

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

*Reserved on: 22nd November, 2011
Pronounced on: 25th November, 2011*

+ **MAC APP. 820/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Santosh Paul Advocate with
Mr. Arvind Gupta Advocate.

Versus

ABDUL RAHMAN & ORS. Respondents
Through: Mr. Subodh Kumar Pathak, Advocate
for the Victim.
Mr. Sanjoy Kumar Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

1. Whether reporters of local papers may be allowed to see the Order?
2. To be referred to the Reporter or not?
3. Whether the Order should be reported in the Digest?

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited impugns the award dated 19.08.2010 passed by the Motor Accident Claims Tribunal (the Tribunal) on the ground that Jilajit Singh (Respondent No.3) did not possess a valid driving licence at the time of the accident, yet the Insurance Company was made liable to pay the compensation of ₹ 3,20,000/-. It was not given the right to recover the compensation ordered to be paid. It is averred that the compensation ordered to be paid is excessive.

2. Abdul Rahman (Respondent No.1) sustained injuries while he was riding on his bicycle on 04.12.2004 at 3:20 PM and proceeding to his house from Shastri Park. He was hit by a truck bearing No.DL-1LE-0578 while it was driven rashly and negligently by its driver Jilajit Singh, Respondent No.3.
3. Respondent No.1 suffered compound fracture of both bones in his left leg resulting into permanent disability of 35%. The Tribunal held that the accident took place on account of rashness and negligence on the part of the driver of truck number DL-1LE-0578 and awarded the compensation as under:-

1.	Compensation towards pain and suffering	₹ 50,000/-
2.	Loss of amenities	₹ 40,000/-
3.	Loss of income during treatment	₹ 19,800/-
4.	Future loss in earning capacity due to disability	₹ 1,02,960/-
5.	Attendant charges for four months (₹ 4,000/- per month)	₹ 16,000/-
6.	Expenses towards medical bills	₹ 60,325/-
7.	Reasonable future medical expenses	₹ 15,000/-
8.	Compensation towards conveyance and special diet (without bills)	₹ 15,000/-
	TOTAL rounded off	₹ 3,19,085/- ₹ 3,20,000/-

4. It is settled that the onus to prove that there was breach in the terms of the conditions of policy is on the Insurance Company. The Insurance Company did summon a witness from the Regional Transport Authority but preferred to close its evidence on 26.05.2010 without examining witness or without seeking any future opportunity for producing any evidence. The Appellant, therefore, cannot make any grievance against the Tribunal's findings that the Appellant had failed to establish that there was violation of the policy condition to avoid liability under Section 149 (2) of the Motor Vehicles Act. (*National Insurance Company Limited v. Swaran Singh 2004 (3) SCC 297*).
5. The Appellant has failed to show as to how the compensation awarded was excessive or unreasonable. The award of compensation, therefore, cannot be interfered with.
6. The appeal is without any merit; the same is accordingly dismissed and the impugned award is confirmed.
7. Pending applications also stands disposed of.
8. Copy of the order be sent to the Trial Court for information.

(G.P. MITTAL)
JUDGE

NOVEMBER 25, 2011

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