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

% **Date of Decision: 03rd NOVEMBER, 2016**

+ **MAC.APP. 364/2014**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

SHRI RISHABH SOOD & ANR. Respondents

Through: Mr.S.N.Parashar, Advocate for
respondent no.1.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.1,69,000/- has been awarded to respondent no.1.

2. The accident dated 5th December, 2007 resulted in the fracture of mid shaft of right tibia, fracture lower end of fibula right leg, right sciatic nerve injury at upper popliteal fossa, fracture right leg treated with fixation of screws, fracture acetabulum right side and fracture nasal bone. Respondent no.1 remained hospitalised from 6th December, 2007 to 13th December, 2007. Respondent no.1 underwent surgery of the right lower leg in which plate with screws was fixed. Respondent No.1 further underwent detailed orthopaedic investigation and treatment which continued for about four months from the date of accident i.e. 5th December 2007. Respondent No.1 incurred Rs.1,16,854/- medical expenditure out of which Rs.90,780/- was reimbursed to him under his medi-claim policy leaving an un-

reimbursed amount of Rs.26,074/-.

3. The Claims Tribunal awarded Rs.1,00,000/- towards medical expenses, Rs.20,000/- towards special diet and conveyance, Rs. 24,000/- towards loss of earning/study period and Rs.25,000/- towards pain and sufferings to respondent no.1. The total compensation awarded is Rs.1,69,000/-.

4. Learned counsel for the appellant urged at the time of the hearing that the medical expenditure of Rs.1 lakh awarded to respondent no.1 be set aside as respondent no.1 got reimbursed of the same from his medi-claim policy. Reliance is placed on ***United Insurance Company Ltd. v. Patrica Jeans***, AIR 2002 SC 2607 and ***National Insurance Company Ltd. v. Deepmala Goel***, 2013 ACJ 2382.

5. Learned counsel for respondent no.1 submits that the respondent no.1 incurred Rs. 1,16,854/- on his treatment out of which Rs. 90,780/- was reimbursed to him under his medi-claim policy leaving an un-reimbursed amount of Rs.26,074/-. It is further submitted that the compensation awarded to respondent no.1 under the head of pain and suffering is on a lower side. It further submitted that no compensation has been awarded for loss of amenities of life and disfiguration.

6. There is merit in the appellant's contention that the medical expenditure in respect of which the respondent no.1 has got reimbursement under the medi-claim policy cannot be claimed in view of the judgment of the Supreme Court in ***United Insurance Company Ltd. v. Patrica Jeans*** (supra) followed by this Court in ***National***

Insurance Company Ltd. v. Deepmala Goel (supra). With respect to the medical expenditure of Rs.1,16,854/- incurred by respondent no.1, respondent no.1 got reimbursement of Rs.90,780/- from his medical claim policy and therefore, he is entitled to balance medical expenditure of Rs.26,074/-. The medical expenditure of Rs. 1 lakh awarded by the Claims Tribunal is set aside and is substituted with Rs.26,074/-.

7. Respondent no.1 is present in Court along with his counsel and his condition has been seen. The compensation of Rs.25,000/- towards pain and suffering is on a lower side and is therefore, enhanced to Rs.50,000/-. The Claims Tribunal has not awarded any compensation for loss of amenities of life and disfiguration. Rs.48,926/- is awarded towards loss of amenities of life and disfiguration. Respondent no.1 is entitled to total compensation of Rs.1,69,000/- (Rs.26,074/- towards medical expenditure + Rs.50,000/- towards pain and sufferings + Rs.48,926/- towards loss of amenities of life and disfiguration + Rs.20,000/- towards special diet and conveyance + Rs.24,000/- towards loss of earning/ study period.)

8. The award amount of Rs.1,69,000/- is upheld for the reasons mentioned above. The appeal is disposed of in the above terms.

9. The appellant has deposited 60% of the award amount with the Registrar General of this Court in terms of order dated 28th April, 2014 out of which 50% of the amount has been released to respondent no.1 and the balance amount is lying in fixed deposit.

10. The Registrar General is directed to disburse the balance award amount lying in fixed deposit to respondent no.1 by instructing UCO

Bank, Delhi High Court Branch to discharge the FDR and release the FDR amount to respondent no.1.

11. The appellant is directed to deposit the balance award amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Rishabh Sood within four weeks.

12. Upon the aforesaid deposit being made, UCO Bank shall release the FDR amount to respondent no.1 by transferring the same to his savings bank account.

13. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

NOVEMBER 03, 2016
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J.R. MIDHA, J.