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

Date of Decision: 05th May, 2016

\+ **MAC.APP. 692/2013**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through Ms. Suman Bagga and Mr. Pankaj Gupta, Adv.

versus

MANISH KUMAR & ORS ..... Respondents

Through Mr. S N Parashar, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent was riding motorcycle bearing registration No.DL 3SAV 2255 (motorcycle) on 13.02.2011 and had reached the traffic signal at Junk Market Red Light, Mayapur, New Delhi at about 8.20 PM when there was an accident involving his vehicle and Santro car bearing registration No.DL 3 AB 6794 (the car) driven by the second respondent, it being admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. It appears the second respondent is also the owner (insurer) in respect of the car. As a result of the injuries suffered, the first respondent (claimant) has been rendered totally blind in both eyes and, thus, assessed to be permanently disabled to the extent of 100%. He filed an accident claim case (suit No.174/2011) on 23.07.2011 before the motor accident claims tribunal (tribunal) which held inquiry and on that basis returned a finding that the accident had occurred

due to negligent driving of the car by the second respondent. The tribunal assessed compensation in the sum of ₹56,50,000/- and awarded it with interest in favour of the claimant directing the insurer to pay.

2. The amount of compensation awarded includes ₹10 lakhs towards loss of consortium, ₹14,32,080/- towards attendant charges, ₹5 lakhs towards pain & suffering; the three heads of damages to which the insurer takes exception by the appeal at hand. The insurer has also argued in the appeal that the negligence was on the part of the claimant himself as the car is shown by the evidence to have been struck from behind by the motorcycle while the former was stationary.

3. Having heard the counsel on both sides and perused record, this Court finds no substance in the contention with regard to negligence. The evidence of the claimant on the strength of his affidavit (Ex.PW1/A) clearly brought out that the car had overtaken his vehicle and having come at rash speed had lost balance to strike against his motorcycle making him fall down. Merely because the second respondent stated in his deposition that his vehicle was stationary and had been hit from behind, the said version cannot be believed. The record of the corresponding criminal case which also has been placed as part of the evidence before the tribunal corroborates the word of the claimant with regard to the sequence of events. In these circumstances, the finding returned by the tribunal does not call for any interference.

4. The learned counsel for the claimants fairly conceded that in a claim arising out of injuries and permanent disablement as in hand, the award under the head of loss of consortium was wholly uncalled for and unwarranted. But, the contentions of the insurance company against the

other heads of damages cannot be accepted. The claimant having been rendered totally blind in both eyes, and therefore, in a helpless state for the remainder of his life would undoubtedly require services of an attendant. The computation made in this regard is appropriate. The tribunal did not include a separate head to award in damages for loss of amenities of life on account of blindness. In these circumstances, the composite award of Rs.5 lakhs under the head of pain & suffering cannot be grudged.

5. For the foregoing facts and circumstances, the award of Rs.10 lakhs towards loss of consortium is set aside. The total compensation payable in the case, thus, is reduced to Rs.46,50,000/-.

6. The insurance company had been directed by order dated 30.07.2013 to deposit 50% of the awarded amount with interest out of which Rs.5 lakhs was released to the claimant, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. By subsequent order dated 20.12.2013, the amount of Rs.6,00,000/- was allowed to be released to the claimant. The balance lying in deposit with the Registrar General shall also now be released. The insurer shall now satisfy the balance of its liability under the modified award. It shall do so by requisite deposit with the tribunal within 30 days making it available to be released.

7. The statutory deposit, if made, shall be released by the registry only after award has been satisfied.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016
VLD