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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 9th March, 2018

\+ MAC.APP. 174/2011

PUSHPA DEVI ..... Appellant

Through: Mr. Sumit Kumar, Mr. Vinay Kumar & Mr. Ashish Arya, Advs.

versus

PURAN SINGH & ORS ..... Respondents

Through: Ms. Shantha Devi Raman & Mr. Arihant Jain, Advs. for R-3.

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

JUDGMENT (ORAL)

1. The appellant was the claimant before the motor accident claims tribunal (suit No. 663/2003) instituted on 17.11.2003 seeking compensation for injuries sustained and permanent disability consequently suffered on account of motor vehicular accident that took place on 05.07.2003 at about 5.45 a.m. involving collision between motorcycle bearing registration No. DL 7SAA 3391 (the motorcycle) on the pillion of which she was riding on one hand and truck bearing registration No. HR 55A 2184 (the truck), on the other, the truck concededly insured against third party risk with the third respondent (insurer). The case was set up on the ground that the claimant was moving on the pillion of the motorcycle driven by her

brother-in-law, the said vehicle having been struck against by the truck which had come in a rash or negligent manner. The tribunal put the case to inquiry and on the basis of evidence adduced returned finding affirming the case for compensation on account of fault of the truck driver. It awarded compensation in the total sum of Rs. 1,98,328/- in favour of the claimant/appellant directing the insurer to pay the said amount with interest @ 7.5% per annum from the date of filing of the petition. The amount was calculated thus:-

S.No.	Heads	Compensation
1.	Treatment expenses	Rs. 82,328/-
2.	Pain and sufferings and Loss of amenities of life	Rs. 15,000/-
3.	Special diet & conveyance	Rs. 5,000/-
4.	Compensation on account of disability	Rs. 96,000/-
	Total	Rs. 1,98,328/-

2. Aggrieved with the quantum of compensation awarded, the present appeal was filed. It was not diligently prosecuted and came to be dismissed in default for want of prosecution by order dated 23.08.2013. The application for restoration was submitted but again filed with delay and upon being returned on objections re-filed even

with further delay of 586 days. The appeal was eventually restored by order dated 30.01.2018.

3. Having heard the learned counsel for the claimant and also for the insurer, this Court finds the grievance as to under-assessment of compensation to be correct. The claimant was about 32 years old when the accident had occurred. She had suffered degloving injury in the left lower limb besides fracture of the left tibia bone which mercifully re-united. Nonetheless, the loss of muscle has resulted in she being rendered permanently disabled, the physical impairment having been assessed to be 40% as per the disability certificate dated 10.02.2006 issued by board of doctors of Safdarjung Hospital of Govt. of India (page 22 of the paper book).

4. In above facts and circumstances while the conclusion of the tribunal about the extent of disability to be 40% is correct, error in computation of compensation for loss of income due to disability has crept in due to the assumption that the claimant's income be taken as Rs. 15,000/- per annum. It appears, the tribunal has gone by the prescription in the Second Schedule appended to the Motor Vehicles Act, 1988. The present case is under Section 166 of Motor Vehicles Act, 1988. The calculation of loss of income due to disability should have been made with the help of minimum wages of Rs. 2783.90 as payable on the relevant date to an unskilled worker, there being nothing on record to show any educational or trade qualifications of the claimant. It may be added that in computing the loss of future income due to disability, the element of future prospects to the extent

of 40% will have to be added. [see judgment of the 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.*,]. Thus, the loss of income due to permanent disability in future is computed with the multiplier of 16 as (2783.9 x 140 ÷ 100 x 40 ÷ 100 x 12 x 16) Rs, 2,99,325, rounded of to Rs. 3,00,000/-.

5. The accident had occurred on 05.07.2003 and the record of treatment as submitted before the tribunal at the time of inquiry reveals that the appellant had remained unfit unable to pursue normal activity, being under continued treatment till March, 2005 and, thus, for a period of three years. In these circumstances, the loss of income for a period of three years during the period of treatment will also have to be added. This component is calculated as (2783.9 x 12 x 3) Rs. 1,00,220/-.

6. While the award under the head of special diet and conveyance at Rs. 5,000/- is found to be correct, given the period to which the case relates, the composite award of Rs. 15,000/-under the common head of pain & suffering and loss of amenities of life is found to be deficient. Thus, an amount of Rs. 75,000/- each shall be added on account of pain & suffering on one hand and loss of amenities of life on the other.

7. Putting together all the heads including treatment expenses (Rs. 82,328/-), the total compensation comes to (3,00,000+ 1,00,220 + 5,000 + 75,000 + 75,000 + 82,328) Rs. 6,37,548/-, rounded off to Rs. 6,38,000/-. The award stands modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum 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*.]. The interest shall be leviable on the enhanced portion of the award from the date of filing of the petition till payment excluding the period 23.08.2013 to 07.08.2015.

9. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days hereof. Upon such deposit being made, the tribunal shall release the amount to the claimant in the form of interest bearing fixed deposit receipt in a nationalized bank initially for a period of seven years with right to draw periodic interest.

10. The appeal is disposed of in above terms.

11. Dasti.

R.K.GAUBA, J.

MARCH 09, 2018
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