



2025:DHC:306



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

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Reserved on: 23rd October, 2024

Pronounced on: 20th January 2025

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MAC.APP. 427/2019 & CM APPL. 15063/2019

RELIANCE GENERAL INSURANCE CO. LTD.

A-12, Mohan Co-operative Industrial Estate,
Mathura Road,
New Delhi - 110044

.....Appellant

Through: Mr.A.K.Soni, Advocate

Versus

1. NAND KUMAR

S/o Shri Ram Narayan Singh,
R/o H. No. 129, Gram Jasola,
New Friends Colony,
Delhi-110025

....Respondent No.1

2. Sh. Mithilesh Raman Tiwari

S/o Shri Suresh Chand Tiwari,
R/o Gram Tahirpur, PS Sikandra,
District-Jonpur
also at: C/o Shri Krishna Sharma,
R/o Bhati Road, Surajpur,
Near Pushpa Chakki, Greater Noida,
District Gautambudh Nagar, UP

....Respondent No.2

3. Shri Yogender Drivedi

S/o Shri R.N.Drivedi,
R/o C-206, Sec-P3,
Greater Noida, District GB Nagar,
Noida, UP

....Respondent No.3

Through: Ms.Amrita Mishra, Mr.Vishal Sharma
and Ms.Jyoti Sharma, Advocates for
R-1.



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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed by the Appellant *Insurance Company* against the Award dated 12.02.2019 vide which compensation in the sum of Rs.36,04,000/- along with interest @ 9% per annum has been granted to Respondent No.1, Sh. Nand Kumar who had suffered injuries in a road accident on 11.06.2014.
2. The main grounds of *challenge* to the Award are as under:-
 - (i) that there was *no negligence* on the part of Respondent No.2, Sh. 2. Sh. Mithilesh Raman Tiwari, driver of the offending car Mahindra Xylo bearing No.UP-16AT-0525, in causing the accident;
 - (ii) that the *monthly income of the injured* has been erroneously taken as Rs. 32,500/-;
 - (iii) That the *loss of future income* has been incorrectly awarded since he has not suffered any loss of earnings on account of permanent disability;
 - (iv) that the reimbursement for Medical Bills in the sum of Rs.7,70,000/- has been incorrectly awarded since the medical Bills were only worth Rs.6,75,096/-;
 - (v) That the interest @ 9% per annum should in fact have been @ 7% per annum.
3. Learned counsel *on behalf of the Respondent No.1/Claimant* has



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refuted all the averments and has submitted that the compensation amount has been calculated correctly and there is no ground for reducing the compensation amount.

4. **Submissions Heard.**

5. ***Briefly stated***, that on 11.06.2024 at about 11 PM, injured Sh. Nand Kumar along with one Sh. Ravi Chobey, was going on his motorcycle bearing registration No.DL-3SD-0631 (Bajaj Platina) from Fortis Hospital, Sector 62, Noida, U.P. towards his residence. When he reached at Labour Chowk, Sector 57, Noida, U.P., offending car Mahindra Xylo bearing registration No. UP-16AT-0525 driven by Respondent No.2. Sh. Mithilesh Raman Tiwari in a rash and negligent manner hit the motorcycle resulting in injuries to Sh. Nand Kumar.

6. FIR No. 724/2014 under Section 279/338 IPC was got registered at P.S. Noida Sector 58, by the brother of the Petitioner on the next day of the accident. Chargesheet against the driver was filed under Section 279/338 IPC.

Negligence of the Injured:

7. The first ground of challenge taken by the Insurance Company is that there was no negligence on the part of the driver of the offending vehicle. However, PW-1 Nand Kumar/Injured deposed about the manner of the accident as narrated above. No cross-examination whatsoever has been done by the driver owner of the offending vehicle to challenge the testimony of the injured. Pertinently, the Site Plan Ex.PW-1/G also corroborates the testimony of the injured about the manner in which the accident took place.

8. The Chargesheet under Section 279/338 IPC has been admittedly filed against the driver of the offending vehicle.



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9. In the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle.

10. Pertinently the driver was the other material witness who could have deposed about the manner of the accident, but he has chosen not to appear in the witness box.

11. *The learned Tribunal, therefore, has rightly concluded that the accident occurred due to the sole negligence of the driver of the offending vehicle.*

Income of the Injured:

12. The testimony of the injured in regard to the salary which he deposed was Rs.38,500/- was not challenged either by the Insurance Company or by the Owner. In any case, the same is sought to corroborated by way of the salary slips.

13. To corroborate his testimony, injured examined PW-2/Sh. Bhupender Kumar Chaudhary, Senior Executive of 24 Secure Services Pvt Ltd who produced the salary slips of the Petitioner for the months of June, 2014, July, 2014, December, 2017 and January, 2018 which were collectively Ex.PW-2/1. The witness in his cross examination reaffirmed that the duty of the injured was 24 hours and was need based. He further deposed that the injured remained on leave for 2-3 months, but was paid his entire salary during this period. There is no break in service and he is still continuing in the Company. He further deposed that there was no deduction of Income Tax in the salary slips as it was for the injured to make the requisite savings/investments.

