mean an increase in the loss of earning by $(5,04,000/- \text{ minus } 2,04,000/-)$ Rs.3,00,000/-.

17. By factoring in element of fifty percent (50%) of future prospects, the income of Rs.14,000/- per month accruing in August, 2003 would turn out to be $(14,000/- \times 150/100)$ Rs.21,000/- as the notional income at the age of 60 years. Taking into account the 34% functional disability, and applying the multiplier of 9, the loss of future income is calculated as $(21,000/- \times 34/100 \times 12 \times 9)$ Rs.7,71,120/-. Since the tribunal has awarded Rs.7,83,360/- under this head, the award would need to be reduced by Rs.12,240/-.

18. Having regard to the nature of injuries suffered and the deep impact they would have on her future not only in the career but in

personal life, the non-pecuniary heads of damages are found to be inadequate. The compensation on account of pain and suffering, loss of enjoyment of amenities of life, as indeed towards loss of marriage prospects are, therefore, increased to Rs.1,00,000/- each. This would mean the net further increase of (3,00,000/- - 1,80,000/-) Rs. 1,20,000/-. The gross effect of the above modifications would be that the award deserves to be increased by (3,00,000/- + 1,20,000/- - 12,240/-) Rs.4,07,760/-.

19. The award is, thus, increased to (13,24,473/- + 4,07,760/-) Rs.17,32,233/-, rounded off to Rs.17,33,000/-.

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

21. The execution of the award was stayed by order dated 01.03.2017 (in MCA APP.61/2017) on the condition that the entire awarded amount with interest be deposited with the tribunal. By order dated 19.05.2017, forty percent (40%) of the said amount was released to the claimant. The balance lying in deposit shall also now be released.

22. The appellant (in MAC APP.61/2017) shall satisfy the enhanced portion of the award by requisite deposit with corresponding interest with the tribunal within thirty days, whereupon it shall be released to the claimant.

23. The statutory amount be refunded to the insurance company.
24. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 02, 2017

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