

\$~6

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

Decided on: 31st August, 2017

+ **MAC.APP. 216/2016 and CM 8367/2016**

RELIANCE GENERAL INSURANCE CO. LTD Appellant
Through: Mr. A.K. Soni, Advocate

versus

INTZAR ALI & ORS Respondents
Through: Mr. S.N. Parashar and Ms. Pankaj
Kumari, Advocates for R-1

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

JUDGMENT (ORAL)

1. The first respondent, then aged 26 years, working for gain as a driver on motor vehicle described as a van bearing registration no.DL-7CB-1004 suffered injuries in a motor vehicular accident that occurred on 24.06.2012 at about 12.10 p.m. due to negligent driving of another motor vehicle, it being tempo bearing registration no. UP-17T- 4654 which was admittedly insured against third party risk with the appellant / insurance company (insurer), the injuries suffered including multiple fractures including Open Grade Fracture SOF(R), Open Grade-IIB Fracture and Open Grade IIIA both bone leg fracture. The treatment that was administered included surgical procedures in which nail and plate were implanted. The victim (claimant), however, was rendered permanently disabled, the disability being described as

locomotor impairment assessed by a board of doctors of Guru Tegh Bahadur Hospital, Delhi on 11.08.2014 vide disability certificate (Ex. P-2) to be in relation to right lower limb.

2. The victim filed accident claim case (MACT 306/12) on 25.08.2012 seeking compensation on the principle of fault liability impleading the aforementioned insurer in addition to the driver and owner of the offending vehicle as party respondents.

3. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 11.01.2016, awarded compensation in the total sum of Rs.10,40,473/- fastening the liability on the insurer to pay with interest at the rate of 9% p.a.

4. The insurer is in appeal raising several grievances, first being that negligence on the part of the vehicle in question was not properly proved as no other witness in corroboration was examined. It is noted that the claimant had appeared during the inquiry as his own witness (PW-1) deposing on the strength of the affidavit (PW1/A) on which he was cross-examined. In the said affidavit, he narrated the sequence of events leading to the occurrence bringing out that it is the insured vehicle which was driven negligently in violation of the traffic rules, having hit the vehicle driven by the claimant, it in turn being on the correct side of the road and moving at normal speed. Noticeably, the driver of the offending vehicle did not appear in witness box nor was called upon to do so by any of the contesting parties. The statement of PW-1 finds corroboration from the record of the corresponding criminal case and, therefore, the finding about negligence has been properly reached.

5. The Tribunal had assessed the functional disability of the claimant at 28% taking into account, *inter alia*, the medical opinion referred to above and also the nature of avocation of the claimant. The grievance of the insurance company in such regard does not merit acceptance. The conclusion reached by the tribunal is based on sound reasoning and so does not call for any interference.

6. It is, however, noted that the tribunal assumed the income of the claimant with the help of minimum wages (Rs.8,528/-) but added the element of future prospects of increase to the extent of 50%. The insurance company questions the element of future prospects being factored in.

7. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

8. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo*

General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

9. In the given facts and circumstances where there is no cogent proof of employment or earnings of the claimant, the element of future prospects will have to be kept out.

10. Thus, the loss of earnings in future due to disability, with the help of multiplier of 17, correctly chosen, is re-computed as [Rs.8,528/- x 28/100 x 12 x 17) Rs.4,87,119/-. Since the tribunal had awarded Rs.7,30,679/- under this head, the award needs to be reduced by [Rs.7,30,679/- (-) Rs.4,87,119/-] Rs.2,43,560/-.

11. The award is, thus, reduced to (Rs.10,40,473/- (-) Rs.2,43,560/-] Rs.7,96,913/-, rounded off to Rs.7,97,000/- (Rupees Seven Lakh and Ninety Seven thousand only). Needless to add, it shall carry interest as levied by the tribunal.

12. By order dated 08.03.2016, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the tribunal, out of which forty percent (40%) was allowed to be released to the claimants and the balance ordered to be kept in interest bearing account. The balance with interest, in terms of the modified award, shall now be released to the claimants, refunding the excess, with corresponding interest, to the appellant / insurance company.

13. The statutory amount shall also be refunded to the appellant /insurance company.

14. The appeal along with accompanying application stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 31, 2017

yg

