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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd April, 2015

+ **MAC.APP. 948/2012**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD..... Appellant

Through: Mr. Rajat Brar, Adv.

versus

RAVINDER GOEL & ORS.

..... Respondents

Through: Mr. Harendra Kumar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of ₹2,56,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered injuries in a motor vehicular accident which occurred on 13.12.2008.
2. It is urged by the learned counsel for the Appellant that the Claims Tribunal awarded compensation of ₹50,000/- towards medical expenses, whereas bills for ₹23,895/- only had been produced by Respondent no.1. It is stated that the compensation of ₹1,00,000/- awarded towards pain and suffering, shock, *etc.* is on the higher side.

3. It is also urged that the award of counsel's fee to the extent of ₹40,000/- and out of pocket expenses amounting to ₹5,000/- is illegal and is in violation of the Delhi High Court Rules and Orders.
4. I have the Trial Court record before me. Immediately after the accident Respondent no.1 was taken to Jaipur Golden Hospital. He was found to have suffered fracture acetabulum right. He was given traction with 2.5 kg weight for two months. He remained under treatment of Dr. K.D. Jain. On appreciation of evidence, the Claims Tribunal found that Respondent no.1 could not attend to his work for a period of six months.
5. The award of compensation of ₹76,000/- towards loss of income and ₹15,000/- each towards special diet and conveyance is not disputed by the Appellant.
6. It is not the case of Respondent no.1 that he could not retain all the bills. He had produced bills for ₹23,895/-. The compensation awarded towards medical expenses is on the higher side. The same is thus, reduced to ₹25,000/-.
7. As far as award of compensation of ₹1,00,000/- towards pain and suffering is concerned, it may be noted that Respondent no.1 was put

on traction on his right leg for about two months. During all this period, he must have suffered immense pain, shock, agony and discomfort. Hence, the compensation of ₹1,00,000/- in the circumstances, cannot be said to be excessive and exorbitant.

8. As far as grant of counsel's fee to the extent of ₹40,000/- and out of pocket expenses of ₹5,000/- are concerned, this question was gone into at great length by this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors.* MAC APP No. 645/ 2012 decided on 30.07.2012. Para 32 of the report is extracted hereunder:

“32. To sum up, it is directed:-

- (i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.*
- (ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.*
- (iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.*
- (iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to*

award any costs unless it forms part of the legal offer.

(v) *The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.’’*

9. In *Kanti Devi(supra)*, it was thus, concluded that instead of awarding counsel’s fee, the Claim Petition ought to have been allowed with costs and the counsel’s fee was to be paid only in accordance with Rules 1, 1A and 9 of Chapter 16 Vol. I of the Delhi High Court Rules and Orders.
10. Hence, the award of counsel’s fee and out of pocket expenses in this manner was not permissible. At the most, the Claims Tribunal could have decreed the Claim Petition with costs which should have included counsel’s fee in accordance with Delhi High Court Rules and Orders. The award of counsel’s fee and out of pocket expenses is, consequently, set aside.
11. The compensation is thus, reduced from ₹2,56,000/- to ₹2,31,000/-.
12. By an order dated 28.08.2012, the execution of the impugned award

was stayed subject to deposit of 50% of the award amount, less counsel's fee. The balance compensation along with interest @ 9% per annum, as awarded by the Claims Tribunal, shall be deposited by the Appellant Insurance Company with UCO Bank, Delhi High Court Branch, New Delhi within six weeks.

13. On deposit, the compensation shall be released in favour of Respondent no.1.
14. The appeal is allowed in above terms.
15. Pending applications stand disposed of.
16. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 23, 2015

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