

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

Date of decision: 10th October, 2012

+ **MAC. APP. 965/2005**

RATTAN SINGH KHATRI Appellant

Through: Mr. ZS. Lohat, Adv. with
Mr. Manoj Lohat, Adv. with
Appellant in person.

versus

THE ORIENTAL INSURANCE COMPANY LTD. & ORS. . Respondents

Through Mr. S.K.Ray, Adv. with
Mr. Amitava Poddar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹20,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 16.02.2003.
2. As per the Appellant's case on 16.02.2003 at about 3:15 P.M. he (the Appellant) was proceeding to Alipur on his two wheeler No. DL-6SJ-0875. After examining a cow in village Bhoregarh, Narela, the Appellant took a turn towards Alipur when he was hit by a speeding Maruti Van No.DL-3CB-9046 which came from the side of Alipur. It was claimed that the Maruti Van was being driven in a very rash and negligent manner and in violation of the traffic rules and regulations. The driver of the Maruti Van was apprehended at the spot and a criminal case FIR No.32/3003 was registered in Police Station Narela.

3. Immediately after the accident, the Appellant was removed to Babu Jagjivan Ram Hospital. He was then shifted to Apollo Hospital, Sarita Vihar where he remained admitted from 16.02.2003 to 03.03.2003. He had to undertake physiotherapy from Bone Joints Care Foundation of India. The Appellant suffered comminuted fracture of right femur and loss of his four teeth. He had to be operated upon in the Apollo Hospital. The Appellant proved on record duplicate bills from Apollo Hospital Exs.PW-2/1 to PW-2/21. He further proved bills/receipts regarding payment of charges towards physiotherapy, purchase of medicines and purchase of medical equipment (for drainage of pus). Bills/receipts for purchase of medicines are Ex.PW-4/1-15. Receipts regarding payment of preparation of crown for the teeth are Annexures A-23 to A-33.
4. The Claims Tribunal awarded compensation of ₹20,000/- towards pain and suffering. It rejected the bills for treatment from Apollo Hospital and Bone Joints Care Foundation of India on the ground that no explanation was given for loss of original bills.
5. The finding on negligence having not been challenged by the Respondents, the same has attained finality.
6. The following contentions are raised on behalf of the Appellant:-
 - (i) The original bills were misplaced at the time of whitewash. The duplicate bills were photo-generated with detailed statements of the bills along with receipts for payment. There was no reason to disbelieve the same, particularly, in view of proving the discharge summary Ex.AW-2/1 filed during the pendency of the Appeal.

- (ii) The Appellant remained under treatment as an indoor patient for a period of about 15 days and as an outdoor patient for a period of four months. He had to travel 45 kms. from his village in Narela all the way to Apollo Hospital in South Delhi, Sarita Vihar, as also for the physiotherapy. But, no compensation was awarded towards conveyance and special diet.
 - (iii) No compensation was awarded towards Attendant charges and loss of income.
 - (iv) The compensation awarded towards pain and suffering is very low.
7. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that the Appellant was not referred to Apollo Hospital by the doctors of Babu Jagjivan Ram Hospital. Thus, the Appellant was not entitled to the reimbursement of the treatment undergone in Apollo Hospital, which otherwise is of a doubtful nature.
8. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins payment of just compensation. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, (1994) 2 SCC 176, the Supreme Court held as under: -

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

9. MLC Ex.PW-7/A was prepared in Babu Jagjivan Ram Hospital. At the time of the Appellant's admission, he was admitted with the *history of RTA* (road traffic accident) while going on a two wheeler. He was having loss of consciousness and was bleeding from nose. There were as many as six injuries recorded on the MLC which included fracture of femur and uprooting of the teeth.
10. A perusal of the detailed bills placed on record shows that the Appellant got himself admitted only in a general ward. He remained admitted in ICU for two days and then in Semi-Private ward for 11½ days. The Appellant did not opt for any luxurious accommodation in Apollo Hospital. Charges for the general ward were ₹950/- per day whereas charges for the Semi-private ward were ₹24,150/- for 11½ days i.e. ₹ 2100/- per day. Rest of the amount of ₹2,16,784/- was towards various tests, surgeries and purchase of various articles required for Appellant's surgery and for his day to day care during his treatment in the hospital.
11. The Appellant examined PW-2 Heman Singh Bisht, Record Clerk from Apollo Hospital. Of course, the witness had not brought the prescription made by the hospital but the same was not summoned from him. Nothing was brought out in cross-examination of this witness to suspect the genuineness or veracity of these bills issued by Apollo Hospital, which is a very prestigious hospital. The Claims Tribunal was totally oblivious to the plight of a victim of a motor vehicle accident and without any justifiable reason rejected the bills and the receipts which were computer generated documents by an institution like Apollo Hospital.
12. As stated above, the Appellant received treatment in general/semi-private ward. The tortfeasor cannot be permitted to take up the plea that a victim

