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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12th January, 2018

\+ MAC.APP. 894/2012

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pradeep Gaur, Advocate with Mr. Himanshu Joshi, Advocate

versus

SANJAY & ORS ..... Respondents

Through: Mr. Santosh Chaurihaa, Advocate with Mr. M.A. Khan, Adv. & Mr. Minendra Singh, Advocate

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

JUDGMENT (ORAL)

1. The first respondent was the claimant before the motor accident claims tribunal in accident claim case (MACT No.942/10/07), instituted on 14.03.2008, seeking compensation for the injuries suffered in a motor vehicular accident that had occurred on 31.10.2007, involving negligent driving of water tanker bearing registration No.DL-1GB-3548, admittedly insured against third party risk for the period in question with the appellant (the insurer). The tribunal held that the injuries had been sustained and consequently the claimant had been rendered permanently disabled due to negligence on the part of the driver of the water tanker. It awarded compensation in the total sum of Rs.11,26,018/-, calculating it thus:-

Sl.No.	Head	Amount (in Rs.)
1.	Loss of income for 12 months	42,192/-
2.	Future medical expenses	50,000/-
3	Loss of future income, etc.	7,08,826/-
4.	Special diet	50,000/-
5.	Conveyance	25,000/-
6.	Pain and sufferings and trauma	1,00,000/-
7.	Loss of amenities & enjoyment of life	1,50,000/-
	Total	11,26,018/-

2. The tribunal directed the insurer to pay the aforesaid amount with interest @ 9% per annum, also adding the liability of payment of Rs.51,000/- towards lawyers' fee and Rs.4,000/- as out of pocket expenses for the counsel for the claimant.

3. The insurer filed the present appeal and presses it taking exception to the assessment of the functional disability at 70% pointing out that this is way above the medical opinion about the physical disability in relation to the right lower limb. Exception is also taken to the directions for payment of lawyers' fee and out of pocket expenses.

4. Having heard the counsel on both sides and having gone through the record, this court finds that the most serious injuries

suffered leading to the disability factor was in the form of crush injury in the right lower foot. The claimant underwent surgical procedure in the course of which plates had to be inserted. The tribunal's record shows that the claimant was examined by a board of doctors of Sanjay Gandhi Memorial Hospital, Govt. of NCT of Delhi on 18.03.2010, which issued the disability certificate (Ex.PW-1/2) opining the physical impairment to be 44% in relation to the right lower limb. The claimant was again examined by another board of doctors of Dr. Baba Saheb Ambedkar Hospital on 07.05.2011, which issued disability certificate affirming the permanent physical impairment describing it as post-traumic stiffness of the ankle and evaluating permanent disability to be 36% in relation to the right lower limb. This certificate is available on the record of the tribunal (page 187). The claimant was yet again examined by another board of doctors of the Department of Physical Medicine and Rehabilitation of All India Institute of Medical Sciences (AIIMS) on 27.06.2011 which issued its report (Ex.PW-6/X). As per this opinion, the claimant was found to be a case of post-traumatic deformity of the right ankle and foot with chronic osteomyelitis and difficulty in activities of daily living, his physical impairment having been found to be 40% in relation to the right lower limb. Pertinent to note, as per this opinion the evaluation required reassessment after five years.

5. Faced with the above material on record, particularly the fact that the second evaluation dated 07.05.2011 by board of doctors of Dr. Baba Saheb Ambedkar Hospital has not even been noted by the

tribunal in the impugned judgment, and the fact that the evaluation by the board of doctors of AIIMS rendered on 27.06.2011 itself indicated that it was not final evaluation, have escaped notice of the tribunal, the counsel appearing for the claimant submitted he may be sent for final re-evaluation by a board of doctors.

6. In these facts and circumstances, it is clear that the tribunal has rushed into passing the award without securing appropriate and definitive medical opinion. In this view, the impugned judgment cannot be upheld. It is, therefore, set aside. The claim case is remitted to the tribunal for further proceedings in accordance with law. During further proceedings, the tribunal will make appropriate arrangement for proper evaluation of the disability of the claimant and pass a fresh award thereupon.

7. In terms of order dated 27.08.2012, the insurance company had deposited the awarded amount excluding the counsel's fee and out of pocket expenses with upto date interest with UCO bank, Delhi High Court Branch and out of such deposit, 50% has already been directed to be released to the claimant. The amount already released to the claimant will be subject to adjustment or appropriate directions to be given by the tribunal in the fresh judgment to be passed. The balance lying in deposit with accrued interest along with statutory deposit shall be refunded to the appellant.

8. The parties are directed to appear before the tribunal on 26th February, 2018.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JANUARY 12, 2018
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