

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.643 of 2003

% Judgment reserved on: 19th May, 2008

Judgment delivered on: 28th May, 2008

Sh. Inder Sain Jain
S/o. Sh. Sita Ram Jain
Through his wife and next friend
Smt. Kaushalya Devi
R/o. 1913, Pandav Road
Bhola Nath Nagar, Shahadara
Delhi-110032 Appellant
Through: Mr. Jitender Jain, Adv.

Versus

1. New India Assurance Company
Branch Code No.20704
Hamir Pur, Himachal Pradesh.
2. Sh. Deshraj
S/o. Sh. Bhagirath
R/o. Village Hatera
Post Office Bohta, Teh. Bassar
Distt. Hamirpur, Himachal Pradesh.
3. Sh. Kashmir Singh
S/o. Sh. Bhagirath
Both R/o. Village Hatera
Post Office Bohta, The. Bassar
Distt. Hamipur, Himachal Pradesh.
4. United India Insurance Company Ltd.
F-43, Connaught Place, New Delhi ...Respondents

Through: Mr. S.L. Gupta, Adv. for R-1.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

The present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed against the award dated 22.05.03 passed by Sh. O.P. Gupta, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal"), Karkardooma, Delhi.

2. The brief facts leading to the dispute are that on 19.03.97, the appellant was traveling in Maruti Car no. D1-7C-1924 with Vikas Jain (owner) and driven by Prem Dutt Pant. They were going from Bhola Nath Nagar, Shadra to Rewari (Haryana) in connection with business. The car was being driven at a very normal speed and on the left side of the road. When they reached near Rathi Vas More on National High Way

No. 8, near Bilaspur Police Station, Gurgaon, a Truck No. HP-24-0955 came in a rash and negligent manner at a very high speed in utter disregard of the traffic rules and without any care and caution from the opposite direction from Dharuhera side. The said truck colluded against aforesaid Maruti Car. Appellant sustained serious brain injuries amongst other injuries and after the accident, he became unconscious and was removed to the General Hospital, Gurgaon. Treatment was not available at General Hospital so the appellant was referred to Safdarjung Hospital and later on shifted to Sir Ganga Ram Hospital on 20.03.97, where he remained admitted till 14.04.97 and during that period he remained unconscious and in deep coma. Since, there was no improvement in the condition of the appellant, thus he was shifted to Jain Neura Centre at Jagriti Enclave, Delhi on 14.04.97. He remained admitted there till 21.06.97 when he was temporarily discharged. He was again admitted in the same centre from 27.06.97 to 1.7.97 and was still

under treatment. There has been no improvement in his condition till the filing of the petition on 20.09.1997.

3. Vide impugned judgment, the Tribunal awarded the compensation of Rs.25,29,000/- under three head, firstly, the loss of income amounting to Rs.15,60,000/-; secondly, loss of income for 52 weeks amounting to Rs.1,20,000/- and thirdly medical expenses and fee paid to physiotherapist, to the tune of Rs. 8,49,000/- along with the interest @ 9% from the date of filing of the petition till its realization.

4. It has been contended by Ld. Counsel for the Appellant that the Tribunal has wrongly assessed the income of the injured to be Rs.77,720/- per annum whereas, the appellant had proved from the records of Income Tax Department that the income was not less than Rs.1,05,440/- per annum. It is further submitted that the claimant had proved actual medical expenses to the tune of Rs. 11, 46, 265/-, the Tribunal ought to

have awarded the full amount instead of only Rs. 8,49,000/-. The Tribunal has failed to award towards future medical needs of the appellant despite there being enough evidence on record to show that in the five years since the date of filing of claim petition, necessary expenses of approx. Rs. 9 Lacs had been incurred for the treatment and maintenance of the appellant.

5. Ld. Counsel for the appellant has relied upon ***General Manager, Kerala State Road transport Corporation, Trivandrum v. Susamma Thomas & Ors., (1994) 2 SCC 176 and Nagappa v. Gurudayal Singh & Ors., AIR 2003 SC 674***, in support of its contention.

6. On the other hand, it has been contended by learned counsel for the respondent that as per the claim petition, appellant was earning Rs.77,720/- per annum. Though, due to this unfortunate accident, the appellant sustained certain injuries but the plant and

machinery of the factory are still there and the appellant had already been paid more than Rs.38,00,000/- by insurance company and the learned Tribunal has rightly awarded the compensation for actual medical expenses etc. and no ground has been made out for enhancement.

7. With regard to the income of appellant, the Tribunal held;

“As regards quantum it may be observed that the Inder Sain Jain alleged his income to be Rs.77,720/- per annum in para 23(9) of the petition. Though he tried to show his income to Rs. 4,20,790/- which was reduced in appeal to Rs.1,05,440/-. I do not think that he can be allowed to travel beyond pleading.”

8. Therefore, the Tribunal has rightly assessed the income of the appellant as Rs.77,720/- per annum. I am satisfied with the reasoning given by the Tribunal.

