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

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Date of Decision: 06th February, 2020

+ **MAC.APP. 671/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD Appellant
Through: **Mr.Navneet Kumar and Mr.Mohit Singh, Advocates**

versus

DEEN DAYAL VERMA & ANR Respondents
Through: **Ms.Vagisha Kochar, Advocate for R-1**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the award of the Claims Tribunal whereby the compensation of Rs.4,32,878/- has been awarded to the respondent No.1.
2. On 25th March, 2009 at about 07:05 PM, respondent No.1 was going on foot to Bridh Ashram, Village Jonty at Kanjhawala when he was hit by TSR No. DL-1LG-5893 from behind which resulted in grievous injuries to respondent No.1. The disability of respondent No.1 was assessed by the medical board of Dr. Baba Saheb Ambedkar Hospital as 3% permanent disability in relation to his right lower limb.
3. The Claims Tribunal awarded Rs.1,57,878/- towards medical expenses; Rs.1,50,000/- towards loss of enjoyment of life; Rs.1,00,000/- towards pain and suffering; Rs.20,000/- towards special diet; and Rs.5,000/-

towards conveyance charges. Total compensation awarded is Rs.4,32,878/-.

4. Learned counsel for the appellant urged at the time of the hearing that respondent No.1 has not proved the negligence of driver of the offending vehicle and is not entitled to any compensation. It is submitted that the accident occurred due to the burst of the right tyre of TSR and there was no negligence on the part of the driver. Without prejudice, it is submitted that compensation awarded under the head of pain and suffering is on higher side.

5. Learned counsel for respondent No.1 submits that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. It is further submitted that respondent No.1 has proved the negligence of the driver and no evidence has been lead in rebuttal. It is further submitted that the driver of the offending vehicle did not appear in the witness box to rebut the evidence lead by respondent No.1. It is further submitted that the Claims Tribunal awarded Rs.80,000/- to respondent No.1 towards loss of earning which has not been added in the final compensation computed in the award.

6. This Court is of the view that this case is covered by the principles of *res ipsa loquitur* as the deceased was walking on the road and was hit by TSR from behind. Respondent No.1 deposed before the Claims Tribunal that the accident occurred due to the rash and negligent driving of the driver of TSR. The driver of the offending vehicle did not appear in the witness box to rebut the same.

7. With respect to the quantum of compensation, the compensation of Rs.1,50,000/- under the head of loss of amenities of life is on higher side and is reduced to Rs.70,000/-. The Claims Tribunal has awarded Rs.80,000/-

towards loss of earnings in para 9 of the award which has not been added in final calculation. The net result is that respondent No.1 is entitled to compensation of Rs.4,32,878/- awarded to respondent No.1.

8. The appeal is partly allowed in the above terms. However, the compensation of Rs.4,32,878/- awarded by the Claims Tribunal is maintained for the reasons stated hereinabove.

9. The appellant has deposited Rs.1,00,000/- with the Claims Tribunal in terms of order dated 29th March, 2017 which has been released to respondent No.1.

10. The appellant is directed to deposit the balance award amount along with interest with the Registrar General of this Court within four weeks. The appellant is directed to file computation of interest on affidavit within one week of the deposit.

11. The statutory amount be refunded back to the appellant within four weeks.

12. List for disbursement of the compensation amount to respondent No.1 on 17th April, 2020.

13. Respondent No.1 shall remain present in Court on the next date of hearing along with the passbook of his savings bank account near the place of his residence as well as PAN card and Aadhaar card. The concerned bank of respondent No.1 is directed not to issue any cheque book or debit card to respondent No.1 and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on his passbook to this effect. The respondent No.1 shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on the passbook of respondent No.1 that no cheque book and/or debit card shall be

issued to respondent No.1 without the permission of this Court.

14. Copy of this judgment be given *dasti* to counsel for the parties under signatures of Court Master.

J.R. MIDHA, J.

FEBRUARY 06, 2020
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