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

% *Decided on: 23.10.2019*

\+ MAC.APP. 571/2015 & CM.APPL.46535/2019

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Gupta, Advocate.

versus

MUKESH YADAV & ORS ..... Respondents

Through: Mr. Taiyab Khan, Advocate for R-1.
Mr. S.N. Parashar, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. At joint request, the appeal is taken up for disposal. It impugns the award of compensation dated 19.05.2015 passed by the learned MACT in Suit No.1150/08, on the ground that the injured being 45 years of age at the time of the motor vehicular accident, the multiplier of 14 ought to have been applied instead of 15 in terms of the dicta of the Supreme Cout in ***Sarla Verma vs. Delhi Transport Corporation***, (2009) 6 SCC 121**.** The said argument is valid. Accordingly, the multiplier of 14 shall be made applicable.

2. The appellant argues that since the injured being in the age bracket of 40 to 50 years, the 'loss of future prospects' ought to have been granted to him @ 25% and not @ 30% in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.***, (2017) 16 SCC 680.

The contention is correct. Accordingly, "loss of future prospect" shall be computed @ 25% instead of 30%. The impugned order stands modified in this regard.

3. The appellant next contends that there is duplication of amount of Rs. 23,697/- corresponding to bill no. 23692 whereas advance receipts at seriatim 27, 28, 29 and 30 in the list of medical bills (at page 46 of the appeal paperbook) is a duplication, therefore, this amount should be deducted. The said argument is correct in terms of the record, therefore, this amount shall be deducted.

4. The Court would note that for a person who has been rendered incapable of walking about as a normal person for the rest of his life because of steel rod implants in both his legs and the award of merely Rs. 1,00,000/- towards 'pain and suffering' and Rs. 2,00,000/- towards 'loss of enjoyment of life' is definitely on the lower side. Furthermore, the learned Tribunal has assessed his functional disability at 100%. Therefore, in the circumstances both the said non-pecuniary heads need to be enhanced to Rs. 2,50,000/- and Rs. 4,50,000/- respectively. It is so enhanced.

5. The amount payable by the appellant is as under:-

Sl.No.	**Particulars**	**Amount**
1.	Loss of income: Rs. 1,22,968/- (annual income)x14(multiplier)x125/100(loss of future prospects)x32/100(disability)	Rs. 6,88,621/-
2.	Pain and suffering	Rs. 2,50,000/-
3.	Loss of enjoyment of life	Rs. 4,50,000/-
	TOTAL	Rs.13,88,621/-

6. The aforesaid amount shall be deposited before the Registrar General of this Court within three weeks from the date of receipt of copy of this order, alongwith interest @ 9% from the date of filing of the claim petition till its realization, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

7. The appellant further seeks right of recovery against the owner of the offending insured vehicle on the ground that it had Road Permit for carrying goods only in the State of Haryana but the accident happened in Delhi and the vehicle had no permit to enter NCT of Delhi.

8. The learned counsel for the appellant relies upon the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Chella Bharatamma & Ors.***, Civil Appeal No.6178/2004, which held, *inter alia*, as under:

> *"……*
>
> *High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious……"*
>
> *…….*
>
> *A person without permit to ply a vehicle cannot be placed at a better pedestal vis-'-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable…......"*
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> ……..
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> *66. Necessity for permits*
>
> *<u>(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place</u>*

whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used: Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage: Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not: Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him."

(emphasis supplied)

9. It is an undisputed fact that the accident happened in Delhi. The transport vehicle had Permit to operate only in the State of Haryana and not in Delhi. It entered Delhi without requisite permit. That being the position, there is clear breach of the policy condition. In view, the insurer, having paid the awarded amount, under the principle of pay and recover would be entitled to right of recovery against the owner of the insured vehicle. The same is granted.

10. The appeal is disposed-off in the above terms.

11. Since the appellant has partially succeeded in its appeal, the statutory amount, alongwith interest accrued thereon, be returned to it.

NAJMI WAZIRI, J

OCTOBER 23, 2019/AB