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

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Decided on: 04.09.2019

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MAC.APP. 577/2018

ROYAL SUNDARAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Gupta, Advocate on
behalf of Ms. Suman Bagga,
Advocate.

versus

ANSAB JAFFAR & ORS

.....Respondents

Through: Mr. Mayank Khurana, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 577/2018 & CM APPL. 25632/2018

1. The learned Joint Registrar (J) on 26.06.2019 recorded that Service of Notice was completed. None appears for the owner and driver of the vehicle.
2. The appellant impugns the award of compensation dated 31.03.2018 passed by the Ld. MACT in MACT No. 358575/16, on the ground that the appellant should be exonerated from any liability in law. Neither the owner, nor the driver of the vehicle has produced a driving license. The impugned order has dealt with the issue as under:-

“22. Learned counsel appearing for insurance company submitted that since driver was not holding a valid licence at the time of accident, insurance company is entitled for recovery right.

(i) *Perusal of the DARs reveals that during investigation, respondent No.1 & 2 failed to produce any driving licence. Accordingly, respondent No.1 was prosecuted for the offence punishable under Section 3/181 of M. V. Act whereas respondent No.2 was prosecuted for the offence punishable under Section 5/181 of M. V. Act. During inquiry, both the respondents preferred not to contest the DAR and they were proceeded ex-parate on 14/02/2017. Indisputably, the finding in the DAR is per-se admissible. In the absence of any contrary evidence on record, this Tribunal has no reason to disbelieve the findings in the DAR that respondent no.1 was driving, the offending vehicle without any valid and effective driving licence. Being the driver, it was the duty of respondent No.1 not to drive the vehicle without any valid licence and being the owner, it was the duty of respondent No.2 not to allow respondent No.1 to drive the vehicle without any valid and effective driving licence. During inquiry, respondent No.2 failed to produce any evidence to show under which circumstances he permitted respondent no.1 to drive the vehicle without any valid and effective driving licence. Thus, this Tribunal has no other option except to hold that there was a willful breach on the part of respondent No.1 & 2. Accordingly, insurance company after satisfying the award is entitled to recover the same from respondent no.1 & 2 without filing a separate civil suit. Accordingly, Issue No.2 is decided in favour of petitioners and against the respondents.”*

3. Neither the owner nor the driver of the vehicle contested the case set up by the claimant or otherwise set up by the insurer that the driver had no driving licence. The DAR records the involvement of the vehicle and also that the said respondents did not produce any driving license. They have also been prosecuted for breach of relevant legal provisions.

4. The appellant contends that under the principle of Pay and Recover¹, the insurer is liable to pay compensation for third party losses and thereafter it shall have the right of recovery against the driver/owner of the offending vehicle.

5. The appellant challenges the award of compensation on the non-pecuniary heads such as:-

“....

9. As discussed above, the overall compensation is tabulated as under:

<i>Name of Head</i>	<i>Amount in (In ₹)</i>
<i>Loss of Income</i>	<i>16, 794</i>
<i>Medical Expenses</i>	<i>911</i>
<i>Conveyance Charges</i>	<i>5,000</i>
<i>Special Diet</i>	<i>5,000</i>
<i>Attendant Charges</i>	<i>5,000</i>
<i>Loss of earning and capacity due to disability</i>	<i>0</i>
<i>Mental & Physical Shock</i>	<i>1,50,000</i>
<i>Pain & suffering</i>	<i>1,00,000</i>
<i>Loss of life amenities</i>	<i>2,00,000</i>
<i>Loss of inconvenience/hardship/disappointment/mental stress</i>	<i>2,00,000</i>
<i>Loss of disfiguration</i>	<i>1,00,000</i>
<i>Total</i>	<i>7,82,705</i>

Round off:- ₹ 7,83,000/-

(Rupees Seven Lac & Eight Three Thousands Only)

(i) The claimant/petitioner is also entitled to interest @ 9% per annum from the date of filing of the petition i.e. November 28, 2016 till realization.”

¹ As laid down in Manuara Khatun & Ors. vs Rajesh Kumar Singh & Ors. (2017) 4 SCC 796.

6. It is the appellant's case that compensation towards mental and physical shock, 'pain and suffering', 'loss of amenities', 'loss of conveyance', etc., and 'loss of dependency' are on higher side. The respondent/injured has suffered a 46% permanent disability in his left lower limb. He was working as an accountant. It is the appellant's case that his 'loss of earnings' would not suffer.

7. The Court would note that compensation towards 'loss of income' is only Rs. 16,794/-, medical expenses is Rs. 911/-, conveyance charge is Rs. 5,000/-, special diet is Rs. 5,000/-, attendant charges is Rs. 5,000/-, compensation for mental and physical shock is Rs. 1,50,000/-, pain and suffering is Rs. 1,00,000/-, 'loss of life amenities' is Rs. 2,00,000/-, loss of inconvenience, hardship, disappointment, mental stress is Rs. 2,00,000/-, loss of disfiguration is Rs. 1,00,000/-. The compensation towards 'loss of earning capacity' has been found to be nil because the injured can work as an accountant despite permanent disability of 46% in his left lower limb. It is only on this ground, no compensation was granted as there was no loss in his earning capacity.

8. Nevertheless, for such person, the compensation on non-pecuniary heads would obviously be much more because of the loss of amenities the injured suffers; for disappointment, mental stress, hardship and inconvenience due to his disability. Accountants would normally be spending time with account books while sitting in offices or places, where they would not be required to or necessarily move about. Therefore, in moments when such a person has to walk about, it would be a relief from the sedentary work style. But the inability to move about even in those spare moments due to the constraints brought about by the permanent physical

disability would be particularly disappointing, distressing and excruciating. Hence, due compensation to this life-long disappointment, and for mental and physical shock and pain and suffering needs to be awarded. In the circumstances, the amounts granted to the respondent/claimant cannot be faulted with.

9. The appeal is accordingly dismissed.

10. The impugned amount is stated to have been deposited before the learned MACT and the same shall be disbursed to the beneficiaries of the award in terms of scheme of disbursement specified therein.

11. Statutory amount of Rs. 25,000/- shall be paid to the respondent as costs against this litigation.

NAJMI WAZIRI, J

SEPTEMBER 04, 2019

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