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

+ **MAC.APP. 63/2017**

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

Versus

VIJAY SHARMA & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate for
Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **01.05.2017**

CM No.16087/2017 (for release of amount by R-1) & MAC.APP. 63/2017

1. Issue notice. Mr. A.K. Soni, Advocate accepts notice on behalf of the non-applicant/appellant.
2. This application seeks release of the monies deposited in the Court.
3. With the consent of the parties, the appeal is taken up for final disposal.
4. The appellant has impugned the grant of compensation of Rs.17,83,387/- (rounded as Rs.17,84,000/-) on the ground that the compensation granted towards loss of income should have been based on minimum wages of an unskilled worker instead of monthly income at Rs.10,000/-. The learned counsel for the appellant argues that the award of loss of earning capacity to the extent of Rs.14,40,000/- is on the higher side as it is not supported by any evidence. He further states that the

compensation of Rs.1,00,000/- towards pain and suffering and Rs.1,50,000/- for the loss of enjoyment of life and grant of interest at the rate of 9% per annum are also on the higher side.

5. The impugned Award concluded that respondent no.1 was injured due to rash and negligent driving by respondent no.2-the driver of the insured vehicle. Respondent no.1 had claimed that he was earning between Rs.15,000/- to Rs.20,000/- per month by delivering cold drinks. It is not disputed that the accident happened while respondent No.1 was driving his own vehicle, which was used for the delivery of cold drinks to his customers. In the absence of evidence to substantiate the earning, the Tribunal assumed his monthly income to be Rs.10,000/- per month. It reasoned as under:

"As mentioned above, according to petitioner , he was earning Rs. 15,000-20,000 per month by delivery of cold drinks. There other evidence except deposition of petitioner to verify aforesaid fact. No reason to doubt petitioner saying that he used to deliver cold drinks to his customers, in his own vehicle, as accident in question took place while driving same vehicle. Even if, deposition of petitioner about his income is not supported by any other evidence, it will not be proper to presume his earnings equal to minimum wages of a labourer. Considering his profession, monthly income of petitioner is taken as Rs. 10,000/- per month. Petitioner is stated to be 40 years of age, at the time of accident. While counting future earnings of petitioner, a multiplier of 15 is thus taken. Counting in this way, total future earnings of petitioner come to Rs. 18,00,000/- (10,000x12x15). 80% of which comes to Rs. 14,40,000/-. This amount of Rs,

14,40,000/- is allowed to the petitioner, as loss of future earnings"

The appellant has challenged this assumption as being arbitrary and argues that minimum wages of an unskilled worker should have been considered and the compensation should be reduced accordingly. The Court finds no merit in this contention. A person earning a livelihood through selling/delivering cold drinks in his own vehicle would be a person of some means and surely earning more than minimum wages of an unskilled worker. This Court finds that the assumption of monthly income of the injured at Rs.10,000/- was appropriate and prudent. In view of his permanent disability of upto 75%, this assumed quantum was reduced proportionately. Accordingly, the compensation granted for loss of earnings too was justified.

6. The challenge to grant of compensation of Rs.1,00,000/- towards pain and suffering, is unsubstantiated in view of similar amounts being approved by this court in ***Shivani Sharma Vs. Ram Chander and Ors. 2015 ACJ 1547*** and ***Reliance General Insurance Co. Ltd. Vs. Rajesh Kumar and Ors*** MAC. APP. No. 1102/2013 decided on 15.09.2016.

7. Apropos the compensation of Rs.1,50,000/- awarded for loss of enjoyment of life, the challenge is rejected because for a person who is otherwise permanently disabled upto 75% in relation to his whole body and for the rest of his life he is also rendered unfit for driving thus curtailing his free movement, this amount is not exorbitant.

8. In view of the above, the appeal is dismissed. The pending application stands disposed off. The awarded amount shall be released to respondent No.1 in terms of the Award. The statutory amount shall be

released to the appellant.

9. The next date of hearing fixed in the matter i.e. 04.09.2017 stands cancelled.

NAJMI WAZIRI, J.

MAY 01, 2017

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