

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

Date of Decision: July 10, 2018

+ **MAC. APP. 156/2013**

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

DR. ARUN KUMAR AND OTHERS

..... Respondents

Through: Mr. Anshuman Bal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 29th September, 2012 grants compensation of ₹9,49,512/- with interest @ 9% p.a. to respondents-claimants on account of death of one *Sapna* aged 23 years in a vehicular accident on 30th July, 2009.
2. The factual background of this case, as noticed in the impugned Award, is as under:-

“Briefly stated the facts giving rise to the petition are that on 30.7.2009 at about 11.50 AM the deceased was going on scooty no. DL-7-SBD-8102 from Delhi to Ghaziabad and when she reached Sales Tax Office, Mohan Nagar, a Truck bearing no. UP-15AT-0074 coming from behind at a high speed being driven in a rash and negligent manner hit the scooty of deceased. It was further alleged

that the deceased sustained fatal injuries and she was removed to the hospital where she died. It was further stated that the FIR no.1607/09 under Section 279/304A IP was registered at PS Sahibabad, District Sadar, Ghaziabad, UP with regard to the accident. It was also averred that postmortem of the deceased was conducted in M.M.G. Hospital Ghaziabad, UP.”

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:-

1.)	Loss of dependency	:	₹9,19,512/-
2.)	Funeral Expenses	:	₹10,000/-
3.)	Loss of Estate	:	₹10,000/-
4.)	Loss of Love and Affections	:	₹10,000/-
Total :			<u>₹9,49,512/-</u>

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that insured vehicle was being plied without any valid permit and so, recovery rights ought to be granted to appellant against owner and driver of the insured vehicle.

5. As per order of 10th November, 2014, service is complete. Owner and driver of the insured vehicle in question have not come forward. It is matter of record that owner and driver of the vehicle in question have neither contested before the Tribunal nor this Court.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that as per evidence of witness from concerned RTO office, the owner of vehicle in question had got the permit cancelled on 29th July, 2009 i.e. a day before this accident. Meaning thereby, there was

no valid permit in respect of the vehicle in question on the day of the accident. The Tribunal has erred in holding that the vehicle in question was having a valid permit on the day of the accident. Consequentially, impugned Award is modified to the extent of granting recovery rights to appellant against driver and owner of the vehicle in question.

7. This appeal is accordingly allowed to the aforesaid extent. Statutory deposit, if any, be refunded to the Insurer. Awarded compensation be released forthwith to respondents-Claimants in terms of impugned Award.

8. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JULY 10, 2018

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