

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

Date of Decision: July 04, 2018

+ **MAC.APP. 79/2013**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Pankaj Gupta, Advocate for
Ms. Suman Bagga, Advocate

Versus

PRAVEEN KUMAR & ORS.

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 19th September, 2012 grants compensation of ₹25,248/- with interest @ 7.5% p.a. to respondents-claimants on account of grievous injuries sustained by respondent-injured in a vehicular accident on 26th August, 2006.
2. The factual background of this case, as noticed in the impugned Award, is as under:-

“The case of the petitioners is that on 26/08/06 at about 10.00 p.m while the late petitioner after parking the Vikram Scooter was going on foot and while late petitioner reached at opposite Sonia Hospital, in the meantime the offending vehicle bearing No. DL-6S-U-3180 which was being driven by its driver/respondent No. 1 in rash and

*negligent manner and hit the late petitioner from behind. Resultantly, the late petitioner got injuries. The late petitioner died during the pendency of the petition and hence the case was taken over by the L.Rs of the late petitioner. In total, the petitioner has claimed **Rs.5,00,000/-** as compensation on account of the injuries sustained by him in the accident.”*

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal (*henceforth referred to as “the Tribunal”*) and the breakup of compensation awarded is as under:-

The total compensation is assessed as under:-

Treatment expenses:	Rs. 5,000/-
Pain and sufferings:	Nil....
Special diet	Rs. 5,000/-
conveyance:	Rs. 2,000/-
Loss of income during	
<u>Treatment period</u>	<u>Rs. 13,248/-</u>
<u>Total:</u>	<u>Rs. 25,248/-</u>

4. Learned counsel for appellant-Insurer seeks recovery rights against the driver and owner of the vehicle involved in this accident. It is pointed out by appellant’s counsel that despite Notice under Order 12, Rule 8 CPC being served upon driver of the vehicle in question, driving licence has not been produced. It is also pointed out by appellant’s counsel that driver of the vehicle in question was *challaned* by the police for driving vehicle in question without a licence.

5. Reliance is placed upon decision of a Coordinate Bench of 19th September, 2017 of this Court in MAC.App. 630/2012, titled as *Royal Sundaram Alliance Insurance Co. Ltd. v/s Jagat Prasad & Ors.* to submit that upon failure of driver and owner of the vehicle to respond to the

Notice under Order 12, Rule 8 CPC the only inference which can be drawn is that there was no valid or effective driving licence possessed by driver of the vehicle in question. So, recovery rights are claimed against driver and owner of the vehicle in question. As per order of 12th January, 2015 service is complete. Despite service, there is no representation on behalf of respondents.

6. Upon hearing and on perusal of impugned Award and evidence on record and the decision cited, I find that the Tribunal has denied the recovery rights to appellant by observing that there is no conviction of driver and owner of the vehicle in question for driving the vehicle without a licence. The Tribunal has relied upon decision of 7th February, 2008 of a Coordinate Bench of this Court in Mac.App. 139/2007, titled as *Deepak Kumar vs. National Insurance Co. Ltd.* to conclude that the Insurer has to produce evidence to satisfy the Tribunal that there was any wilful breach of the terms and conditions of Insurance Policy by the insured.

7. A perusal of the record reveals that Notice under Order 12, Rule 8 CPC was sent by speed post to driver and owner of the vehicle in question. The presumption of service arises. Driver and owner of the vehicle in question had not bothered to contest the claim petition or the appeal, and in this background, the Tribunal was not justified in denying the recovery rights to appellant, as the plea of due diligence was not taken by owner of the vehicle in question before the Tribunal. In view of the decision of the Coordinate Bench of this Court in *Royal Sundaram (Supra)* and the facts of instant case, this Court is inclined grant recovery rights against driver and owner of the vehicle in question.

8. In view of the aforesaid, this appeal is allowed to the extent of modifying impugned Award by granting recovery rights against driver and owner of the vehicle in question. Statutory deposit, if any, be refunded to appellant-Insurer.

9. With aforesaid directions, this appeal stands accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 04, 2018

v