can receive treatment from a private hospital only when he is referred to the same by a Govt. hospital.

13. During the pendency of the Appeal, an application for additional evidence was allowed. The Appellant examined himself as AW-1 and Shekhar Dogra, Medical Record Technician, in Apollo Hospital as AW-2. The Appellant's discharge summary was proved as Ex.AW-2/1. The portion of the discharge summary is extracted hereunder:-

“Patient presented with history of RTA with Maruti Van at around 3.30 PM on 16/02/2003 at Narela, while riding on a bike, with injury to head & right hip. Patient had Complaints of pain, swelling, deformity right hip and right femur and injury to head. Complains of head injury. History of unconsciousness present – 15 minutes. No history of ENT bleeding/convulsions. No history of chest / abdomen injury.

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COURSE IN THE HOSPITAL

Patient was admitted for further management. Investigations done showed right trochanteric fracture. He underwent ORIF with long plate DHS and bone grafting on 18/02/03. Patient stood the procedure well. Blood transfusion were given as and when required. During hospital stay he had faecal impaction Dr. Sushil Kumar Jain had seen him and done the manual evacuation. Patient was also seen by Dr. Neeraj Verma (Dental Surgeon). Patient is doing well and being discharged on following advice.....”

14. The medical bills are amply proved. In the absence of any suggestion or any investigation that the Appellant claimed its reimbursement from any other source, there is no reason to deny the same.
15. The Appellant is, therefore, entitled to a sum of ₹2,16,784/- towards expenditure in Apollo Hospital. ₹60,000/- as expenditure on

physiotherapy in Bone Joints Care Foundation of India and a sum of ₹33,240/- towards purchase of medicines, etc. bills whereof have been duly proved on record.

16. It is amply proved that the Appellant remained an indoor patient in Apollo Hospital for about 15 days and was an outdoor patient and received physiotherapy for about three months. The compensation of ₹20,000/- awarded towards pain and suffering was totally inadequate. I enhance the same to ₹50,000/-.
17. Considering the nature of injuries, the Appellant needed an Attendant for a period of at least four months. I award him a sum of ₹10,000/- @ ₹2,500/- per month as Attendant charges.
18. The Appellant retired as a Veterinary Assistant. He used to attend to the animals after his retirement. I would assess his income to be about ₹4,000/- per month and would hold that he was unable to attend to his work for about six months. Thus, he is granted compensation of ₹24,000/- for loss of income. I would further make a provision of ₹20,000/- each towards conveyance and special diet.
19. The compensation awarded is re-computed as under:-

Sl.No.	Compensation under various heads	Awarded by this Court
1.	Expenditure on Treatment	₹2,16,784/-
2.	Physiotherapy	₹ 60,000/-
3.	Purchase of Medicines	₹ 33,240/-
4.	Pain and Suffering	₹ 50,000/-

5.	Attendant Charges	₹ 10,000/-
6.	Loss of Income	₹ 24,000/-
7.	Conveyance	₹ 20,000/-
8.	Special Diet	₹ 20,000/-
	Total	₹ 4,34,024/-

20. The compensation is thus enhanced from ₹20,000/- to ₹ 4,34,024/-.
21. The enhanced compensation of ₹4,14,024/- shall carry interest @ 7.5% per annum from the date of filing of the petition till its deposit.
22. Respondent No.1 the Oriental Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
23. Since major amount is awarded towards reimbursement on the expenditure incurred by him for his treatment and this accident took place almost 10 years ago, the entire compensation along with interest shall be released on deposit.
24. The Appeal is allowed in above terms.
25. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 10, 2012

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