



2024:DHC:5800



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

% **Date of order: 24th July, 2024.**

+ **MAC.APP. 435/2019 & CM APPL. 15887/2019**

LIBERTY GENERAL INSURANCE CO LTDAppellant

Through: Appearance not given.

versus

LALLAN THAKUR @ LALAN KUMAR & ORSRespondents

**Through: Mr. Alok Vajpayee, Mr. Amrish
Kumar, Mr. Yogesh Sharma, Ms.
Madhuri Katyal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of appellant seeking the following reliefs:

“It is, therefore, prayed that this Hon'ble Court may be pleased to set aside the impugned award dated 31.01.2019 passed by Sh. S.S. Malhotra, PO: MACT, Rohini Courts, Delhi in MACT No.9/2018- Mr. Lallan Thakur@LalanKumar & Ors. Vs. Anit Kumar& Ors.”

2. The brief facts of the case are reproduced herein:

- The injured i.e. Mr. Lallan Kumar was driving a motorcycle and the same was hit by a Duster car bearing registration no.

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 06.08.2024
18:33:06

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DL8C AK3915 at Holambi khurd, Bawana, New Delhi around 2:30 PM on 20th November. 2017.

- Pursuant to the said accident, Mr. Kumar was admitted to the hospital and upon inquiry, it was found that the driver had a legally valid license, however, the vehicle was being driven at a very high speed.
- Since the vehicle was insured, the company (petitioner herein) accepted its liability and offered Rs.68,660/- as compensation, however the same was not acceptable to Mr. Kumar.
- Thereafter, the learned Tribunal framed the issues and awarded a sum of Rs.4,83,502.8/- to the petitioner.
- Aggrieved by the same, the insurance company has filed the instant appeal.

3. The learned counsel appearing on behalf of the petitioner/insurance company submitted that the learned Tribunal erred in holding that the respondent No.2/driver was driving the vehicle in a rash and negligent manner.

4. It is submitted that the learned Tribunal manifestly erred in determining the monthly income of the claimant in the sum of Rs.13,350/- whereas, there is no material evidence to support such finding, and therefore, the learned Tribunal erred in granting 40% future prospects to the unproven income of the claimant.

5. It is submitted that the learned Tribunal erred in assessing 11% permanent disability as loss of earning capacity of the claimant without any



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medical evidence and the same is against the judgment rendered by the Hon'ble Supreme Court in a catena of cases.

6. It is submitted that the learned Tribunal erred in granting exorbitant, inappropriate, arbitrary and baseless interest @ 9% whereas, the prevailing rate of interest is much lower to the same.

7. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner-company submitted that the present appeal may be allowed and reliefs be granted as prayed.

8. *Per Contra*, the learned counsel appearing on behalf of the respondent/claimant vehemently opposed the instant appeal submitting to the effect that the same is filed on frivolous grounds, and therefore, may not be allowed by this Court.

9. It is submitted that the claimant had sustained grievous injuries all over his body and several ribs were fractured leading to 11% permanent disability and making it impossible for him to lead a normal life.

10. It is submitted that the claimant is a barber and was earning approximately Rs.2,000/- per day and due to the accident, he is unable to discharge his work properly, ultimately affecting his livelihood.

11. In view of the foregoing submissions, the learned counsel for the respondent/claimant prayed that the instant appeal may be rejected and this Court may enhance the compensation, if it deems fit.

12. Heard the learned counsel for the parties and perused the records.

13. It is the case of the petitioner that the learned Tribunal wrongly granted compensation to the claimant by taking his monthly salary as



Rs.13,350/-, and therefore, the impugned award is liable to be set aside.

14. In rival submissions, the above said contention has been rebutted by the learned counsel for the respondent/claimant by stating that the claimant was earning Rs.2,000/- per day and the learned Tribunal took the monthly income much lower to his income. The learned counsel for the respondent/claimant also stated that the claimant suffered grievous injuries and has 11% permanent disability, thereby, hampering the work of the claimant.

15. Therefore, the limited question for adjudication before this Court in the instant appeal is whether the impugned award is legally tenable or not.

16. The relevant extracts of the impugned award reads as under:

“ISSUE NO.1

Whether the offer given by the ins. Co. is reasonable, if not, what amount petitioner is entitled for and from which of the respondents? OPP 7. Before the petitioner is held to be entitled for any compensation, he has to prove first that accident has been caused due to rash and negligent driving by respondent no. 1 and he suffered injuries due to such accident. To prove the same, petitioner examined himself as PW1 and in his affidavit (Ex.PW1/A), he reiterated the facts of DAR. In his cross examination by Ld. Counsel for respondent no. 3, no suggestion was given to PW1 regarding rash and negligence or the manner in which the accident has occurred. PW1 has not, at all, been cross examined by respondents no. 1 and 2, particularly by respondent no. 1 nor the respondent no. 1 has examined himself to prove that accident has not been caused due to his rash or negligent driving or that he has been falsely implicated in the present case. Further, the criminal case record filed on record shows that respondent no. 1 was indicted by police for offences punishable under Section 279/338 IPC.



Respondent no. 1 did not approach to any higher authority or any forum against his such implication in this case. Apart from deposition of petitioner, the fact that petitioner suffered injuries in the accident is also supported from his medical record i.e. IMLC etc. Considering all this, it stands proved that accident in question occurred on account of negligence on the part of respondent no. 1 and petitioner suffered injury on his person on account of rash and negligent driving by respondent no. 1. Now coming to the aspect as which of the respondent is liable to pay compensation to the petitioner.

