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

Date of decision: January 27, 2017

\+   MAC.APP. 36/2008

ANIL KUMAR ..... Appellant

Through: Mr. Mukesh Kaushik, Advocate

Versus

PUNEET KAUR @ POONAM & ORS. .....Respondents

Through: Mr. A.K. Soni, Advocate for respondent No.3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%   **ORAL**

1. Impugned Award of 29th September, 2007 grants compensation of ₹69,140/- with interest @9% p.a. to appellant due to grievous injuries suffered by him in a road accident on 16th May, 1998. Impugned Award directs owner of vehicle in question to pay the compensation and absolves respondent-insurer, as the driver of vehicle in question was found to be not possessing any driving license. In this appeal, a direction is sought to respondent-insurer to pay the awarded amount and to recover it from the owner of vehicle in question. Impugned Award denies loss of income of ₹54,000/- by observing that notionally there was no loss of income because appellant-injured had availed earned leaves to recover

from the injuries suffered in the road accident in question.

2. The factual matrix of this case already stands noted in the impugned Award and so, needs no reproduction.

3. Learned counsel for appellant submits that loss of income of ₹54,000/- has been erroneously declined to appellant who is entitled to it. Learned counsel for appellant relies upon Supreme Court's decision in *National Insurance Company Limited Vs. Geeta Bhat & ors.* (2008) 12 SCC 426 to submit that in the case of there being no driving license, liability is of the insurer to pay and recover it from the owner of vehicle in question. Reliance is also placed upon decision of a Coordinate Bench of this Court in *Ashwani Kumar Vs. Oriental Insurance Co. Ltd.* 2014 ACJ 153 to submit that even if injured utilizes earned leaves to recover from the injuries suffered, still injured is to be compensated for the loss of earned leaves.

4. On the other hand, learned counsel for respondent-insurer supports the impugned Award and relies upon Supreme Court's decision in *Sardari & ors. Vs. Sushil Kumar & ors.* 2008 ACJ 1307 to submit that insurance company has been rightly exempted from the liability to pay. Nothing else is urged on behalf of respondent-insurer.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that decision in *Sardari (supra)*, question of liability to pay the compensation has not been specifically dealt with, whereas in *Geeta Bhat (supra)*, it has been specifically dealt with. So, while relying upon Supreme Court's decision in *Geeta Bhat (supra)*, impugned Award is modified to the extent that liability to pay is

fastened upon respondent-insurer with the right to recover it from the owner of vehicle in question. So far as the loss of income is concerned, I find that learned Motor Accident Claims Tribunal is not justified in disallowing it by observing that there is no notional loss of income. I find no reason to take a different view that the one taken by a Coordinate Bench of this Court in *Ashwani Kumar (supra)*. Consequently, appellant is granted compensation of ₹54,000/- on account of loss of income. Impugned Award is modified in this regard also.

6. In view of the aforesaid, it is directed that respondent-insurer shall pay the enhanced compensation of ₹54,000/- with interest @9% p.a. to appellant-claimant within eight weeks, failing which appellant shall be at liberty to get the Award executed. Thereafter, respondent-insurance shall be well within its rights to recover it from owner and driver of offending vehicle in question.

7. With aforesaid modifications in the impugned Award, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 27, 2017
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