$~R-706, R-706A

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

Decided on: 4th January, 2018

\+ MAC APPEAL No. 1/2013

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

Through: Mr. Shoumik Mazumdar, Adv.

versus

ARJUN & ORS. ..... Respondents

Through: Mr. O.P. Mannie & Mr. Manish Maini, Advs. for R-1.

\+ MAC APPEAL No. 223/2016

ARJUN & ORS. ..... Appellants

Through: Mr. O.P. Mannie & Mr. Manish Maini, Advs.

versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD. ..... Respondent

Through: Mr. Shoumik Mazumdar, Adv.

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

JUDGMENT (ORAL)

1. Arjun (the claimant), then aged 28 years, self-employed as a tailor, suffered injuries in motor vehicular accident that took place on 27.06.2008, due to negligent driving of motor vehicle described as Mahindra Champion bearing registration no. DL 1LH 8594 of Smt.

Kanti (the registered owner) by Ashok Kumar (the driver) engaged by her for such purposes, the said vehicle admittedly being insured against third party risk for the period in question with Iffco Tokio General Insurance Company Ltd. (insurer). He instituted accident claim case (MACT 124/10/08) on 24.07.2008. The tribunal after inquiry, by judgment dated 13.07.2012, accepted the said case, holding that the accident had occurred resulting in injuries being suffered by the claimant, rendering him permanently disabled due to negligent driving of the said vehicle. It awarded compensation in the total sum of Rs. 9,69,415/-, directing the insurer to pay with interest @ 12 % per annum, calculating it thus:

S.No.	Heads	Compensation
	Pecuniary damages (special damages)	
	a) Medical expenses	Rs. 1,08,203/-
	b) Loss of future income etc.	Rs. 2,90,624/-
	c) Special diet	Rs. 50,000/-
	d) Conveyance	Rs. 25,000/-
	e) Loss of income for six months	Rs. 45,588/-
	Non-pecuniary damages (general damages)	
	f) Pain & sufferings & trauma	Rs. 1,50,000/-
	g) Loss of amenities & enjoyment of life	Rs. 1,50,000/-
	h) Loss of deformity &	Rs. 1,50,000/-

	inconvenience	
	Total	**Rs. 9,69,415/-**

2. It may be mentioned here that the insurer while contesting had raised the defence that there was breach of terms and conditions of the insurance policy for the reason the driver was not holding a valid or effective driving licence. It led evidence by examining Abhishek Kujur (R3W1), its legal executive. The tribunal, however, was not satisfied with the said evidence and declined to grant exoneration or recovery rights to the insurer. By the impugned judgment, the tribunal further directed the insurer to pay Rs. 25,000/- as lawyers' charges and Rs. 3,000/- as out of pocket expenses to the counsel for the claimant.

3. The insurer questions the above-mentioned award by its appeal (MAC Appeal No. 1/2013) on the grounds that the non-pecuniary damages awarded are excessive, the interest levied at 12% is unjust and the directions for payment of lawyers' charges and out of pocket expenses were uncalled for. It also reiterates its plea that there was breach of terms and conditions of the insurance policy on which account it should have been exonerated.

4. *Per contra,* the claimant by his appeal (MAC Appeal No. 223/2016) seeks enhanced compensation on the ground that his functional disability has been wrongly taken as 25% only, which, given the condition to which he has been reduced, should have been treated as 50% as affirmed by the disability certificate (Ex.PW-3/A) issued by board of doctors of Dr. Baba Saheb Ambedkar Hospital of

the Govt. of NCT of Delhi, one of the members of such board (PW-3) having come in the witness box to prove the necessary facts.

5. The evidence led by the claimant would show that the injuries suffered by him included multiple fractures in the left lower limb besides fracture of the left clavicle bone and head injuries. He underwent prolonged treatment which included surgical procedures and skin grafting. He not only suffered loss of toes in the left foot but also restricted movement of the said part of the body, the after-effect whereof is that he is rendered a case of post traumatic hemiparesis, such condition having been evaluated by the board of doctors (Ex.PW-3/A) to be to the extent of 50%. Given this medical opinion, and the fact that the claimant was earning his livelihood prior to the date of the accident as a private tailor, it is correct on the part of the claimant to contend that his functional disability has been under-assessed. In the opinion of this Court, such condition will have to be treated as functional disability to the extent of 50% (fifty per cent) which would mean there has to be an increase in the compensation on account of loss of future income to the extent of Rs. 2,90,624/-.

6. Given the above facts, the general damages awarded by the tribunal cannot be said to be excessive. In these circumstances, the compensation is enhanced to (9,69,415 + 2,90,624) Rs. 12,60,039/-, rounded off to Rs. 12,61,000/- (Rupees Twelve Lakhs Sixty One Thousand only). Ordered accordingly.

7. The tribunal has not set out any special reasons why the interest at the rate of 12% should have been levied. Such rate is undoubtedly higher than the ordinary.

8. Following the consistent view taken by this Court, the rate of interest is reduced to 9% (nine per cent) 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*.].

9. There being no justification for such inclusion. The directions for payment of lawyers' charges and out of pocket expenses to the counsel for the claimant are set aside.

10. The evidence of R3W1 shows that the driver of the offending vehicle had made available copy of his driving licence. It is clear from the testimony of said witness examined by the insurer that the corresponding records of the concerned transport authority at Mathura having been shifted to its office at Agra, verification of the said document could not be made. In these circumstances, this Court finds no good reason why the insurer should succeed in its plea about the breach of terms and conditions of the insurance policy. It was its obligation to call for the necessary witness from the concerned office to prove the requisite facts. The plea is, thus, rejected.

11. By order dated 04.01.2013 in MAC Appeal No. 1/2013, the insurer had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch within the period specified. By order dated 08.04.2013, 70% of the said awarded amount was permitted to be released to the claimant. Since the award has been increased but the rate of interest has been reduced, the registry will calculate the amount payable to the claimant under

the modified award and release the balance payable to him from out of the remainder in deposit, refunding excess, if any, to the insurer. Conversely, if the deposit is deficient, the insurer will be obliged to pay the remainder of its liability by requisite deposit with the tribunal within 30 days.

12. The statutory amount, however, shall be refunded to the insurer after proof is shown of the award having been satisfied.

13. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

JANUARY 04, 2018
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