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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26th September, 2012

+ **MAC. APP. No.765/2010**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Kanwal Chaudhary, Advocate

Versus

JAGDISH CHAND & ORS. Respondents

Through: Mr. S.C. Aggarwal with Mr. Harmesh
Kumar, Advocates for the Respondent
No.1

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 31.08.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹5,79,173/- was awarded in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 16.02.2006.
2. The finding on negligence is not challenged by the Appellant.
3. There is twin challenge to the conclusion reached by the Claims Tribunal. First, the compensation awarded is exorbitant and excessive inasmuch as award of compensation of ₹1,00,000/- towards pain and suffering was on the higher side and award of a sum of ₹82,500/- towards loss of income was excessive. Second, the Appellant proved that the licence held by the

Respondent No.2 was fake, yet the Appellant was made liable to pay the compensation. Even the recovery rights were not granted.

4. Per contra, the learned counsel for the First Respondent states that he (Respondent No.1) suffered very serious injuries, that is, as many as eight fractures on various parts of the body. He remained admitted in Indraprastha Apollo Hospital for about 80 days and remained confined to the bed for over a year. The compensation awarded is just and reasonable. It is urged that the Appellant failed to prove wilful breach of the terms and conditions of the policy and, therefore, the recovery rights were refused.

QUANTUM:

5. The compensation of ₹5,79,173/- awarded by the Claims Tribunal is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Medical Charges	₹2,33,673/-
2.	Future Estimated cost of Treatment	₹ 1,13,000/-
3.	Pain and Suffering	₹ 1,00,000/-
4.	Loss of Income	₹ 82,500/-
5.	Attendant Charges	₹ 25,000/-
6.	Conveyance Charges	₹ 10,000/-
7.	Special Diet	₹ 15,000/-
	Total	₹ 5,79,173/-

6. While dealing with the quantum of compensation, the Claims Tribunal held as under:

“15. The evidence of PW-3 Jagdish Chand is relevant on this issue. According to him he was working in Grand Hotel, Vasant Kunj, New Delhi as a Trainee Cook and was earning Rs.5500/- per month. His pay slip has been proved as Ex.PW3/3.

16. According to PW-3 after the accident he was taken to LBS Hospital. Copy of the MLC has been proved as Ex.PW3/4 from where he was shifted to Apollo Hospital where he remained admitted from 16.02.2006 to 1.05.2006. It has been deposed by PW3 that he has received head injury and also have had fractures in other parts of the body and his discharge summary has been proved by him as Ex.PW3/9. Even after discharge from the hospital his treatment had continued in OPD upto 04.09.2006. According to PW-3 on 05.09.2006 he was again admitted in Apollo Hospital for bone grafting from where he was discharged on 11.09.2006. The admission and discharge bill of the said hospital has been proved by him as Ex.PW3/48 and Ex.PW3/49. According to him he was advised rest for six months from 11.09.2006 and certificate of the hospital to this effect has been proved by him as Ex.PW3/8.

20. Keeping in view the nature of injuries petitioner is awarded Rs.1,00,000/- on account of pain and suffering. He is allowed Rs.82,500/- on account of loss of income as claimed by him in para 16 of his affidavit. He is awarded a sum of Rs.25,000/- on account of attendant charges. He is also awarded a sum of Rs.10,000/- for conveyance and Rs.15,000/- for special diet.”

7. A certificate Ex.PW3/58 whereby the First Respondent was advised rest for a period of six months w.e.f. 11.11.2006 is extracted hereunder:

“Mr. Jagdish Chand 25 years male is under my care for the following diagnosis since 16th February, 2006.

- 1) Polytrauma with head injury*
- 2) Fracture right neck of scapula*

- 3) *Fracture right Ilium*
- 4) *Fracture right Pubic Rami*
- 5) *Fracture right tibial shaft*
- 6) *Fracture right lateral malleolous*
- 7) *Fracture right medial malleolous*
- 8) *Fracture lamina of C. Vertera (bialateral)*

I have advised him rest for a period of 6 months w.e.f. 11th September 2006.”

