

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

Date of decision: 19th October, 2012

+ **MAC. APP. 834/2011**

SHRI GOVIND PRAKASH Appellant
Through: Mr. Subhash Chander, Adv.

versus

MS/. ICICI LOMBARD INSURANCE COMPANY LTD. & ANR.
.... Respondents
Through: Ms. Suman Bagga, 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 ₹86,728/- awarded in favour of the Appellant Govind Prakash for having suffered injuries in a motor vehicle accident which occurred on 30.07.2007.
2. In the absence of any Appeal by the driver-cum-owner and the insurer, the finding on negligence reached by the Claims Tribunal has attained finality.
3. During inquiry before the Claims Tribunal it was claimed that the Appellant was working as a driver of Vikram (a light goods vehicle) and was earning ₹15,000/- to ₹16,000/- per month. He had purchased the said three wheeler on credit through Two Friends Motor and Auto Deals. It was stated that he was only able to drive the vehicle for a period of five months, that is, upto 02.01.2008. Thereafter, he was advised to drive the vehicle gradually.

4. Immediately after the accident, the Appellant was admitted in All India Institute of Medical Sciences (AIIMS). On the next day he was discharged. At the time of discharge on the next day, the Consultant noted his diagnosis as minor head injury.
5. The Claims Tribunal in the absence of any evidence with regard to Appellant's income took the minimum wages of a skilled worker on the date of the accident and awarded compensation for loss of earning for 12 months. It further awarded a sum of ₹10,000/- towards special diet and conveyance and ₹25,000/- towards pain and suffering to compute the overall compensation of ₹86,728/-.
6. The following contentions are raised on behalf of the Appellant:-
 - (i) The Claims Tribunal erred in taking the Appellant's income as per the Minimum Wages of a skilled worker.
 - (ii) Apart from head injury, the Appellant also suffered fracture of ribs. The compensation of ₹25,000/- awarded towards pain and suffering and ₹10,000/- towards special diet and conveyance was on the lower side.
 - (iii) No compensation was awarded towards functional disability.
7. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins 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."

8. As stated earlier, immediately after the accident the Appellant was admitted to AIIMS. He was diagnosed to have suffered minor head injury. He was discharged from the hospital on the next day. The following observations are recorded on the discharge summary:-

"DIAGNOSTIC PROCEDURE:

NCCT SCAN HEAD 30/7/07 L sided small temporal contusion, with No mass effect, No midline shift basal cistern open. NCCT Scan head 30/7/07 No change in hematoma size. No mass effect. No midline shift. Basal cisterns are N.

CONDITION ON DISCHARGE:

E4V5M6. Pupils B/L NSNR. Accepting orally. No motor/Sensory deficit.

COMMENTS : Pt may suffer from post head injury sequele like headache and irritability, lack of concentration lack of intact.

It is informed that, it pt develops LOC, severe headache vomiting weakness of any limbs, urgently report to the casualty AIIMS/any other hospital to residence."

9. The Appellant followed up his treatment with GTB hospital where it was noticed that he had also suffered fracture of 4th and 5th ribs. On the first date of consultation, that is, on 05.09.2007 doctor advised him to take rest, avoid driving/cycling/swimming for two months. On 18.10.2007 the Appellant was found to be comfortable and the medicines were continued. Again on 14.11.2007 he (the Appellant) was found to be comfortable. He was advised to avoid driving for one month, i.e. upto 14.11.2007. After 14.11.2007 the Appellant contacted the doctor only on

02.01.2008. The doctor noticed that there was no seizure for the last five months; there was no dizziness. Thus, he was advised to start driving gradually.

10. It is admitted by the learned counsel for the Appellant that after 02.01.2008 the Appellant never consulted the doctor. This means that at the most the Appellant was away from driving for 5-6 months.
11. Apart from his own statement in the Affidavit that he was earning ₹15,000/- to ₹16,000/- per month, the Appellant did not produce any evidence with regard to his income. Admittedly, the Appellant was not paying any income tax. In the Assessment Year 2007-08 any income beyond ₹1,00,000/- was subject to tax. Thus, even if, the Appellant's income is not taken or assessed on the basis of Minimum Wages and is taken @ ₹5,000/- per month and if loss of income is awarded for the period of six months (as against 12 months awarded by the Claims Tribunal), the same comes to ₹30,000/- only against an award of ₹46,728/-
12. As stated above, the Appellant suffered minor head injury. There was no history of seizure after he was discharged on the next day of the accident. The compensation of ₹25,000/- awarded towards pain and suffering and ₹10,000/- towards conveyance and special diet cannot be said to be low so as to call for any interference by this Court.
13. The overall compensation of ₹86,728/- awarded by the Claims Tribunal is just and reasonable.
14. The Appeal has to fail; the same is accordingly dismissed.

15. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 19, 2012

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