14. However, the monthly salary of the injured has been made out as



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Rs.32,500/- from perusal of the salary slips collectively exhibited as Ex. PW-2/2, to which there is no challenge.

15. The injured had claimed that he was additionally doing the business of milking and earning about Rs. 25,000/-p.m. but had failed to produce any cogent evidence to prove either that he was doing the milking business or was having an earning of Rs.25,000/- per month from the said business.

16. ***The learned Tribunal has, therefore, rightly held that the salary of the injured is Rs.32,500/-.***

Loss of Income on account of Permanent Disability:

17. The Petitioner had suffered grievous injuries which resulted in Permanent Disability to the extent of 76% on account of *post traumatic stiffness of right knee with shortening*.

18. The learned Tribunal considering the testimony of the Petitioner that he was having a difficulty in driving the vehicle took the Functional Disability as 40% in relation to the entire body.

19. The Petitioner had further deposed that because of the permanent disability, he is not able to drive the vehicle as he used to do before the accident. However, PW-2/Sh. Bhupender Kumar Chaudhary examined from the Employer Company had deposed that the injured is continuing to be in their employment and is getting the same salary.

20. The Appellant/Insurance Company has argued that admittedly there is no reduction in the salary of the deceased and he is continuing to get the same salary. So being the case, his Functional Disability has been erroneously taken as 40%.

21. Though it has come on record that the injured has been getting the same salary, but there is no challenge that on account of permanent



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disability the injured has suffered shortening of leg and stiffness of the knee which has made it difficult for him to drive the vehicle. This disability definitely would have an impact on his functional capabilities. ***Considering that his salary is continuing to be the same, it is held that his functional disability be taken as 20% of the whole body.*** The compensation amount is revised accordingly.

Rs.3,90,000/- X 20/100 X 14 = Rs.10,92,000/-.

Reimbursement of Medical Bills:

22. The *next ground* argued by the Insurance Company that the Medical Bills placed on record, are in the sum of Rs.6,75,096/- but the medical reimbursement has been allowed in the sum of Rs.7,70,000/-.

23. Though the Medical Bills that have been proved on record are of Rs.6,74,096/-, but it cannot be overlooked that the injured had suffered Permanent Disability to the extent of 76% of his right lower limb. The bills pertain only to his hospitalization, but it cannot be overlooked that considering his permanent disability, he would have undergone treatment from time to time for which he may not have preserved the bills.

24. The learned Tribunal in the light of the grievous injuries and the permanent disability has awarded an amount of Rs.7,70,000/- which cannot be faulted. ***There is no ground for interfering in the compensation granted towards medical expenses.***

Compensation under Non-Pecuniary Heads:

25. The Insurance Company has challenged the compensation awarded under the non-pecuniary heads, as excessive. The learned Tribunal has granted a sum of Rs.1,00,000/- each on the grounds of *Mental and Physical shock, Pain and Suffering, Loss of Amenities of life and disfiguration.*



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Considering the nature of injuries, it cannot be said that the compensation so awarded is excessive and does not merit any interference.

Rate of Interest:

26. The last objection taken by the Insurance Company that the interest has been awarded at an excessive rate. The learned Tribunal has awarded 9% interest per annum and no evidence has been led to prove that this was not the prevailing rate of interest.

27. *Therefore, this objection is not tenable and does not merit any interference.*

Relief:

28. The compensation is recalculated/modified as under: -

S. No.	Heads	Awarded by the Tribunal	Final Amount granted by this court
1.	Loss of Future Income	Rs.21,84,000/-	Rs.10,92,000/-
2.	Medical Expenses	Rs.7,70,000/-	Rs.7,70,000/-
3.	Pain and Suffering	Rs.1,00,000/-	Rs.1,00,000/-
4.	Mental and physical shock	Rs.1,00,000/-	Rs.1,00,000/-
5.	Disfiguration	Rs.1,00,000/-	Rs.1,00,000/-
6.	Loss of Amenities and Enjoyment of life	Rs.1,00,000/-	Rs.1,00,000/-
7.	Loss of expectation of life span on account of disability	Rs.1,00,000/-	Rs.1,00,000/-
8.	Conveyance Charges	Rs.50,000/-	Rs.50,000/-
9.	Special Diet	Rs.50,000/-	Rs.50,000/-
10.	Cost of Nursing/Attendant	Rs.50,000/-	Rs.50,000/-
11.	Interest @	9%	9%
	TOTAL COMPENSATION	Rs.36,04,000/-	Rs.25,12,000/-



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**Relief:-**

29. In view of the aforesaid discussion, the compensation amount is revised as **Rs.25,12,000/-** along with interest @ 9% per annum to be disbursed in terms of the Award dated 12.02.2019.

30. The Statutory Deposit/excessive amount, if any, along with corresponding interest be returned to the Insurance Company in accordance with law.

31. The Appeal is disposed of accordingly, along with the pending Application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 20, 2025

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