

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 16th October, 2012

+ **MAC. APP. No.854/2010**

NEW INDIAN ASSURANCE COMPANY LTD. Appellant
Through: Mr.Abhishek Kumar, Advocate.

Versus

J.L.SURI & ORS. Respondents
Through: Ms.Manjeev Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Insurance Company seeks reduction of compensation of Rs.5,52,199/- awarded in favour of the First Respondent J.L.Suri who suffered grievous injuries in an accident which occurred on 24.08.2009.
2. Since the finding on negligence is not challenged by the Insurance Company, the same has attained finality.
3. The compensation of Rs.5,52,199/- awarded by the Claims Tribunal is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for the expenses incurred on medical treatment	₹3,10,929/-
2.	Compensation for expenses incurred on conveyance charges	₹ 20,000/-
3.	Compensation for expenses incurred on	₹ 40,000/-

	special diet	
4.	Compensation for expenses incurred on attendant charges	₹ 1,17,570/-
5.	Compensation for loss of income	₹23,700/-
6.	Compensation for pain and suffering and loss of amenities of life	₹40,000/-
	Total	₹5,52,199/-

4. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) The amount of ₹1,00,000/- was reimbursed to the First Respondent by the Insurer under the Mediclaim Policy. The First Respondent cannot receive a double benefit and thus, the amount of Rs.1,00,000/- should have been deducted from the medical treatment charges which were ₹3,10,929/- awarded by the Claims Tribunal.

(ii) The compensation awarded towards attendant charges, conveyance and special diet is on the higher side.

5. On the other hand, learned counsel for the First Respondent states that the compensation awarded is just and reasonable.

REIMBURSEMENT OF RS.1,00,000/-UNDER THE MEDICLAIM POLICY.

6. It is not disputed by the learned counsel for the First Respondent that a sum of Rs.1,00,000/- was reimbursed to the First Respondent under the Mediclaim Policy taken by him.

7. In *National Insurance Company Limited v. R.K.Jain & Ors.*, MAC APP.346/2010 decided by this Court on 02.07.2012 while relying on the reports of the Supreme Court in *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999)1 SCC 90; *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1; and a report of a Division Bench of the Madhya Pradesh High Court in *Jitendra v. Rahul*, 2008(5) MPHT 336, this Court held that since the reimbursement made by the Claimant or Insurer was towards the amount spent on accidental injury, the same was liable to be deducted from the compensation payable to the Claimant. Following the same, I hold that the Appellant would not be entitled to the said sum again as it would amount to double payment.

**COMPENSATION TOWARDS NON-PECUNIARY DAMAGES,
ATTENDANT CHARGES & OTHER PECUNIARY CHARGES**

8. It is urged by the learned counsel for the Appellant that the compensation of Rs.1,17,570/- awarded towards attendant charges, a sum of Rs.20,000/- awarded towards conveyance and Rs.40,000/- towards special diet is on the higher side.
9. The First Respondent proved on record the Bills Exs. PW1/1 to Ex.PW1/40 and Exs.PW1/51, PW1/63, PW1/87, PW1/100, PW1/112 and PW1/120 etc. regarding payment of attendant charges. The first Respondent suffered injuries on his head and right forearm and suffered fracture of the left lower shaft; he was removed to Kalra Hospital where he remained admitted from 24.08.2009 to 07.09.2009. Thereafter, he was shifted to Bombay and remained admitted in Dhirubhai Ambani Hospital

for four days where he was operated upon. The First Respondent has placed on record a number of prescriptions which proved that there were at least 50 visits to the doctors/hospitals. There was prolonged treatment for about one year. There was no rebuttal to the Bills with regard to the payment of attendant charges. In the circumstances, the award of compensation of Rs.1,17,570/- towards attendant charges (on actual basis), a sum of Rs.20,000/- towards conveyance and Rs.40,000/- towards special diet cannot be said to be excessive and exorbitant.

10. In the result, the Appeal is allowed only to the extent that the First Respondent was not entitled to a sum of Rs.1,00,000/- towards medical treatment which was reimbursed by the Raksha TPA (Medicclaim Policy).
11. The compensation amount is thus reduced to Rs.5,52,199 to ₹4,52,199/-
12. The excess amount of Rs.1,00,000/- along with proportionate interest shall be refunded to the Appellant Insurance Company. Rest of the amount of compensation shall be disbursed to the First Respondent in terms of the order passed by the Claims Tribunal.
13. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
14. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 16, 2012

v