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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 295/2016, CM APPL. 24204/2016

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Advocate.

Versus

BIKRAMJIT SINGH & ANR Respondents

Through: Mr. R.K. Nain, Advocate for R-1.

Mr. S.N. Parashar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **01.05.2018**

On the previous date, i.e. on 30.01.2018, the following order was passed:-

“Mr. S.N. Parashar, the learned counsel for respondent No. 2 states that he has recently been provided with the copy of a Driving Licence in the name of Bikramjit Singh, issued on 6.12.2016 by the Licensing Authority, Barasat, 24 Parganas District, West Bengal.

The Court would note that there has been a delay of over a year since the issuance of the said document which is sought to be brought on record. The case has been listed five times in the interim. The said respondent should have brought it on record earlier. However, in the interest of justice, it is permitted to be brought on record supported by an affidavit, subject to a payment of cost of Rs. 1,000/- to be deposited with the Delhi High Court Legal Service Committee within 15 days from today. A copy of the same shall be served upon the learned counsel for the appellant who seeks to verify the same. Upon receipt of the affidavit and the Driving Licence, it shall be verified by the appellant and the Verification Report shall be filed before the next date of hearing.

List on 01.05.2018”.

It is clearly noted that there has been a delay of over a year since the purported driving licence was issued to the appellant by the Government of West Bengal; the appellant was granted five occasions to place it on record,

subject to the costs of Rs. 1,000/- to be paid to the Delhi High Court Legal Services Committee; neither the said document has been placed on record nor the cost has been paid. The learned counsel for respondent no. 2 states that he has intimated the respondent of the Courts repeated orders, but has received no instructions. He submits that a letter has been sent to the said respondent for compliance of the aforesaid order. However, whether the respondent no. 2 was told about the Court's order three months earlier, there is no explanation from the counsel. Be that as it may, insofar as the respondent has failed to bring on record the alleged driving licence, as aforementioned, nor a copy of the same has been supplied to the appellant, therefore, the verification of the same could not be done by the appellant. The case of the respondent is based on the driving licence but no such document has been brought on record or sent for verification.

The award of compensation of Rs.9,67,968/- along with an interest @12% per annum from 30 days after the accident to respondent no. 1, is impugned. Although, the injured driver/respondent no. 1 had sustained only 31% disability in his right lower limb, the total disability has been assessed as 100% by the Commissioner, Employees' Compensation.

The appellant's argument is untenable because what has to be examined is whether the physical disability results in such a disability that would render the injured party unable to discharge functions of employment which he/she was doing earlier i.e. the degree of functional disability would form the basis for assessing compensation. The driver has 31% physical disability in the right lower limb and that would obviously render him unable to drive a motor vehicle or a goods carrier as the right leg is used primarily for acceleration and applying the brake, the two most important

aspects of a motor vehicle in motion.

If there is an impairment to such a degree, then it would compromise the safe driving of the vehicle, therefore, it could well be determined as 100% functional disability. Hence, 31% disability in the right leg can easily be equated as 100% disability for a driving.

Since, there was a doubt about the extent of disability suffered by the claimant, the Commissioner, Employees' Compensation had referred the case for ascertainment of the disability to the Medical Board of Aruna Asaf Ali Hospital, Delhi, a government owned and run hospital. The said Medical Board comprising three doctors, by a Certificate dated 13.09.2013, Exhibit AW1/2, has certified that the claimant's case was of proximal femur (right) resulting in physical disability of 31% in the right lower limb.

Keeping this Certificate in mind, the impugned order relied upon the judgment of this Court in ***National Insurance Co. vs. Hari Om & Anr.***, 2011 LLR-428 that loss of earning capacity of the driver was assessed as 100% even though his physical disability was only 20% - 25%. Similarly, in ***National Insurance Co. Ltd. vs. Shri Ranjit Singh@ Rana & Anr.*** FAO No. 246/2007 delivered on 26.11.2009 again considered the physical disability of 15% as 100% functional disability. In the present case, however, the disability is 31% in the right lower limb which obviously would compromise safe driving of any motor vehicle. The employment of a driver suffering from such a severe physical disability is a too remote, indeed almost negligible. Therefore, would have to be treated as a 100% functional disability entitling the claimant to the award which has been granted.

In view of the aforesaid, the appeal is dismissed insofar as it impugns

the compensation awarded to respondent no. 1/the Claimant. However, the appellant has a right to pursue recovery proceedings against respondent no. 2, as per law.

In terms of the order dated 08.08.2016, 50% of the award amount was made available to respondent no. 1 upon his furnishing the indemnity bond. In the absence of an indemnity bond, this amount has not been claimed by respondent no. 1. Since, the appeal has been disposed-off, let 50% of the awarded amount be released to respondent no. 1. The remaining 50% amount shall be kept in an interest bearing FDR of Rs. 75,000/- each to mature every successive year, which upon maturity, shall be released to the appellant in his bank account maintained in a bank near his place of residence. In case of exigency, it will always be open to the claimant to approach the Court.

The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J.

MAY 01, 2018

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