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

% *Decided on: 11th May, 2017*

+ **MAC.APP. 145/2017 & CM No.6135/2017**

RELIANCE GENERAL INSURANCE CO LTD. Appellant
Through: Mr. Rajeev M. Roy, Advocate.

Versus

ASHOK KUMAR & ANR. Respondents
Through: Mr. Manish Maini, Advocate for
Respondent No.1.

+ **MAC.APP. 147/2017 & CM No.6139/2017**

RELIANCE GENERAL INSURANCE CO LTD. Appellant
Through: Mr. Rajeev M. Roy, Advocate.

Versus

PREMA DEVI & ANR. Respondents
Through: Mr. Manish Maini, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals under Section 173 of the Motor Vehicles Act, 1988 impugn the common Award dated 17.11.2016 passed in DAR No.D-200/14 awarding compensation of Rs.2,92,464/- and Rs.5,17,450/- with interest at the rate of 12% per annum to respondent No.1 respectively in each appeal for the injuries suffered on account of the motor vehicle accident. The

vehicle was insured with the appellant. Accordingly, the liability has been fixed on it. The appellant contends that there is a contributory negligence on behalf of the respondents, since the cycle-rickshaw in which the respondents were travelling was being driven on the wrong side of the road, therefore, to some extent, the awarded amount should be reduced.

2. The Tribunal has dealt with this contention as follows:-

“11. During cross-examination by R1, PW-1. and 2 stated that rickshaw was on the wrong side of the road/ flyover. It is correct that they were going in lane meant for vehicles coming from the front side where vehicles from other side. is not ail owed. His statement was recorded in the hospital. The rickshaw puller also sustained injuries in the accident. The suggestion is denied that accident has taken place due to their negligence as rickshaw was on the wrong side.

12. During cross-examination by R2, the suggestion is denied by PW-1 and 2 that they have compelled the rickshaw puller to go on the wrong side or accident has taken place due to their negligence.

13. I have heard Id. Counsel for the parties and perused the record. The testimony of PW-1 and 2 is material in nature as they are the victims. It is clear from the evidence on record that PW-1 and 2 were going on a cycle rickshaw and reached at 5.00 p.m. at Flyover, Anand Vihar, Delhi. One Xylo Car bearing no. UP-14CT-1700 being driven by respondent no. 1 came in a high speed and in a rash and negligent manner hit against cycle rickshaw as a result both of them fell down and sustained injuries. The respondent no. 1 stopped his vehicle after the accident. They were removed to Dr. Hedgewar Hospital by PCR Van. The accident has taken place due to the rash and negligent

(sic) of respondent no. 1. Respondent no. 1 has taken the defence that no accident has taken place with his vehicle. The defence does not inspire confidence. No question or suggestion is put to PW-1 and 2 that respondent no. 1 has not hit his car against their cycle rickshaw or he was not driving the car in a rash and negligent manner. Their testimony on material aspects of the case has gone un rebutted. Respondent no. 1 has not put his defence to PW-1 and 2 for the reasons best known to him. The mechanical inspection report shows that front portion of the car has been damaged which corroborates the version of PW-1 and 2 that car hit the cycle rickshaw from the front side. FIR has been registered against respondent no. 1. He has not made any complaint against the IO to his Sr. Officials in case he has not caused any accident. All these facts show that his defence is without any merits. Respondents have failed to shatter PW-1 and 2 during the course of their cross-examination.

14. The testimony of PW-1 and 2 shows that cycle rickshaw was on the wrong side. The rickshaw puller might be at fault but that is no ground to conclude that there was any contributory negligence on the part of PW-1 and 2.”

In view of the clear reasons and sound conclusion arrived at, the Court finds no reason to interfere with it.

3. It is not in dispute that the rickshaw was not being pulled by the injured passengers but by the rickshaw puller. They may have protested it being taken on the wrong side of the road but the passenger could not have jumped off the rickshaw to stop it while it was still moving. The latter course would be daring, adventurous and fraught with serious threat of corporal injury. The accident had happened at about 5.00 pm on 9th March,

2014. On that date, sunset in Delhi happened at 6.20 p.m., therefore, at 5.00 p.m. there would have been sufficient day light for the driver in the offending vehicle to see anybody coming in its direction. Yet if despite such apparent visibility, if a human pedalled cycle rickshaw could not be avoided from crashing into them, the only conclusion which can be drawn is that the offending vehicle was being driven at a high speed in a rash and negligent manner. This conclusion has been logically arrived at by the Tribunal after taking into consideration the evidence on record.

4. The other ground contended by the appellant is that instead of awarding interest at the usual rate of 9% per annum on the compensation amount, the impugned Award grants the interest at 12% per annum. The Court finds reason in the said contention. Accordingly, keeping in view the decisions of the Supreme Court in ***Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphar Tragedy and Ors. (2011) 14 SCC 481*** and also of this Court in the case of ***National Insurance Co. Ltd. Vs. Komal & Ors. 2014 ACJ 1540***, the interest rate applicable would be 9% per annum.

4. In the circumstances, the appeals are allowed only on this count and the order of the Tribunal is modified to the extent of reducing the rate of interest from 12% per annum to 9% per annum. The amount of compensation shall be payable at the rate of 9% per annum from the date so specified in the Award.

5. It is noted that by order dated 15.02.2017 that this Court stayed the execution of the impugned Award and directed the appellant to deposit the awarded amount alongwith interest at the rate of 9% per annum. The amounts so deposited by the appellants shall be released to the respective beneficiaries in terms of the Award. Should there be any shortcoming in

satisfying the Award, the appellant shall make good the same. The statutory amount shall be released to the appellant. After the digitization of the Trial Court record within two weeks, it shall be returned to the Tribunal concerned.

6. The appeals along with pending applications stand disposed off in the above terms.

MAY 11, 2017
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NAJMI WAZIRI, J.

