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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 10th December, 2024*+ **MAC.APP. 557/2018 & CM APPLs. 24473/2018, 4973/2021, 26147/2021, 26946/2022****RELIANCE GENERAL INSURANCE CO LTD**

2nd & 3rd Floor, D-160/2,
Behind Honda Courtesy,
Okhla Phase-I, New Delhi

.....Appellant

Through: Mr. AK Soni, Advocate through VC.

versus

1. **NAVEEN KUMAR**

R/o VPO Rathdhana,
Sonipat, Haryana

.....Respondent No. 1

2. **HARI PRAKASH (DRIVER)**

R/o J/Mp/109, Village-Rohat,
Distt. Sonipat, Haryana

.....Respondent No. 2

3. **NARESH (OWNER)**

R/o H.No. 180,
Village-Satula I. Kharkhoda,
Distt. Sonipat, Haryana

.....Respondent No. 3

Through: Ms. Aruna Mehta, Advocate for R-1.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The present Appeal under *Section 173 of the Motor Vehicles Act*,



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1988 has been filed on behalf of the Appellant/Insurance Company against the impugned Award dated 17.04.2018 *vide* which a compensation in the sum of Rs. 55,91,700/- along with interest @ 9% per annum has been granted to the Respondent No. 1/Claimant on account of injuries suffered by him in a road accident on 16.01.2011.

2. The *grounds of challenge* to the impugned Award as under: -

(i) that there was a *delay of three months in registration of FIR* and the alleged negligence of the Respondent No. 2/Driver of the offending vehicle has not been established.

(ii) that *the functional disability* of the Respondent No. 1/Claimant had been assessed 60%, when in fact, the same *should not have been taken more than 40%*.

3. The *learned counsel for the Respondent No. 1/Claimant* submits that the Respondent No. 1/Claimant (Injured) was admitted in the Hospital immediately after the accident on 16.01.2011, where he remained admitted till 12.02.2011. The Respondent No. 1/Claimant had suffered amputation of his right lower limb above knee and on account of this trauma, he was unable to get the FIR registered immediately. He made the complaint in this regard on 16.03.2011 on the basis of which an FIR was registered on 14.04.2011.

4. It is further submitted that the factum of accident is not only proved by the medical record of the Respondent No. 1/Injured, but also from the testimony of the Respondent No. 1/Injured, who appeared as PW1, which is fully corroborated by the other eye-witness i.e., PW2/Satpal. Not only this, PW5/Rajesh Kumar who was a passer-by, had deposed that he had helped PW2, Mr. Satpal in putting the Respondent No. 1/Injured in the car to be



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taken to the Hospital and he had informed the family members of the Respondent No. 1/Injured about the accident.

5. Moreover, Respondent No. 2/Driver-Hari Prakash has pleaded guilty before the learned Metropolitan Magistrate.

6. It is also submitted that in fact, the Respondent No. 1/Claimant had suffered the amputation of right lower limb above knee and his functional disability should have been taken as 100% instead of 60%.

7. It is, therefore, submitted that the quantum of compensation has been calculated rightly and the same does not merit any interference and the Appeal is liable to be dismissed.

8. **Submissions heard and the record perused.**

Delay in registration of FIR & Negligence of the Driver:

9. *The first ground of challenge is the delay in registration of FIR of about three months.*

10. The factum of accident stands fully proved from the fact that the injured was admitted in the Hospital on the same day and treated for his injuries. The MLC prepared on the same day which recorded about the injuries suffered by the injured in the accident.

11. Further, testimony of PW1/Injured-Naveen Kumar, which is fully corroborated by the testimony of PW2/Satpal, establishes the date of accident as well as manner of accident. The charge sheet in the criminal case was also filed, in which the Driver has pleaded guilty.

12. The date of accident is fully established and delay has been duly explained.

13. Moreover, it has been amply explained on behalf of the Respondent No. 1/Injured that Respondent No. 1/Injured after having suffered the



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trauma, was not able to make any complaint to the Police immediately. However, he made a complaint to the Police on 16.03.2011 on the basis of which the FIR was registered on 14.04.2011. The delay in registration of FIR has been amply explained and the same has been rightly appreciated by the learned Tribunal.

14. *Insofar as the negligence of the driver is concerned*, it is deposed by PW1/Injured-Naveen Kumar, which is fully corroborated by the testimony of PW2/Satpal that on 16.01.2011, he was hit from behind by the offending vehicle coming at a very high speed. He further stated that he sustained crush injuries over his right leg and lacerated injuries all over his body. He deposed that PW-2, who was coming in his Santro car behind the offending vehicle, with the help of PW-5, admitted him in Hospital.

15. Not only this, PW5/Rajesh Kumar who was a passer-by, had also deposed that he assisted PW2/Satpal in putting the Respondent No. 1/Injured in the vehicle to be taken to the Hospital and he also informed the family members of the Respondent No. 1/Injured about the accident.

16. No material contradiction has been brought forth in the testimony of any of these witnesses which prove the factum of the accident as well as the negligence of the Respondent No. 2/Driver of the offending vehicle.

17. Moreover, the driver has not set up any defence; rather he has admitted his guilt before the Criminal Court.

18. There is no infirmity in the finding of the negligence on the part of Respondent No. 2/Driver of the offending vehicle.

19. *The findings on this aspect of delay in registration of FIR and negligence, do not warrant any interference.*

Quantum of Compensation:



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20. *The second ground of challenge is on the quantum of compensation wherein it is submitted that the Respondent No. 1/Injured had suffered Permanent Disability of 75% due to amputation of his right lower limb above knee, but the learned Claim Tribunal has erroneously taken the same as Functional Disability of 60%, when in fact, the same should not have been more than 40%.*

21. The learned Claim Tribunal had observed that the Respondent No. 1/Injured had suffered amputation of his right lower limb above knee and he claimed that he was working with the HDFC Bank. However, he was not able to furnish any proof or document thereof. No cogent evidence has been led by the injured in regard to his profession or the extent of handicap he has suffered in his work on account of Disability. The Tribunal has rightly placed reliance on *Entry No. 19 in Part II of Schedule I of the Employee's Compensation Act, 1923* to take the loss of earning capacity as 60%.

22. Considering the facts and totality of the circumstances, ***the learned Claim Tribunal has rightly assessed the functional disability of the Respondent No. 1/Injured as 60%.***

23. In view of above, there is no ground made out for interface.

Conclusion:

24. Accordingly, the Appeal along with pending Applications is dismissed.

25. The statutory amount be refunded to the Appellant/Insurance Company.

26. The Registry is directed to release the compensation amount in terms of the Award dated 12.03.2018 within four weeks along with upto date



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interest.

**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 10, 2024
S.Sharma