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

+ **MAC. APP. No. 224/2013**

% *Judgment delivered on: 18th March, 2014*

A.N. MADANASEKARAN (INJURED) THR LRS..... Appellant
Represented by: Mr.Ashwarya Sinha and
Mr.Srijan Sinha, Advocates.

Versus

RAM NIWAS & ORS. Respondents
Represented by: Mr.Abhinav Agnihotri,
Advocate for Respondent No.2
Ms.Sonia Sharma, Advocate for Respondent
No.3/Insurance Company.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is directed against the impugned award dated 15.09.2012, whereby Ld. Tribunal awarded compensation for a sum of Rs.4,19,764/- with interest @ 9% per annum from the date of filing of the petition till realization of the amount.

2. Vide the present appeal, the appellants are seeking enhancement of the compensation amount as noted above.

3. Ld. Counsel appearing on behalf of the appellants submitted that Ld. Tribunal erred by awarding Rs.2,18,944/- towards treatment and medicines, whereas the total cost of surgeries itself is Rs.5,32,361/-. Further erred in not appreciating the fact that the surgeries for the left leg

were also related to the accident. If the accident had not happened in the first place, the injured would not have gone through the surgeries for right leg and consequently physiotherapy sessions.

4. He submitted that Ld. Tribunal also erred by awarding Rs.30,000/- only for purchase of medicines, when even on a bare understanding of the medical complications suffered by the injured due to the accident and the evidence available on record, it would become abundantly clear that the injured must have spent more than Rs.1,50,000/- on medicines over a period of four years. It is submitted that while determining the cost incurred on medications, the amount of medicines consumed, its market price and time period of the consumption are of utmost importance.

5. Ld. Counsel further submitted that the Ld. Tribunal further erred by awarding Rs.20,820/- only as compensation towards attendant charges @ Rs.3,470/- per month for a period of six months, when the male attendant's statement is a part of the record, wherein it has been clearly stated that he was attending the injured from June, 2007 till July, 2010 and was being paid Rs.9,000/- per month, thus amounting to a total of Rs.3,33,000/-. Moreover, the Ld. Tribunal further erred in not appreciating the fact that the attendant was a trained male nurse and not an unskilled labour, who amongst other works was required to help the injured with his daily morning chores; take care of the injured personal hygiene; administration of drips and injections; attend to any immediate medical need and to keep a track of routine medicines etc.

6. Ld. Counsel further argued that Ld. Tribunal also erred by not appreciating the fact that in any event respondent no. 2, Spice Jet was liable to pay Rs.7.5 Lacs since as per its own terms and conditions of

carriage, any person who incurs a personal disability was to be compensated with Rs.7.5 Lacs. Injured permanent disability certificate had been exhibited as Ex.PW1/4 and has been acknowledged by Ld. Tribunal in the impugned order. Despite that Spice Jet has not been directed to pay the compensation as per their Scheme.

7. The brief facts of the case are that on 01.06.2007 at about 6.30 PM Sh. A.N. Madanasekaran (now deceased) was to board a flight of Spice Jet for Chennai. He requested the incharge / flight authorities to let his family accompany him from the airport to the flight via airline bus as his foot was already amputated and he was on a wheelchair. The injured had already lost partial eye sight and was completely dependent upon others. His request was refused by the staff of Spice Jet, who assured of taking care of him. However, at the time of boarding, despite assurance of the flight authorities, there was no one to accompany him in the bus. The Airlines' authorities committed another negligence by keeping his wheelchair without any latch near door of the bus and further failed to properly lock the door of the bus. At about 7 PM while the bus was moving towards aircraft at one corner, the driver of the bus took such a sharp turn that the wheelchair lost its balance and collided with the door of the bus. Since the door of the bus was not even locked, the injured fell down out of the moving bus and smashed himself on the road with high velocity. The impact of the accident was so dreadful that the injured started bleeding from his nose. He sustained head injuries. His right leg was completely smashed leaving him in unbearable pain. From the Airport, he was taken to the Indian Spinal Injury Centre, where his physical examination was done. Thereafter, he continued with his treatment in Apollo Hospital, Chennai. He was admitted in Apollo

Hospital, Chennai on 03.06.2007 and was discharged on 12.06.2007. As per the Discharge Summary, he was diagnosed “Supracondylar Fracture Right Femur” and operated for “Open reduction internal fixation distal fracture with LCP and screws right side”. However, in the said summary it is specifically noted that the injured had no history of injury to other limb and spine. On the said surgery, he spent an amount of Rs.2,24,594/- inclusive of medicines. In the past history, it was specifically mentioned that right foot amputation six years back.

