

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2119-2013 (O&M)
Date of Decision: April 20, 2015

Manoj Kumar Yadav

...Appellant

Versus

Azad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Chand Ram Olla, Advocate,
for the appellant.

Mr. Arun Sharma, Advocate,
for Mr. T.K. Joshi, Advocate,
for respondent No. 3.

1.	Whether Reporters of local papers may be allowed to see the judgment?	✓
2.	To be referred to the Reporters or not?	✓
3.	Whether the judgment should be reported in the Digest?	

NARESH KUMAR SANGHI, J (Oral)

CM-10069-CII-2013:

Prayer in this civil miscellaneous application is for
condonation of delay of 63 days in filing the appeal.

Having heard learned counsel for the parties and gone
through the contents of the application, which is duly supported by
an affidavit, the present civil miscellaneous application is allowed
and the delay of 63 days in filing the appeal is condoned.

FAO-2119-2013:

Challenge in this appeal is to the award dated 30.8.2012, passed by learned Motor Accidents Claims Tribunal, Gurgaon (for brevity, 'the Tribunal'), whereby a sum of Rs. 2,77,440/- (Rupees two lacs seventy-seven thousand four hundred and forty only) along with interest @ 7.5% per annum from the date of filing of claim petition till realization was awarded in favour of the appellant-claimant and respondent No. 3 was directed to pay the awarded amount to the claimant with a further rider that the insurance company could recover the awarded amount from respondent Nos. 1 and 2 (driver and owner of the offending vehicle) in accordance with law. Learned Tribunal further directed that 50% of the amount of compensation would be deposited for three years in the fixed deposit account in a nationalized bank in the name of the appellant/claimant and remaining 50% shall be paid in cash to him.

Learned counsel for appellant/claimant submits that learned Tribunal should have assessed the monthly income of the appellant/injured at the rate of Rs.15,000/- (Rupees fifteen thousand only) per month; learned Tribunal has awarded Rs.5,000/- (Rupees five thousand) only for transport charges; a meagre sum of Rs.6,000/- (Rupees six thousand) has been awarded

for nutritious diet; and that interest at the rate of 7.5% per annum was also on lower side. Learned counsel for the appellant also pointed out that learned Tribunal has wrongly declined the claim of Rs. 1,61,692/- (Rupees one lac sixty-one thousand six hundred and ninety-two) to the claimant, which was straightway paid by the insurance company to Paras Hospital, Gurgaon, where the appellant/claimant remained admitted as an Indoor patient. To elaborate his last contention, learned counsel submitted that the appellant/claimant after paying premium got mediclaim policy from the Insurance Company. Learned Tribunal has gone wrong in deducting the said amount from the award to which the appellant/claimant was entitled to. In support of his last contention, learned counsel has placed reliance on a judgment of Karnataka High Court in the case of **Shaheed Ahmed v. Shankaranarayana Bhat and another**, 2008 (5) Air Kar R 460 and a judgment of Kerala High Court in the case of **National Insurance Co. Ltd. v. Bijumon**, 2012 (1) R.C.R. (Civil) 325.

On the other hand, Mr. Arun Sharma, Advocate, has put in appearance for respondent No. 3 – Insurance Company and submits that he has instructions to argue the matter. He submits that as per the ratio of the judgments cited by learned counsel for the appellant/claimant, the amount straightway paid to Paras

Hospital, Gurgaon, by the Insurance Company, which had insured the claimant for medical reimbursement, could not be deducted from the amount to which the appellant/claimant was entitled to. He further submitted that learned Tribunal had rightly assessed the monthly income @ Rs.9,430/- (Rupees nine thousand four hundred and thirty). He further pointed out that as per the material available on record, the appellant/claimant was residing at Gurgaon and Paras Hospital where he remained admitted for his treatment was also located in Gurgaon and, as such, the amount of Rs. 5,000/- (Rupees five thousand) awarded by learned Tribunal for transport charges is justified. It was also pointed out that a sum of Rs. 6,000/- (Rupees six thousand) has been awarded for nutritious diet and there is no scope for enhancement under the said head. He further pointed out that learned Tribunal has granted appropriate interest @ 7.5% per annum and there is no scope for further enhancement in the rate of interest.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Since learned Tribunal has held that accident had taken place due to rash and negligent driving on the part of the driver of the offending vehicle and the said finding has not been challenged

by the driver, owner and the insurance company by way of an appeal, therefore, there is no necessity for this Court to deal with the said issue. The only argument of learned counsel for the appellant is with regard to enhancement of amount of compensation awarded under various heads.

