

\$~R-562

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

Decided on: 24th November, 2017

+ **MAC APPEAL 812/2012**

**RELIANCE GENERAL INSURANCE COMPANY
LTD.**

..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

SURESH KUMAR & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant (insurer) is aggrieved by the impugned judgment dated 24.04.2012 of the Motor Accident Claims Tribunal (Tribunal) on accident claim case (M-85C/11) of the first respondent fastening the liability to pay compensation in the sum of Rs.4,82,162/- against it. The challenge in the appeal is to the procedure adopted by the tribunal, it having gone ahead to grant such award in absence of any evidence.

2. The appeal was put in the list of 'Regulars' as per order dated 22.01.2016. On it being called out in its turn, there is no appearance on behalf of the first respondent (claimant). It is noted that the claimant had also not been appearing for three consecutive dates before the appeal was put in the list of 'Regulars'.

3. A perusal of the record and of the impugned judgment shows that the procedure adopted by the tribunal cannot be upheld. The only concession given by the insurer was that it was not disputing the factum of accident or the manner in which it had taken place. The tribunal, however, proceeded to compute the compensation over and above the legal offer made by the insurer without calling upon the petitioner to prove the requisite facts having a bearing on the subject including the nature of injuries, the disability, if any, and its extent or, for that matter, the nature of avocation, income etc.

4. In these circumstances, the impugned judgment is set aside. It would, however, be unjust and unfair to dismiss the claim petition for default in compliance with the procedure by the tribunal. The claim case of the first respondent is consequently remanded to the tribunal for appropriate inquiry in the course of which the claimant will be called upon to adduce evidence followed by opportunity to the parties that contest to lead evidence in rebuttal, if any.

5. The parties are directed to appear before the tribunal on 10.01.2018.

6. Since the first respondent / claimant has not appeared before this court at the time of final hearing on the appeal, the tribunal is directed to issue court notice to him to secure his presence before proceeding further.

7. By order dated 30.07.2012, the insurer had been directed to deposit the entire awarded with up-to-date interest excluding counsel fee and out of pocket expenses which had also been awarded and from out of such deposit, sixty percent (60%) was permitted to be released

to the claimants, the balance kept in fixed deposit receipt. The balance lying in deposit with accrued interest and the statutory deposit shall be presently refunded to the insurer. The amount already released to the claimant will be subject to appropriate directions to be given by the tribunal at the time of fresh adjudication.

8. The appeal is disposed of in above terms.

NOVEMBER 24, 2017

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R.K.GAUBA, J.