8. Thereafter, he was further admitted in Apollo Hospital on 14.09.2007 and was discharged on 20.09.2007. In the Discharge Summary dated 20.09.2007 it is mentioned as under:

Diagnosis: Fracture neck of femur left side.

Surgery: Bipolar hemiarthroplasty left side.

The aforesaid surgery incurs a sum of Rs.1,36,102/- inclusive of medicines. However, Ld. Tribunal has not granted any amount towards the same. Thereafter, he was again admitted on 29.10.2007 and discharged on 03.11.2007. As per the cash memo dated 03.11.2007, he incurred a sum of Rs.26,125/- inclusive of medicines. However, Ld. Tribunal has not granted this amount also. Thereafter, he went to Bone and Joint Hospital, Chennai on 21.02.2008 for check up on account of knee pain suffered by the injured and spent Rs.2,790/-. However, this amount has not been granted by the Ld. Tribunal.

9. Ld. Counsel for the appellant further submitted that due to the surgeries, other diseases such as diabetes and urine infection were exaggerated. Therefore, to control the said diseases, he remained in the Hospital from 03.03.2008 to 15.03.2008 and spent Rs.2,54,567/-.

Thereafter, he was admitted on 15.04.2008 and remained till 23.05.2008 for bilateral medical renal disease caused due history of injury on scalp. He spent an amount of Rs.47,210/-, apart, he spent Rs.22,000/- on physiotherapy of both fractures and X-Rays.

10. Thereafter, he was admitted in the Hospital on 10.06.2008 and remained up to 01.07.2008 for the purpose of physiotherapy, X-Rays, pulse Oximeter therapy and medicines due to severe pain in the right leg on affected area, thus he spent an amount of Rs.58,300/-.

11. Ld. Counsel further submitted that the Ld. Tribunal has denied to grant aforementioned amounts spent by the injured while recording in its impugned order that a sum of Rs.2,04,039/- was spent on his treatment, he was admitted in the Apollo Hospital from 03.06.2007 to 12.06.2007. The injured was admitted for supracondylar fracture right femur as noted in MLC. This was the injury which he had suffered as a result of the accident. Accordingly, the said amount was granted by the Ld. Tribunal. The injured was once again admitted in the Apollo Hospital from 29.08.2007 to 04.09.2007 as a case of old supracondylar fracture right femur bilateral diabetic retinopathy. This injury was again due to accident in question. For this treatment, second time, the injured had spent an amount of Rs.1,34,145/-. Accordingly, this amount has also been granted.

12. Further the injured was admitted in the Hospital 3rd time on 14.09.2007 and remained till 20.09.2007. This time he was diagnosed as fractured neck of femur “left” side. The Ld. Tribunal opined that this diagnosis had nothing to do with the injuries suffered in the accident,

accordingly, the claim of the injured for compensation of Rs.1,34,902/- was rejected.

13. The injured was admitted in the hospital on fourth occasion, from 15.08.2007 to 21.08.2007. This time diagnosis was infected implant “left hip”. The Ld. Tribunal opined that this treatment was also not for injury suffered from the accident. Therefore, the claim of the injured for a compensation of Rs.59,275/- was rejected.

14. In Para 64 of the impugned award, Ld. Tribunal has recorded that only compensation of Rs.2,04,039/- and Rs.1,24,902/- totalling Rs.3,28,941/- has been awarded in favour of the injured; and the Ld. Counsel submitted that the entire treatment expenses are the result of the injury sustained in the accident. Therefore, the appellant is entitled for the entire amount to be awarded as compensation.

15. On the other hand, Id. Counsel appearing on behalf of the respondent / Insurance Company submitted that PW1, son of the injured in his cross-examination stated that on the date of accident, he along with his wife, children and his mother-in-law were accompanying the injured to the Airport as all of them were going to Chennai. At the time of accident, he was in the aircraft and was not an eye witness to the accident. He submitted that all the expenses incurred on the treatment on the injured in the Spinal Injury Centre, New Delhi, were borne by Spice Jet and Air Fare was also paid for the family by Spice Jet. He further submitted that partial expenses incurred at Apollo Hospital were also paid by the Spice Jet.

16. PW1 further submitted that his father was on medicines being a diabetic patient and was suffering from frequent fractures and to prevent

the same, injections used to be given to his father.

