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

% **Date of Decision: 11th January, 2017**

+ **MAC.APP.599/2015**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr.L.K. Tyagi, Adv.

versus

SACHIN GAUNIYAL & ORS. Respondents

**Through: Mr.Pawan Kumar Jakhu, Adv.
for respondent no.1 along with
respondent no.1 in person.**

**Mr. Abhay Prakash Sahay,
CGSC with Mr.Arun Kumar
Mishra, Adv. for respondent
no.2.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.4,22,142.73 has been awarded to respondent no.1.

2. On 15th March, 2006 at about 2.30 pm, respondent no.1 was returning home on his bicycle on Ring Road near Dhaula Kuan when he was hit by Sumo car bearing No.DL-3CJ 4373 and he was dragged for about 15 mtrs. Respondent no.1 fell down from his bicycle and was carried to Safdarjung Hospital by PCR van with serious grievous

injuries on head, both legs, hip, elbow, eyebrow and shoulder. The police collected the broken number plate of the Sumo car from the site. Respondent no.1 suffered old fracture left supra condylar femur and right supra trochanteric femur with residual pain and stiffness in right hip and in both knees. Respondent No.1 underwent treatment at Safdarjung Hospital from 15th March, 2006 to 29th April, 2006. The appellant suffered 40% permanent disability relating to both lower limbs in terms of the disability certificate dated 15th January, 2010.

3. The Claims Tribunal awarded compensation of Rs.21,030/- towards loss of income, Rs.2,14,506/- towards loss of future earning capacity due to disability, Rs.27,606.73 towards medicines and treatment, Rs.50,000/- towards pain and suffering, Rs.30,000/- towards conveyance and special diet, Rs.9,000/- towards attendant charges, Rs.50,000/- towards loss of amenities, Rs.10,000/- towards loss of expectation of life and Rs.10,000/- towards depression and mental state. Total compensation awarded is Rs.4,22,142.73.

4. Learned counsel for the appellant urged at the time of the hearing that the offending vehicle was stolen as back as on 26th December, 1998 whereupon the owner of the offending vehicle raised a claim for theft of the vehicle which was settled by the appellant by making payment of the claim to the owner and the vehicle was transferred in the name of the appellant in the record of the registration authority. However, the vehicle was not traced. On the date of the accident, the vehicle was driven by an unknown person. It is submitted that the appellant is registered owner of the offending vehicle but since the vehicle was not being driven with the permission/

authority of the appellant, the appellant cannot be held liable to pay the compensation amount.

5. Learned counsel for respondent no.1 submits that the appellant being the owner of the offending vehicle is liable to pay the compensation amount to respondent no.1. Reference is made to Section 163A of the Motor Vehicles Act which specifically stipulates the liability of the owner of the offending vehicle to pay the compensation to the victim arising out of the motor accident.

6. Respondent no.1 is present in Court and he submits that he has suffered 40% permanent disability but the functional disability is 100% as he is unable to do any work after the accident. He further submits that he has no means of sustenance and would not be able to survive if the compensation amount is not released to him.

7. The appellant has deposited the entire award amount of Rs.7,74,591.43 with Registrar General of this Court in terms of order dated 31st July, 2015 and the said amount is kept in fixed deposit on which monthly interest is being released to respondent no.1.

8. This Court is of the view that the appellant being the registered owner of the offending vehicle is liable to pay the compensation amount to respondent no.1 and the appellant is entitled to recovery rights to recover the award amount from the driver of the offending vehicle.

9. In the peculiar facts and circumstances of this case and considering the 40% permanent disability suffered by respondent no.1 and further that respondent no.1 has no source of livelihood/ sustenance, it would be in the interest of justice to release the award

amount to respondent no.1. However, the appellant would be entitled to recovery rights to recover the award amount from the driver of the offending vehicle at the time of the accident.

10. The Registrar General of this Court is directed to disburse the award amount deposited by the appellant by instructing UCO Bank, Delhi High Court to keep Rs.7,50,000/- in the name of respondent no.1 in 79 fixed deposits with cumulative interest in the following manner :

- (i) 11 FDRs for Rs.7,500/- each for the periods of 1 month, 2 months, 3 months, 4 months, 5 months, 6 months, 7 months, 8 months, 9 months, 10 months and 11 months respectively.
- (ii) 12th FDR for Rs.30,000/- for the period of 12 months.
- (iii) 13th to 23rd FDRs for Rs.7,500/- each for the periods of 13 months, 14 months, 15 months, 16 months, 17 months, 18 months, 19 months, 20 months, 21 months, 22 months and 23 months respectively.
- (iv) 24th FDR for Rs.30,000/- for the period 24 months.
- (v) 25th to 35th FDRs for Rs.7,500/- each for the periods of 25 months, 26 months, 27 months, 28 months, 29 months, 30 months, 31 months, 32 months, 33 months, 34 months and 35 months respectively.
- (vi) 36th FDR for Rs.30,000/- for the period 36 months.
- (vii) 37th to 47th FDRs for Rs.7,500/- each for the periods of 37 months, 38 months, 39 months, 40 months, 41 months, 42 months, 43 months, 44 months, 45 months, 46 months and 47 months respectively.
- (viii) 48th FDR for Rs.30,000/- for the period 48 months.
- (ix) 49th to 59th FDRs for Rs.7,500/- each for the periods of 49 months, 50 months, 51 months, 52 months, 53 months, 54 months, 55 months, 56 months, 57 months, 58 months and 59 months respectively.

- (x) 60th FDR for Rs.30,000/- for the period 60 months.
- (xi) 61st to 71st FDRs for Rs.7,500/- each for the periods of 61 months, 62 months, 63 months, 64 months, 65 months, 66 months, 67 months, 68 months, 69 months, 70 months and 71 months respectively.
- (xii) 72nd FDR for Rs.30,000/- for the period 72 months.
- (xiii) 73rd to 78th FDRs for Rs.7,500/- each for the periods of 73 months, 74 months, 75 months, 76 months, 77 months and 78 months respectively.
- (xiv) 79th FDR for Rs.30,000/- for the period 79 months.

11. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to respondent no.1.

12. The maturity amount of the FDR along with interest thereon be transferred to savings bank of respondent No.1 near his place of residence.

13. Respondent no.1 is at liberty to approach this Court for release of further amount in case of any financial exigency.

14. The balance amount after issuing FDRs of Rs.7,50,000/- be released to respondent no.1 by transferring the same to his savings bank A/c No.35025158765 with State Bank of India, District Court Complex, Sector – 10, Dwarka [CIF No.88529402912, IFSC No.SBIN0011566, Branch Code No.11566].

15. The appeal is disposed of in the above terms. However, it is clarified that this judgment is being passed in the peculiar facts and circumstances of this case considering that respondent no.1 has suffered 40% permanent disability, is unemployed for the last ten

years after the accident and has no means of survival/sustenance.

16. Statutory amount be refunded back to the appellant.

17. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

JANUARY 11, 2017
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J.R. MIDHA, J.