8. Thus, the First Respondent suffered seven fractures on various parts of his body apart from the head injury. As stated earlier, he remained admitted in Indraprastha Apollo Hospital from 16.02.2006 to 01.05.2006 and then from 05.09.2006 to 11.09.2006. The First Respondent underwent successive surgeries and he was advised further surgery to remove the nail by documents Exs.PW3/75 and PW3/76.
9. It is difficult to measure the pain and suffering in terms of money which has been suffered by the claimant on account of serious injuries caused to him in a motor accident. Since the compensation is required to be paid for pain and suffering an attempt must be made to award compensation which may have some objective relation with the pain and suffering underwent by the victim of a motor accident. For this purpose, the Claims Tribunal and the Courts normally consider the nature of injury; the parts of the body where the injuries were sustained; surgeries (if any) underwent by the victim; confinement in the hospital and the duration of the treatment. Considering the multiple fractures all over the Respondent No.1's body, the period of hospitalization and confinement at home, the compensation of ₹1,00,000/- towards pain and suffering cannot be said to be excessive or exorbitant.
10. As regards the loss of income, in para 16 of the affidavit the First Respondent deposed as under:

“That I say that I have suffered financial loss on account of salary to the tune of ₹82,500/-(Rupees eighty two thousand five hundred only) for the period 17-02-2006 to 06-05-2007 as no salary for this period was given to me by my employer.”

11. This part of First Respondent’s testimony was not challenged in cross-examination. It is further supported by the document Ex.PW3/58. His salary @ ₹5,500/- per month was duly proved. In the circumstances, award of compensation of ₹82,500/- towards loss of income was justified.

LIABILITY:

12. It is urged by the learned counsel for the Appellant that the Appellant successfully proved breach of the terms of the policy. The owner(Respondent No.3) did not come forward to give any explanation as to the circumstances under which he entrusted the offending vehicle to the Second Respondent. As the Appellant discharged the initial onus of proving the breach of the terms and conditions of the policy, thus, argues the learned counsel, the Appellant was entitled to recovery rights.
13. During inquiry before the Claims Tribunal, the Second Respondent(driver of the offending vehicle) filed a written statement denying negligence. He took up the plea that he (Respondent No.2) was driving commercial vehicles for the last many years. He was a trained driver and possessed a valid driving licence which was taken into possession by the police at the time of the accident. He stated that till date the Second Respondent had not caused any accident(except the accident in question). The Appellant did not controvert the claims made by Second Respondent in the written statement. Rather, a vague and general defence was taken that if the driver did not possess a valid driving licence at the time of the accident, the Appellant would not be liable to pay any compensation to the Claimants.

14. The Appellant relies on the report Ex.R3W1/A given by an Investigator Prem Gautam. According to the learned counsel, as per this report, the RTO Meerut informed him(the Investigator) that licence No.DL-J-69916/Meerut/1990 was not issued by the Motor Licensing Authority, Meerut. Thus, the licence held by the Second Respondent at the time of the accident issued by the MLO although was genuine cannot be said to be valid as the initial licence was a fake one.
15. No official from the office of MLO, Meerut was summoned to prove the report Ex.R3W1/B. Amit Kumar Singh, R3W1, Administrator Officer of the Appellant did not depose anything about the signatures on the document Ex.R3W1/B. Moreover, Ex.R3W1/B nowhere states that the initial licence was a fake one. It is well settled that in order to avoid liability, it is for the Insurance Company to prove that there is breach of the terms and conditions of the policy. The Appellant Insurance Company has utterly failed to establish that the initial licence issued in the year 1990 was fake.
16. Moreover, no notice under Order XII Rule 8 CPC was given to the Respondents No.2 and 3 calling upon them to produce the original licence or to depose about its genuineness. No explanation was sought by giving any notice to the owner that the licence held by the driver was fake. Thus, there is no escape from the conclusion that the Appellant Insurance Company failed to establish that there was any wilful breach of the terms of the policy. The Appellant, therefore, cannot escape its liability to indemnify the insured.
17. The Appeal is devoid of any merit; the same is accordingly dismissed.
18. The compensation deposited shall be released to the First Respondent in terms of the orders passed by the Claims Tribunal.

19. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.
20. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 26, 2012
pst