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

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Decided on: 30.07.2019

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MAC.APP. 253/2018

RELIANCE GENERAL INSURANCE COMPANY LTD... Appellant

Through: Ms. Perna Mehta, Advocate.

Versus

PIYUSH KUMBNANI & ORS.

..... Respondents

Through: Mr. Kundan Kr. Lal, Advocate for Respondents
with Respondent No.1 in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The compensation awarded to respondent no.1 is impugned on the ground that the learned Tribunal has erred in not attributing contributory negligence on the claimant – respondent no.1. The motor vehicular accident took place on 18.09.2014 between a two-wheeler scooty being ridden by the claimant and the insured vehicle, a four-wheeler Ford Eco Sport car. The appellant contends that the injured has admitted in his cross-examination on 08.03.2017, that he was coming from the wrong side of the road.

2. Ms. Perna Mehta, the learned counsel for the appellant, submits that insofar as the motor-cyclist admits to driving on the wrong side of the road, contributory negligence is to necessarily attributed to him. She further submits that the learned Tribunal had simply dismissed the contention in this

regard, of the appellant on the ground that the testimony led by the respondents was not sufficient to impeach the testimony and evidence led by the claimant.

3. This Court has examined the site plan/Nazri Naqsha filed with the Detailed Accident Report (DAR) by the Investigating Officer. It shows that the respondent's vehicle was coming from the wrong direction, while the offending vehicle came parallel to it from the correct side of the road and then took a turn towards the side road on the right at an earmarked cut in the road-divider. It is at the point of turning that the offending vehicle is stated to have hit the front side of the claimant's two-wheeler. The accident happened in broad day light, at about 3:00 p.m., on a September afternoon and there could not be any doubt about clear visibility in the day. More importantly, the vehicle of the claimant would have been running parallel to the offending vehicle and the driver of the insured vehicle could have seen that if he turns his motor car suddenly towards the right, it would surely result in the accident. The said accident could have been avoided had the insured slowed down his vehicle or been a little more careful.

4. The claimant's statement that he was driving his two-wheeler on the wrong side, as a matter of necessity, because there was construction material lying on the other side of the road i.e. the side of the road which he would have ordinarily taken if there was no such construction material lying on the road. As a corollary, it has been argued that not only him but all other traffic was moving in the same way i.e. the single lane was being used for two-way traffic. It is further argued that the necessity of management of vehicular traffic demands that it be constantly on the move, lest a grid lock

be created. Therefore, the peculiar exigency of the place and the time demanded that motor vehicular traffic from both sides of the road had to move in the single lane. Interestingly, this contention of the claimant has not been controverted in the evidence led by any of the respondents in the claim petition, including the appellant. The driver of the car did not enter the witness box. The appellant - Insurance Company did not challenge this vital deposition. The DAR is silent as to whether two-way traffic was moving in a single lane, i.e. the lane which was taken by the injured victim. Furthermore, the Site Inspection Report shows that the damage to the insured vehicle is on the bumper and on its right rear side, whereas the damage to the scooty is on the left front side. The impact happened when the offending vehicle hit the scooty while taking a sharp turn to the right.

5. In view of the above, the rash and negligent nature of driving of the offending vehicle is clearly evident and no negligence can be attributed to the injured victim, who has lost the use of both his lower limbs, has been permanently disabled and is now bed-ridden, he is unable to stand on his own. His movement on a wheelchair is limited and he has to be assisted on and off it. In other words, he would require an assistant for the rest of his life. His disability would have to be treated as 100%. He was in the final year of his undergraduate course and would have taken his examination a few months later. The Court is of the view that in terms of the dicta of the Supreme Court in *Arvind Kumar Mishra vs. New India Assurance Co. Ltd. & Anr.* (2010) 10 SC 254, the claimant was rightly granted compensation on the basis of minimum wages applicable to a graduate at the relevant time. The Court would note that although 40% towards 'loss of future prospects'

has been granted to him, it would have to be enhanced to 50% in view of the dicta of the Supreme Court in *Parminder Singh vs. New India Assurance Co. Ltd. & Ors.* 2019 SCC OnLine SC 802. It is so ordered. Let the appellant deposit the enhanced amount with the learned MACT within three weeks of receipt of this order with interest on the enhanced amount @7.5% thereon with effect from 1st July, 2019, i.e. the date of pronouncement of the said judgment.

6. In view of the above, no case is made out. The appeal is without merit and is, accordingly, dismissed.

7. The statutory amount of Rs.25,000/-, alongwith interest accrued thereon, shall be deposited in the 'AASRA' Fund.

JULY 30, 2019

AB

NAJMI WAZIRI, J.

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