

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

Judgment reserved: 10th July 2014
Judgment pronounced: 22nd July 2014

+ **MAC.APP. 448/2004**

NEW INDIA ASSURANCE COMPANY LT Appellant
Through **Mr.S.L.Gupta and Mr.Ram Ashray,**
Advocates.

versus

KAPIL MOHAN SHARMA & ORS. Respondent
Through **Mr.Vijay Waghey, Advocate for R-1.**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed by the Insurance Company challenging the Award dated 15.07.2004 of the Tribunal for limiting the liability of the appellant to the extent of ₹1,50,000/- (Rupees One Lac Fifty Thousand Only) or in the alternate to reduce the awarded amount of ₹10,75,000/- (Rupees Ten Lacs Seventy Five Thousand Only).

2. The basic facts are that an accident took place on 28.02.1988. Respondent No.1 who was one year old then was travelling in a TSR along with his family when a Matador hit it at a very fast speed. The TSR turned turtle and all the occupants received injuries. Respondent No.1 received grievous injuries on the head and other parts of the body. On account of the accident and the head injury, the growth of respondent No.1 was impaired. He was diagnosed as suffering from Growth Hormone Deficiency. The Tribunal awarded a sum of ₹10,75,000/- i.e. ₹50,000/- was given as expenses for treatment, ₹25,000/- for mental trauma and suffering and

₹10,00,000/- was awarded for future treatment. The Tribunal further noted that the liability of the appellant Insurance Company towards public risk was limited to the extent of ₹1,50,000/-. However, it concluded that the liability vis-à-vis any person or third party is unlimited inasmuch as the Company had contracted to indemnify the third party and to recover an amount paid in excess of the liability from the insured. Hence, the Tribunal directed the appellant to deposit the awarded amount.

3. The Award is challenged on three bare grounds as stated in Appeal and which reads as follows:-

“3.1 Because the judgment of Ld.MACT is wrong and contrary to law, which is liable to be set aside/modify.

3.2 Because the liability of the insurance company is limited to Rs.1,50,000/- as per the terms and conditions of insurance policy.

3.3 Because the award of Rs.10,75,000/- is on higher side and without any basis.”

4. The above is the nature of challenge of the appellant to the impugned Award.

5. Learned counsel appearing for the appellant has supported the above grounds of challenge and strenuously urged two grounds. Firstly that as per the insurance policy taken out by the owner, the maximum liability is ₹1,50,000/- and hence, the balance amount is required to be paid by respondents No.2 and 3. It is next argued that the compensation of ₹10,00,000/- granted by the Tribunal for future medical treatment is on the higher side and it should be reduced.

6. Learned counsel for the appellant has strenuously urged that the liability of the Insurance Company cannot exceed to ₹1,50,000/- and the directions in the Award to the contrary are liable to be set aside. This

submission is however made without any reference to the terms and conditions of the Insurance Policy.

7. R3W1 Sh.S.P.Jain, Assistant Manager of appellant Company has placed on record, what he states, attested copy of relevant insurance policy EX.R3W1/1 and relevant tariff for the year 1988 Ex.R3W1/6. As neither the appellant nor the learned counsel for the appellant has referred to any particular clause of the said two documents to support their contention, it is not possible to deal with the said contention. However, the impugned Award based on a reading of the Motor Indian tariffs Ex.R3W1/6 and the public risk premium paid by the insured being ₹240/- concluded that no additional premium was paid by the insured. The Award further concluded that the liability towards public risk is limited to the extent of ₹1,50,000/- only.

8. The Award of the Tribunal itself limits the liability of the appellant to ₹1,50,000/-. Relying on the judgment of this High Court in the case of *Narender Singh & Ors. vs. vs. Sudarshan Kumar & Ors., I (2004) ACC 774*, the Tribunal directed the appellant to deposit the awarded amount. However, it was observed that any excess liability over what was agreed upon by the appellant with the owner can be recovered by the appellant from the said owner.