9. No Tribunal can grant compensation for medical expenses on the basis of “assumptions and presumptions”. It may not be possible to keep vouchers

in respect of all the expenses, but still there must be evidence adduced by the petitioner to cover at least substantial portion of the claim, especially in the case of enlightened petitioner.

10. As per para 12 of the petition, the appellant has claimed in all compensation amounting to Rs.27,43,765.17p under the following heads;

(i) Business Loss = Rs.20,00,000/-

(ii) Loss on account of
mental physical agony= Rs. 5,00,000/-

(iii) Medical Expenses =Rs. 2,43,765.17/-

Total Rs.27,43,765.17p

11. PW4, Sh. Vikas Jain who is the son of appellant has stated in his statement that bills for purchase of medicine, examination and other expenses are ExPW4/160 to PW4/446. The total expenditure incurred in respect of those bills is Rs.4,41,025/-. Further, PW4 states that besides that, they called the physiotherapist at their residence for physiotherapy of

his father and also engaged two nurses to look after his father and vouchers pertaining to physiotherapy are ExPW4/447 to ExPW4/493 and vouchers pertaining to the payment made to the nurses are ExPW4/494 to ExPW4/595. PW4 has further deposed that Dr. Anil Jain also visited his father for treatment and receipt issued by Dr. Jain pertaining to the payment received by him for his visits totaling Rs.45,600/- is Ex PW4/596. Besides this, PW4 has also proved ExPW4/598 to ExPW4/613 as bills of medicines, ExPW4/616 to PW4/625 payment vouchers regarding expenses for nursing and physiotherapy.

12. The learned Tribunal has awarded Rs.8,49,000/- on account of expenses towards treatment etc. The relevant portion of the impugned order with regard to the expenses towards treatment etc read as under:-

“In additional Inder Sain Jain has claimed Rs.2,43,763.17/- on account of expenses towards treatment till 6.9.1997 as mentioned in para 23(7) of the petition. In evidence his son proved bills of Rs.4,41,025/- towards purchase of

medicines, examination of other expenses. The same is inclusive of amount claimed in the petition. During argument the counsel for the petitioner filed a brief chart showing the total of bills available on record. As per page 13 of the said chart amount is Rs.4,41,025.97 which tallies with the statement of PW-4. In addition sum of Rs.4,08,000/- has been claimed at page 17 of the said chart towards fees paid to physiotherapist. The total comes to Rs.8,49,000/-."

13. The appellant herein had moved an application under Section 152 Cr.P.C. for amendment of the judgment before the Tribunal, stating that because of accidental slip or omission or because of arithmetical mistake, a total of Rs.8,49,000/- has been awarded towards medical expenses etc and in fact, bills/expenses worth Rs.11,46,265/- has been proved by PW4.

14. This application for amendment of the impugned judgment, was dismissed by the learned Tribunal vide its order dated 29th May, 2003. The relevant portion of this order read as under:-

“Perusal of the application reveals that petitioner wants to get the amount of medical expenses corrected so as to include certain vouchers stated to be left by the court. In para 2 of the application the petitioner has mentioned at Sr. No. 2, 3, 5, 6 and 7 the amount of certain bills as having been recited at page 8 of the judgment, but the judgment does not contain any such figure. Again according to application there is totaling mistake at page 16 of the judgment. When the figures are not mentioned at page 8, the question of mistake in totaling does not arise. The application is dismissed.”

15. I agree with the reasoning given by the learned Tribunal vide which it has dismissed the application for amendment of the impugned judgment.

16. The learned counsel for appellant has contended that the payment towards expenses incurred for nurses have not been paid by the Tribunal.

17. In this regard it may be pointed out that none of the nurses who have been employed by the appellant have been examined nor there is any evidence on behalf of nurses to show as to for what period and at what rate they were employed.

18. Thus, the Tribunal rightly awarded the compensation as Rs.8,49,000/- towards purchase of medicines, other expenses and fees paid to physiotherapist.

19. Now the question for consideration is as to whether the Tribunal was justified in not awarding any amount for future medical expenses?

20. In catena of decisions of the Apex Court, it has been laid down that in awarding the compensation for future medical treatment, there should be clear evidence and in the absence of it, it should not be awarded blindly.

21. In ***Nagappa (supra)***, the Apex Court has observed;

“However, it is to be clearly understood that M.V. Act does not provide for passing of further award after final award is passed. Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. Hence, only

alternative is that at the time of passing of final award, Tribunal/Court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guess-work after taking into account increase in the cost of medical treatment.”

22. However, for such medical treatment, Court has to arrive at a reasonable estimate on the basis of the evidence brought on record.

23. In the present case, there is no evidence to show as to how much money would be required for the future treatment. The method of multiplier adopted by the Tribunal includes the future loss also.

24. So, the compensation awarded in the present case to the appellant is just and fair and I do not find any ambiguity in the impugned order passed by the learned Tribunal and no ground is made out for enhancement of the compensation, as awarded by the learned Tribunal.

25. Under these circumstances, the present appeal is not maintainable and the same is hereby dismissed.

26. No orders as to costs.

27. Trial court record be sent back forthwith.

28th May, 2008
rs

V. B. GUPTA
(JUDGE)