8. As stated above, accident is not disputed, rather offer was filed by the insurance company, which was not acceptable by the petitioner, therefore petitioner/ injured who is natural eye-witness of accident is well within his right to claim compensation from the Ins. Co. and since there is no statutory defence. Ins. Co. is liable to indemnify the owner and to pay the compensation to the petitioner.

NOW COMING TO QUANTUM OF COMPENSATION

9. The petitioner has suffered 11% permanent disability, which has been proved on record and a disability certificate from Dr. BSA Hospital has also been received on record, therefore considering nature of injuries suffered by petitioner and keeping in view documents available and proved on record, a total compensation of Rs. 5,35,000/- which includes 14 months interest (g) 9% per annum is awarded to the petitioner, details of which are mentioned in the above proforma

This issue is accordingly decided in favour of petitioner and against the respondents.

ISSUE NO. 2 (RELIEF)

10. Petition in hands is allowed. Respondent no. 3 is directed to pay a 5,35,000/- to the petitioner failing which it would pay the interest (5) 9% on the amount of Rs. 4,83,502.8 to the petitioner w.e.f. 05.03.2019, till realization.

11. Statement of petitioner about disbursement of amount of compensation was recorded. Further modified direction have



been complied with by the petitioner and he has filed copy of his bank passbook after compliance. Considering circumstances of petitioner, it is directed out of the total amount of compensation, 90% amount be kept in FDRs to be released to petitioner in a phased i.e. Rs. 10,000/- monthly directly crediting in his account and remaining 10% amount be released to his through his saving bank account, detail of which are mentioned in the above proforma. This amount will be withdrawn only by way of withdrawal slip and by no other mode or digital mode i.e. Debit card / Credit card /ATM/NEFT/RTGS/letter etc.

12.The salient features as prescribed in the judgment in Raiesh Tyagi Vs. Ramesh Chandra Gupta FAQ No. 842/2009 and MAC. APP. No. 422/2009 decided on 07.11.2014 are to be applied: -

- 1. The fixed deposit be renewed automatically till the period prescribed by the Court.*
- 2. The interest on the fixed deposit be paid monthly.*
- 3. The monthly interest be credited automatically in the saving account of the claimant.*
- 4. Original fixed deposit receipt be retained by the bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.*
- 5. The original fixed deposit receipt be handed over to the claimant at the end of the fixed deposit period.*
- 6. Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.*
- 7. No cheque book and debit / credit card shall be issued to the claimant without permission of the Court.*
- 8. No loan, advance or premature withdrawal or premature encashment shall be allowed on the fixed deposit without permission of the Court.*



9. *The amount would be directly credited in the bank account of the petitioner, without any necessity of visiting him / her to court, where FDRs are kept.*

10. *The bank of the petitioner would make necessary endorsement on the passbook of the petitioner and in its own record as "IMACT case" and amount to be disbursed only in terms of the order of the court.*

11. *Bank manager concerned to inform the court in writing prior to releasing of any amount to the petitioner, to the effect that compliance of the order of the Hon'ble High Court has been made with respect to disbursement. In no case, amount of award can be released without filing a compliance report in the court and the amount, which the respective petitioner would be withdrawing can only be allowed through withdrawal slip and by no other mode or any digital mode i.e. Debit card / Credit card /ATM/NEFT/RTGS/letter etc.*

Respondent no. 3 is directed to deposit entire amount of compensation with this tribunal within 30 days, with advance notice to the petitioners.

File be consigned to record room."

17. Upon perusal of the same, it is made out that the learned Tribunal had framed two issues to determine the quantum of compensation to be given to the claimant.

18. In order to answer the same, the learned Tribunal relied upon the police report, MLC, to hold that the accident was caused due to negligence of the driver, and therefore, the same is solely attributed towards the driver of the vehicle.

19. In order to determine the compensation, the learned Tribunal relied upon the disability certificate stating 11% disability, and the bank details of



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the claimant to ascertain the income, and therefore, awarded the compensation of Rs.4,83,502.8/- alongwith the interest @ 9%.

20. Now adverting to the merits of the instant appeal, the appellant has stated that the learned Tribunal wrongly considered the disability as 11%, however, the material on record, i.e. the report by Dr. BSA Hospital whereby the disability was stated to be 11%.

21. Since the BSA Hospital is a government entity, this Court does not have reasons to believe that the said report is not authentic, therefore, no dispute cannot be made to the legal validity of the said report.

22. The perusal of the certificate issued by the Hospital also makes it clear that the claimant has suffered the locomotive disability, therefore, hampering the nature of work being done to earn livelihood.

23. On the aspect of computation of compensation, the bank statements of the claimant were placed on record. The claimant had also placed the medical bills on record, and therefore, the same is sufficient proof to determine the quantum of compensation.

24. The issue of calculation of quantum of compensation is no more *res integra* and the judgments given by the Hon'ble Supreme Court in the cases of ***Sarla Verma v Delhi transport Corporation, 2009 AIR SC 3104*** and ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** whereby, the Hon'ble Court laid down the factors/multipliers for computation of claims to be awarded to aggrieved parties.

25. The bare perusal of the computation chart attached with the impugned award depicts that the learned Tribunal had duly followed the directions of



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the Hon'ble Court and had therefore, computed the claims on the said basis.

26. In view of the foregoing discussion, this Court does not find any compelling reason to interfere with the impugned award as the mandate regarding compensation to the aggrieved person as laid down by the Hon'ble Supreme Court has duly been abided by the learned Tribunal.

27. Accordingly, the present appeal is dismissed and the award dated 31st January, 2019 passed by the Motor Accidents Claim Tribunal in case bearing 9/18 is hereby upheld.

28. Pending application, if any, also stands dismissed.

29. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2024
ss/av/sm

Click here to check corrigendum, if any