9. This court in the said case of *Narender Singh & Ors. vs. Sudarshan Kumar & Ors. (supra)* in para 59 held as under:-

“59. In the present case, all the terms of the contract of insurance were not brought on record by the insurance company or the owner of the vehicle. Under these circumstances, it has become necessary to refer to the India Motor Tariffs to know the standard terms of contract. A perusal of the standard terms so derived shows that they are in substance similar to the terms of insurance contracts dealt with by the Supreme Court in the decisions mentioned above. Consequently, the only available conclusion is that even though the monetary liability of the

insurance company is limited as claimed by it, that limited liability is only vis-à-vis the insured. The liability vis-à-vis “any person” or a third party like the Appellants is not limited. The insurance company has contracted with the insured to indemnify a third party to recover an amount under or by virtue of the provisions of the Act. This is, however, subject to the right of the insurance company to recover from the assured any amount paid in excess of its liability but for the Act. This is the sum and substance of the wider coverage provided by the insurance policy in the cases decided by the Supreme Court and the present case.”

10. The above view is also stated in the judgment of the Supreme Court in the case of *Oriental Insurance Co.Ltd. vs. Cheruvakkara Nafeessu & Ors., I (2001) ACC 335*. Based on the interpretation of the policy of insurance, the Court concluded as follows:-

“6. ... A conjoint reading of all the terms of the policy of insurance executed in this case indicate that total extent of liability of the insurance policy is ₹50,000/- but the company is liable to indemnify the insured against all sums including claimant’s costs and expenses which insured becomes liable to pay and nothing in the policy affects the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of Section 96 of the Act. However, the insured is liable to repay to the company all sums paid by the company which the company would not have been liable to pay but for the condition of liability relating to third party.”

11. Given the above legal position, nothing has been brought on record by the appellant to persuade this court to reverse the directions passed by the Tribunal in the impugned Award.

12. As far as the award of compensation of ₹10,00,000/- for future medical expense is concerned, a perusal of the Award would show that the Tribunal concluded that respondent No.1 is suffering from Growth Hormone

Deficiency meaning thereby that the petitioner will remain short in comparison to his age. The Tribunal relied upon the certificate given by Dr. Menon, AIIMS which states that respondent No.1 requires an injection of Biosynthetic Human Growth Hormone and 25 vials would be required in an year. The approximate cost of one vial was ₹6,400/- and one year's approximate cost would be ₹1,48,000/- (Rupees One Lac Forty Eight Thousand Only). The Tribunal also noted that as the said certificate Ex.PW6/59 was issued on 08.08.1996, the said respondent No.1 was again sent to Medical Superintendent, AIIMS for a check-up vide order dated 03.02.2004 of the Tribunal requesting AIIMS to inform the court about the duration and cost of treatment. Award also notes the certificate dated 28.02.2004 filed by AIIMS pursuant to the above order stating that the petitioner would require treatment for 5 to 6 years and the cost of this treatment would be around ₹25,000/- to 30,000/- per month. PW-7 Mr. M.S.Rawat, Medical Record Clerk of AIIMS has confirmed in his evidence that respondent No.1 was under the treatment of Dr.P.S.N. Menon, though at the time of recording of evidence, the said Dr. Menon had gone out of India.

13. The certificates of AIIMS show that respondent No.1 requires treatment that would cost above ₹ 10 lacs. The appellant has not been able to show anything to contradict these certificates placed on record from All India Institute of Medical Sciences. The appellant has not been able to make any submission to doubt these documents on record. In the absence of the same, there is no reason to differ with the view taken by the Tribunal.

14. There is no merit in the present petition and the same is dismissed. The interim order is vacated.

15. Appellant may deposit balance Award amount before the Tribunal within four weeks.

16. The Award does not grant any interest on the sum of ₹10 lacs granted for the medical treatment of respondent No.1 as the same has to be given for future treatment. However, due to pendency of the present proceedings and the interim order passed by this Court on 25.10.2004, respondent No.1 would have received only a sum of ₹1,50,000/- so far. Accordingly, I direct that the balance amount as per the Award shall be payable along with interest @ 6% per annum from the date of the Award till the deposit before this Court.

17. As per para 27 of the Award, the sum of ₹10 lacs was to be deposited in the name of respondent No.1 and ₹1 lac out of the said amount was to be released immediately. The balance funds were to be released for the treatment of respondent No.1 on orders of the Tribunal by producing appropriate documents. However with the passage of time this direction needs to be modified. Accordingly, I direct that 50% of the amount deposited be released immediately to respondent No.1. For the balance sum, the same may be deposited in an FDR which will be got released by respondent No.1 by getting appropriate orders of the Tribunal on showing requirement of funds for his treatment. This fixed deposit shall be for a period of five years. In case after a period of five years some amount is left, the same will be released along with accumulated interest to respondent No.1.

**JAYANT NATH
(JUDGE)**

JULY 22, 2014
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