The first argument of learned counsel for the appellant/claimant was that he (appellant) was getting salary of Rs.15,600/- (Rupees fifteen thousand and six hundred) from his employer. But the said fact was contradicted by his own witness, namely, Jitender (PW8), an Accountant of M/s Everest Power Limited, Gurgaon, where the appellant/claimant was serving. During his deposition the said witness tendered the salary slip (Ex. PW8/A) consisting of eight pages. Learned Tribunal after perusing the salary slip held that the basic pay of the claimant was Rs.5,350/- (Rupees five thousand three hundred and fifty). He was also getting Rs.200/- (Rupees two hundred) as House Rent Allowance; Rs. 3880/- (Rupees three thousand eight hundred and eighty) as Special Allowance; and Rs. 2,620/- (Rupees two thousand six hundred and twenty) as overtime allowance. The gross salary of the claimant was Rs. 12,050/- (Rupees twelve thousand and fifty) per month. Learned Tribunal declined the overtime allowance and assessed the monthly salary @ Rs. 9,430/- (Rupees nine thousand

four hundred and thirty). The deduction of Rs. 2,620/- (Rupees two thousand six hundred and twenty) from the monthly salary does not appear to be right conclusion. In case the appellant/claimant would not have met with an accident, then he would have got the overtime from his employer. Therefore, learned Tribunal had wrongly declined the over-time amount to the appellant/claimant. This Court is of the considered opinion that the monthly salary of the appellant/claimant was Rs. 12,050/- (Rupees twelve thousand and fifty). The employer did not pay the salary of eight months to the appellant/claimant since he remained absent from his duty on account of treatment he was getting. If the actual loss of salary for eight months is assessed, then it would come to Rs. 12,050/- x 8 = Rs. 96,400/- (Rupees ninety-six thousand and four hundred).

There is no substance in the argument of learned counsel for the appellant/claimant with regard to transport charges. From the perusal of the material available on record it is very much apparent that the appellant/claimant was residing at Gurgaon at the time of accident and he met with an accident at Gurgaon and was shifted to a hospital at Gurgaon. Therefore, there was no force in the argument of learned counsel that the appellant was entitled to Rs. 15,000/- (Rupees fifteen thousand) under the head of "transport charges". Learned Tribunal has already

liberally awarded Rs. 5,000/- (Rupees five thousand) for transport charges.

Further argument of learned counsel for the appellant is that only Rs.6,000/- (Rupees six thousand) has been awarded for nutritious diet and at least Rs. 100/- (Rupees hundred) per day for eight months should have been awarded for the said diet. This Court is not impressed with the submission made by learned counsel for the appellant in that regard. Learned Tribunal has rightly assessed Rs. 6,000/- (Rupees six thousand) for nutritious diet.

There appears to be substance in the argument of learned counsel for the appellant when he argued that learned Tribunal had wrongly declined the payment of Rs.1,61,692/- (Rupees one lac sixty-one thousand six hundred and ninety-two) to the claimant since the said amount was paid by the insurance company straightway to the hospital where claimant remained admitted. It is a matter of fact that the appellant/claimant had purchased the medical claim policy by paying premium thereof. It has been held by Karnataka and Kerala High Courts in the cases of **Shaheed Ahmed (supra)** and **Bijumon (supra)** respectively, that the amount received under medical insurance policy by the claimant cannot be deducted from the compensation amount to be

awarded to the claimant. It was further held that the medical claim policy is taken to cover the medical coverage for particular period on account of ailment one may suffer with certain conditions. A Mediclaim policy is not a pure accidental coverage. It is for the ailment of a person or for a disease of a person on payment of certain premium. In the matter of **Helen C. Rabello v. Maharashtra State Road Transport Corporation**, 1998 (4) R.C.R. (Civil) 177, Hon'ble the Supreme Court held that the amount received by the claimant on the life insurance of the deceased is not deductible from the compensation computed under the Motor Vehicles Act. In view of above factual and legal discussion, this Court is of the considered view that the appellant/claimant is entitled to Rs. 1,61,692/-(Rupees one lac sixty-one thousand six hundred and ninety-two) which was deducted by learned Tribunal on the ground that insurance company, which had insured the claimant for medical policy, had paid the said amount to the hospital where the appellant/claimant remained admitted for treatment.

There also appears to be force in the submission of learned counsel for the appellant/claimant when he submitted that interest at the rate of 7.5% per annum awarded by learned Tribunal, was on lower side. Hon'ble the Supreme Court in the

matters of **Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation, 2015 ACJ 598,** and **Jitendra Khim Shankar Trivedi v. Kasam Daud Kumbhar, 2015 ACJ 708,** has awarded interest @ 9% per annum from the date of presentation of claim petition and till the time full and final payment is made. Therefore, this Court holds that the appellant/claimant is entitled to interest @ 9% per annum on the awarded amount of compensation from the date of filing of the claim petition till realization.

The appellant/claimant shall be entitled to the following amount under various heads:-

Sr. No.	Heads	Amount (in Rs.)
1	Medical Expenses (Rs.1,55,000 + Rs.1,61,692)	3,16,692/-
2	Pain and sufferings	30,000/-
3	Loss of income (Rs.12,050 x 8 months)	96,400/-
4	Transportation	5,000/-
5	Nutritious diet	6,000/-
6	Attendant charges	6,000/-
	Total	4,60,092/-

A sum of Rs. 4,60,092/- (Rupees four lacs and sixty thousand and ninety-two only) is awarded as compensation to the appellant/claimant. The appellant shall also be entitled to interest on the awarded amount @ 9% per annum from the date of filing of

the petition till full and final payment is made. The net amount after adding the component of interest and deducting the amount already paid, shall be disbursed to the appellant/claimant as per the directions passed by learned Tribunal.

Appeal partly allowed.

(NARESH KUMAR SANGHI)
JUDGE

April 20, 2015
Pkapoor