17. Ld. Counsel further submitted that one leg of the injured was amputated; and he was on wheelchair. He was suffering from loss of vision. The injured did not enter in the witness box, however, PW1, son of the injured entered in the witness box who was not an eye witness.

18. Ld. Counsel further submitted that the injured was 65 years of age on the date of accident and keeping in view the injuries received in the accident in question, Ld. Tribunal granted Rs.1,00,000/- for pain and suffering and Rs.2,18,944/- for cost of treatment. The injured also filed bills for purchase of medicines. The injured was a diabetic with one leg amputated and loss of vision. Accordingly, Ld. Tribunal opined that it cannot be ascertained from medical bills whether they were for purchase of medicines for treatment of injuries suffered in the accident and for ailments suffered prior to the accident. However, Ld. Tribunal awarded a lump sum amount of Rs.30,000/- for purchase of medicines. Besides that, he was also awarded a compensation of Rs.15,000/- for special diet and Rs.10,000/- for conveyance charges.

19. Ld. Tribunal recorded in the impugned order that there was no doubt that the injured would have needed help of an attendant as his right leg was already amputated and with the injuries suffered in the accident, he would have definitely needed help of an attendant for his day-to-day needs. The accident had taken place on 01.06.2007 and the injured was discharged from Appollo Hospital, Chennai on 04.09.2007. Accordingly, Ld. Tribunal opined that injured would have needed help of an attendant at least for a period of six months and keeping in view the minimum wages payable to an unskilled workman at the time of the

accident as Rs.3,470/- per month, granted Rs.20,820/- as compensation towards attendant charges. Further on a lump sum basis, compensation of Rs.25,000/- for physiotherapy also granted.

20. While concluding his arguments, Ld. Counsel further submitted that the Ld. Tribunal has awarded just compensation keeping in view the age of the injured and the injuries received in the accident in question.

21. I have heard Ld. Counsels for the parties.

22. Admittedly, prior to the accident, i.e., 01.06.2007, the right foot of the injured was amputated six years back; and was suffering from diabetes mellitus. Being the medical history as mentioned above, the injured sustained fracture right femur out of the accident and operation was performed; and thereupon discharged on 12.06.2007. Thereafter, on 29.08.2007, the injured was admitted for pain, swelling at right distal thigh and diagnosed as old supracondylar fracture right femur and bilateral diabetic retinopathy and surgery was performed; and the medical record reflects the same as Re-do Orif Right Femur with 11 hole LCP; and discharged on 04.09.2007.

23. The learned Tribunal rightly appreciated the facts with respect to the nature of injury and granted compensation on account of injuries mentioned above.

24. The medical records show that the injured was admitted on 03.03.2008; and diagnosed as 'Metabolic Encophalopathy with diabetes mellitus with azotemia and discharged on 15.03.2008.

25. I note, as per discharge summary dated 20.09.2007, the injured was admitted and diagnosed the fracture at the neck of femur left side;

the surgery was performed and discharged on 20.09.2007. The discharge summary and the medical prescriptions reflects that the claimant/injured had taken advice in regard to liver and diabetic problems. It is also not disputed that the claimants/injured has taken treatment in various occasions and the expenses incurred on account of the same has not been granted as compensation.

26. This Court is mindful about the parameters for assessing the just and reasonable compensation as envisaged in the Motor Vehicles Act, 1988. Always, efforts are made to the victim of a road accident, to the extent possible, fully and adequately to restore the position prior to the accident. The object of awarding the compensation for damages is to make good the loss suffered as far as money can do so in a fair and reasonable manner.

27. The basic grievance of the appellant is that the learned Tribunal has not granted the amount that was spent for treatment qua the fracture of femur left side.

28. I have perused the entire medical evidence and bills placed on record.

29. It is important to note that the discharge summary dated 04.09.2007 indicates that the injury as “old supracondylar right femur”. Initially, the appellant had sustained injury out of the accident and mentioned as supracondylar fracture. Both these injuries mentioned above have correlation and accordingly, the compensation has been granted. However, the appellant could not establish the reasonable nexus between the injury named as “supracondylar fracture right femur” and “fracture at the neck of femur left”.

30. Pertinently, no medical expert has been examined in order to substantiate the claim that the subsequent injuries were the result of the fracture sustained out of the accident. There is no material placed on record that the injuries were in such a nature to aggravate the physical condition of the claimant/injured. In the absence of any substantive medical evidence, this Court while exercising the appellate jurisdiction cannot interfere in the findings of the learned Tribunal.

31. Accordingly, the appeal is dismissed.

SURESH KAIT, J

MARCH 18, 2014

Jg/RS