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

% *Judgment delivered on: 9th December, 2013*

+ **MAC.A. No.1114/2011**

NATIONAL INSURANCE CO LTD.

..... Appellant

Represented by: Ms.Shantha Devi Raman and
Mr.Sanjeet Ranjan,
Advocates.

Versus

RATAN LAL & ORS.

..... Respondents

Represented by: Mr.Sanjoy Kumar Ghosh,
Advocate for Respondent
No.2.
Ms.Rupali S. Ghosh,
Advocate for Respondent
No.3.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

CM. No.22332/2013 (for delay)

In view of the averments made in the application, the delay in filing the instant appeal is condoned.

The application stands disposed of.

MAC.APP. 1114/2011

1. This appeal is directed against the impugned award dated 25.05.2011, whereby the learned Tribunal has awarded compensation as under:-

(i)	Medical expenses	4,50,013
(ii)	Special Diet and travelling expense	50,000
(iii)	Loss of income and future earning	14,58,600
(iv)	Other non pecuniary damages	2,00,000

(Rs.1,00,000/- each on account of pain and suffering and future medical expenses and loss of disfigurement)

Total	21,58,163
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Interest at the rate of 7.5% *per annum* from the date of filing of claim petition, i.e., 15.10.2007 till its realization was also awarded by the learned Tribunal.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that the learned Tribunal failed to observe the fact that wife of the respondent No. 1 had appeared as PW1 before the learned Tribunal and admitted that she had filed only the certified copies of the medical bills. However, she further stated that no re-imburement was received by her husband from anywhere.

3. Learned counsel submitted that since the claimants did not file the original bills, which go to show that the respondent No.1 has taken the re-imburement from his employer, therefore, respondent No.1 is not entitled for reimbursement of that amount.

4. She further submitted that the appellant/Insurance Company has verified from the employer of injured Ratan Lal, i.e., M/s Clutch Auto Limited and the same has been responded by their letter dated 13.10.2011,

which reads as under:-

“Q.No.3- Have any Medical Reimbursement paid by your office to Mr.Rattan Lal?”

Resp. Since the date of accident all Medical Bills amounting Rs.5,40,000/- have been paid by Company. This expenditure is incurred on request of his wife & son as they have undertaken to return the amount incurred by company after receiving insurance claim, copy of undertaking enclosed.”

5. Learned counsel argued that the respondent No.1 had deliberately not filed the original medical bills and instead his wife had chosen to file only the certified copies of the entire medical bills. She submitted that the appellant, after impugned award having been passed, had appointed an Investigator, namely, Mr. A.C. Anand to investigate the facts and to find out the truth as to the non-filing of the original medical bills.

6. Accordingly, the Investigator had contacted the employer, i.e., M/s Clutch Auto Limited of the respondent No.1 and inquired about the reimbursement of the expenses of medical treatment. The employer of respondent No.1 gave a reply dated 13.10.2011 as noted in Para 4 above. Pursuant thereto, the Investigator had filed his report dated 23.10.2011.

7. She further argued that the employer of respondent No.1 had admitted that respondent No. 1 was being paid a monthly salary of Rs.2,450/- as shown in the salary slip for the month of August, 2011 and monthly telephone bills of his family were also reimbursed. Copies of salary slip for the month of August, 2011 and telephone bills for the month of September, 2011 are enclosed as Annexure A-6 and A-7

respectively.

8. Learned counsel further argued that wife of respondent No.1 has deliberately concealed all the above mentioned facts from the learned Tribunal and hence, the learned Tribunal has wrongly considered the loss of income of the injured as Rs.9,350/- (basic + HRA, i.e., 6900 + 2450) and went ahead to compute the loss of income. She submitted that since the employer of respondent No. 1 clearly admitted that he was regularly paying a sum of Rs.2,450/- to respondent No. 1 and his family, therefore, he is not entitled for double benefit of an amount of Rs.2,450/-.

9. Except the aforementioned issues, no other issue has been argued by the learned counsel for the appellant/Insurance Company.

10. It is not in dispute that accident had taken place on 01.06.2006 and the claim petition was filed by the claimants on 15.10.2007. Thereafter, impugned award was passed by the learned Tribunal on 25.05.2011.

11. I note, in defence, the appellant/Insurance Company chose not to lead any evidence as has been recorded in para 7 of the impugned award.

12. After the accident, respondent No. 1 was initially taken to the Safdarjung Hospital and later on to Batra Hospital and Medical Research Centre. In order to claim the medical expenses incurred by the respondent No.1, he had placed on record the bills from various hospitals amounting to Rs.4,50,013/-. Since, there was no rebuttal of these expenses by the appellant/Insurance Company, therefore, a sum of Rs.4,50,013/- was granted by the learned Tribunal in favour of the

respondent No. 1 under the head of 'Medical Expenses'.

13. It is very much clear from the Investigator's report dated 23.10.2011 obtained from M/s Clutch Auto Limited, i.e., the employer of the injured, that they had paid an amount of Rs.5,40,000/- on the undertaking given by his wife and son that they would return the same after receiving the insurance claim. Since this amount was taken as a loan on the undertaking to return the same, therefore, the same cannot be considered as reimbursement of the medical bills received by the injured.

14. On perusal of the Annexure A-6, i.e., the salary slip for the month of August, 2011, it is established that injured Ratan Lal was receiving Rs.2,450/- as HRA, but there was no mentioning of the salary of the said month. Moreover, this document has not been proved before the learned Tribunal, therefore, at this belated stage, i.e., in appeal it cannot be allowed being barred by the provisions of Order XLI Rule 2 CPC.

15. Admittedly, the surveyor report dated 23.10.2011 had been filed after the impugned award having been passed on 25.05.2011. The appellant/Insurance Company were given more than five years to lead their evidence, but they failed to do so.

16. PW1, Smt. Pyari Devi, in her cross-examination has specifically stated that she had submitted the certified copies of the medical bills amounting to Rs.4,50,013/- and no re-imburement was received by her husband from anywhere.

17. It is not the case of the appellant/Insurance Company that the

medical bills Ex.PW1/5 are fabricated or not genuine or not related to injured Ratan Lal. Moreover, no evidence was led by the appellant/Insurance Company to rebut the same. Therefore, the new ground taken in the appeal belatedly is barred under Order XLI Rule 2 CPC.

18. In view of the above discussions, I do not find any merit in the instant appeal. Accordingly, the same is dismissed.

19. I note, vide order dated 12.12.2011, while granting stay, this Court directed the appellant/Insurance Company to deposit 60% of the awarded amount along with up-to-date interest with State Bank of India, Saket Courts Branch, New Delhi.

20. Since the present appeal has been dismissed, therefore the Branch Manager of the aforesaid Bank is directed to release the amount with up to date interest lying deposited in pursuance of the aforenoted order dated 12.12.2011 in favour of the respondent No.1/injured in terms of the impugned award dated 25.05.2011.

21. Statutory amount be released in favour of the appellant/Insurance Company.

CM No. 22333/2011 (for stay)

With the dismissal of the appeal itself, the instant application has become *infructuous*. The same is accordingly disposed of.

SURESH KAIT, J.

DECEMBER 09, 2013/sb