

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

Date of Decision: July 06, 2018

+ **MAC.APP. 118/2013**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

PRAMOD KUMAR MAURYA & ORS.Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award of 15th September, 2012 grants compensation of ₹2,40,000/- with interest @ 7.5% per annum to respondent-injured on account of grievous injury suffered by him in a vehicular accident, which took place on 24th December, 2008. The facts as noticed in the impugned Award are as under:-

“This petition under Section 166 & 140 of the Motor Vehicle Act 1988 was filed by the petitioner claiming compensation of Rs. 5,00,000/- from the respondents for the injuries sustained by him in a road vehicular accident which took place on 24.12.2008 at Ring Road, Noida More, New Delhi involving vehicle bearing registration no. DL-1Y-A-3897 (Tavera Car) driven by respondent No. 1, Shri Joginder Singh S/o Shri Ram Chander. An Accident Information Report (AIR) was also filed by the police in respect of this

accident (FIR No. 448/09, PS Hazrat Nizamuddin) and the said AIR was also clubbed with the present claim petition vide proceedings dated 28.08.2009.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured-*Pramod Kumar* and the Disability Certificate (*Ex. PW1/5*) which reveals that respondent-*Pramod Kumar* had suffered 4% permanent disability. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

1. Compensation for treatment expenses:	₹ 70,000/-
2. Compensation for conveyance:	₹ 10,000/-
3. Compensation for special diet and attendant charges:	₹ 10,000/-
4. Compensation for pain, sufferings and loss of amenities of life:	₹ 1,00,000/-
5. Compensation for permanent physical disability and loss of income:	₹ 50,000/-
Total:	₹ 2,40,000/-

3. Learned counsel for appellant-Insurer assails the impugned Award on the liability aspect by submitting that the Insurance Cover Note was not issued by the Insurance Company and so, appellant- Insurer is not liable to pay the awarded amount. To submit so, attention of this Court is drawn to the evidence of Deputy Manager of appellant-Company and to the original Insurance Cover Note (*Ex.R3W1/C-1*).

4. The precise submission of appellant's counsel is that Insurance Cover Note was neither issued nor any premium was received and so,

there is no liability to pay the awarded compensation. Appellant's counsel submits that apart from evidence of injured, there is no other evidence to establish negligence of driver of the vehicle (*Tavera*) in question. It is pointed out by appellant's counsel that the treatment expenses are ₹62,000/- but the Tribunal has granted ₹70,000/-. It is further pointed out that without any bills, compensation has been granted by the Tribunal towards "*future medical expenses*".

5. Learned counsel for appellant-Insurer submits that compensation granted under the head of "*pain and sufferings*" is exorbitant and the compensation under the head "*permanent physical disability*" is also on the higher side and needs to be reduced. Lastly, it is submitted that impugned Award erroneously directs appellant to approach the Civil Court to recover the awarded amount, from the owner and driver of vehicle (*Tavera*) in question, though they have not contested the claim petition and the appeal. In the alternative, it is submitted that recovery rights ought to be granted. Despite service, there is no representation on behalf of the respondents.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the original Insurance Cover Note produced before the Court by the witness of appellant reveals that it has been scored off. Since the original Insurance Cover Note is with the appellant, therefore, it need not bear a formal cancellation note. But it is relevant to note as to when the original Insurance Cover Note was scored off. It is so said because copy of the Insurance Cover Note filed alongwith the '*Accident Information Report*' reveals that it is not scored off. A reasonable inference that can be drawn is that later on original Insurance Cover Note

was scored off. In any case, appellant is not required to be relegated to the Civil Court to seek recovery rights. Since driver and owner of vehicle in question have not contested the claim petition and the appeal, therefore, recovery rights ought to be granted to the appellant. Impugned Award is modified to the extent of granting recovery rights to appellant *qua* the owner and the driver of vehicle (*Tavera*) in question. Regarding negligence of driver of motor cycle in question, there is no cross-examination of the injured and so, there is no basis to assume that it is a case of contributory negligence.

7. In the face of evidence of injured coupled with the copy of the site plan of the spot appended to the '*Accident Information Report*' and the material on record, I find that the negligence was of driver of vehicle (*Tavera*) in question and the Tribunal has rightly held so.

8. As regard the "*treatment expenses*", I find that in view of the discharge summary, "*future medical expenses*" would be there and so, the Tribunal was justified in granting amount of ₹8,000 towards the "*future medical expenses*". The compensation granted by the Tribunal on account of "*permanent physical disability & loss of income*" is ₹50,000 only, which appears to be justified. There is no basis to assert that the compensation of ₹1,00,000/- granted under the head of "*pain and suffering*" is exorbitant. Considering the nature of permanent injury sustained by the injured and the period of hospitalization and treatment after his discharge, the grant of compensation under this head is justified.

9. In light of the aforesaid, I find that compensation granted by the Tribunal is just and proper. However, impugned Award is modified to

the extent of granting recovery rights to appellant against owner and driver of vehicle (*Tavera*) in question.

10. This appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 06, 2018

v