



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 05 April 2024**
Judgment pronounced on : 08 May 2024

+ **MAC.APP. 107/2016**

RELIANCE GENERAL INSURANCE CO LTD

Appellant

Through: Mr. Rajeev M. Roy, Advocate.

versus

HAWA SINGH & ANR

..... Respondents

Through: Mr. S.S. Rathee, Advocate for R-1.

**Mr. Kundan Kumar Lal,
Advocate for R-2.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹, assailing the impugned judgment-cum-award dated 23.11.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Central District, (North), Rohini, Delhi² in claim petition bearing suit No.43/12 titled as 'Sh.Hawa Singh v. Sh.Anil Kumar & Anr.', whereby a sum of Rs.7,64,654/- has been awarded as compensation to the respondent No.1/claimant with interest @ 9% per annum from the date of filing of the petition till realisation.

¹ M.V. Act

² Tribunal



2. Shorn of unnecessary details, the respondent No.1/claimant-injured sustained injuries on 07.11.2011 when at around 11:30 PM, his motorcycle bearing registration No. DL-4SAW-0917 was hit by a Santro car bearing registration No. DL-4CAV-2456 (*hereinafter referred to as the 'offending vehicle'*) driven by respondent No.2/Anil Kumar, who is the driver³-cum-owner⁴ of the offending vehicle.

3. Learned counsel for the appellant/insurance company vehemently urged that while the factum of the accident is not in dispute as also the fact that the two vehicles were indeed involved in the accident, however, it was vehemently submitted that the respondent No.1/claimant-injured was guilty of negligence since when he was examined in Sanjay Gandhi Memorial Hospital and *vide* Medico-Legal Case (MLC) Ex.PW1/82, it was recorded by the doctor attending to him that he smelled of alcohol in his breath.

4. Having my full consideration to the submissions advanced by the learned counsel for the rival parties and on perusal of the Trial Court Record (TCR), I find that the plea raised by the appellant/insurance company cannot be sustained in law.

5. It would be apposite to refer to the observations made by the learned Tribunal while passing the impugned judgment on the issue of respondent No.1/claimant being injured, which goes as under:

“8. According to respondents, accident in question was caused due to fault of petitioner himself, as he was under the influence of

³ Section 2(9) “driver” includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle

⁴ Section 2(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.



liquor. As mentioned above, none from respondents opted to lead any evidence. It is not proved on file that petitioner was under the influence of liquor or said accident was caused to petitioner's fault. Document stated to be MLC of petitioner (Hawa Singh) prepared by Sanjay Gandhi Memorial Hospital is Ex.PW1/82. If this document is taken as true, doctor who attended the petitioner found smell of alcohol in latter's breath. For the sake of argument, even if, it is presumed that there was smell of alcohol in his breath, same is riot enough to conclude that petitioner was under the influence of liquor or was incapacitated to judge right or wrong or was not in his senses. In this way, respondents have failed to prove that accident was caused due to negligence of petitioner himself. Issue no. 1 is thus decided against the respondents.

6. The aforesaid observations have to be considered in the light of testimony of PW-1, who in his cross-examination, denied being given the suggestion that he had consumed liquor before the accident. Although it is borne out from the MLC of respondent No.1/claimant-injured that on being examined by the attending doctors in the hospital, the smell of alcohol was present and it was also recorded that the patient was conscious and well-oriented. No blood sample of the respondent No.1/claimant-injured was taken so as to test how much alcohol was present in his blood. Further, there was no challenge in the cross-examination to his testimony that it was the driver of the offending vehicle who was responsible for causing the accident. Also, no suggestion was given to the fact that he was responsible for causing the accident in any manner. Mere smell of the alcohol in the breath would not lead to a conclusive presumption that the respondent No.1/claimant was guilty of contributory negligence.

7. All said and done, the only issue that requires modification is the award of compensation towards the interest rate. The claim petition was decided within three years of its filing and this Court, in



umpteen number of cases, has taken a consistent view that the interest rate should ordinarily be 7.5% unless and until exceptional circumstances are shown. In this regard, reference can be invited to a decision of this Court in **The Oriental Insurance Co. Ltd. v. Sohan Lal**⁵. The Supreme Court, in conformity with the norms, has reiterated the same view and in this regard, decision in the case of **National Insurance Co. Ltd. v. Mannat Johal**⁶ becomes germane, wherein it was observed:

“The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. **The Tribunal had awarded interest @ 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by the High Court.**” (paragraph 13)
{bold portions emphasized}

8. Accordingly, the interest rate is reduced from 9% to 7.5%, which shall be payable to the claimant from the date of filing of the petition till realization.

9. In view of the foregoing discussion, the present appeal is hereby dismissed. It is pertinent to mention here that this Court *vide* order dated 02.02.2016, had directed the appellant/insurance company to deposit the entire amount of compensation with accrued interest with the learned Tribunal within four weeks from the day upon which 60% of the amount of compensation was directed to be released to the respondent No.1/claimant. Hence, the balance amount of

⁵ 2024 SCC OnLine Del 1966

⁶ (2019) 15 SCC 260



compensation be released to the respondent No.1/claimant forthwith with interest. Further, since the present appeal is failing on merits, the statutory amount of Rs.25,000/- deposited by the appellant/insurance company shall stand forfeited to the State.

10. The present appeal is disposed of accordingly.

DHARMESH SHARMA, J.

MAY 08, 2024
VLD