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

Date of Decision: July 03, 2018

\+   **MAC.APP. 74/2013 & C.M. 1377/2013**

THE NEW INDIA ASSURANCE CO. LTD.   .....Appellant
Through: Mr. Sameer Nandwani, Advocate

Versus

PRAKASH & ORS.   .....Respondents
Through: Mr. Navneet Goyal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award grants compensation of ₹2,27,772/- with interest @ 9% to respondent-injured on account of grievous injuries sustained by him in a vehicular accident on 29th December, 2011. The factual background noticed in the impugned Award of 6th December, 2012 by Motor Accident Claims Tribunal *(hereinafter referred to as 'the Tribunal')* is as under:-

> *"Petitioner's case is that on 29/12/2011 at about 01:50 a.m. (midnight) was travelling in the TSR no.1RE 5417 (offending vehicle) but on the Main Road, Burari near Bengali Colony Pulia, Delhi was overturned due to rash and negligent driving of respondent no.1 causing grievous injuries. Petitioner was taken to hospital where FIR was lodged and MLC was prepared."*

2. Pertinently, appellant-Insurer had led evidence but had not examined its Agent *Chetan Mehta*, who had issued the Insurance Cover

Note in respect of insured vehicle in question. The Tribunal has relied upon evidence of injured and other documentary evidence to grant compensation under various heads, which is as under:-

1.	Medical expenses	:	₹5,100/-
2.	Special diet and conveyance	:	₹24,000/-
3.	Loss of income	:	₹48,672/-
4.	Pain and suffering	:	₹1,50,000/-
	Total	**:**	**₹2,27,772/-**

3. The challenge to impugned Award by learned counsel for appellant is on the ground that Insurance Cover Note in respect of vehicle in question was not issued by appellant-Insurance Company. To submit so, attention of this Court is drawn to evidence of *R3W1-Vikram Singh,* Branch Manager of appellant-Insurance Company, who has deposed that the insurance policy in question in respect of vehicle in question, has not been issued by the office of appellant. It is pointed out by appellant's counsel that the Tribunal has erred in putting the liability of paying compensation on appellant on the premise that no police report was lodged by appellant in respect of forged Insurance Cover Note. It is also urged by appellant's counsel that compensation granted under the head *"Pain and Suffering"* is on the higher side, as the injured had suffered multiple facial abrasions, fracture of patella bone, fracture of right temporal bone and lost six teeth and treatment continued for about eight months only. Thus, it is submitted that the compensation awarded deserves to be suitably reduced.

4. Despite service, there is no appearance on behalf of driver and

owner of offending vehicle in question. It is evident from the order of 18th April, 2016 that driver and owner of vehicle in question were duly represented by a counsel. However, there is no appearance on their behalf today when this appeal is taken up for hearing.

5. Learned counsel for respondent-injured submits that liability to pay the awarded amount is of appellant and the compensation awarded is just and proper.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that appellant has not disputed that *Chetan Mehta* was the Agent who had issued the Insurance Cover Note and despite being aware of the fact that the alleged Insurance Cover Note was issued by him without knowledge of appellant-Insurance Company, Agent- *Chetan Mehta* has not been blacklisted. Therefore, in the considered opinion of this Court, there is no reason to put the onus on driver and owner of vehicle in question, to pay the awarded amount as appellant –Insurance Company has failed to take any action against its Agent- *Chetan Mehta.*

7. So far as compensation of ₹1,50,000/- awarded under the head *"Pain & Suffering"* is concerned, I find that injuries sustained by respondent-injured were grievous and since the period of treatment was more than six months, therefore, the compensation granted under this head is well justified.

8. In light of the aforesaid, I find no justification to interfere with the impugned Award. This appeal and pending application are accordingly dismissed. Compensation awarded be released forthwith to respondents-claimants in terms of impugned Award. Statutory deposit, if any, be refunded to appellant-Insurer as per rules.

9. With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 03, 2018
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