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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd February, 2016

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MAC.APP. 251/2010

IFFCO TOKIO GENERAL INS. CO. LTD. Appellant

Through: Ms. Shantha Devi Raman Adv.

versus

SAMRIDH MAGAN & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. A claim petition under Section 166 of Motor Vehicles Act, 1988 (MV Act) was filed by his father/next friend on 5.2.2005 for compensation for injuries suffered in a motor vehicular accident that occurred on 28.9.2004 at about 2.45 p.m. involving collision between two wheeler scooter No. DL 5SN 4277 (the scooter) driven by his mother and truck bearing registration No. HR 38 3754 (the truck) driven by one Bir Singh. The said Bir Singh was impleaded as the first respondent on the allegations that he was the principal tort-feasor. The truck was owned by M/s Ahluwalia Contracts India Ltd. which was impleaded as second respondent, it being vicariously liable. The truck was admittedly insured with the appellant insurance company which was impleaded as third respondent.

2. The tribunal, after inquiry, by judgment dated 9.3.2010, awarded compensation in the sum of ₹ 8,53,577/- with interest @ 7.5 % per

annum from the date of filing of the petition till realization. Noticeably, it found that the claimant was 10 years old on the date of accident and due to grievous injuries suffered he has been rendered disabled to the extent of 60% in relation to earning capacity.

3. The insurance company whilst presenting this appeal under Section 166 of the MV Act, submitted on 21.4.2010 that though the tribunal had noted at one stage in the impugned judgment that certain amount on account of medical expenses had been reimbursed under the medical insurance policy, the said money already received was not deducted when the award was passed. Pursuant to the liberty granted, by the said order, the appellant insurance company moved an application under Section 151 and 152 of the Code of Civil Procedure, 1908 (CPC) before the tribunal seeking correction. The said application was, however, dismissed by order dated 1.5.2010.

4. The order dated 01-05-2010 whereby the request of the insurance company for correction in the above nature was repelled by the tribunal is extracted in application moved under Section 151 CPC read with Order 41 Rule 5 CPC for stay of the execution and may be quoted in extenso:-

File put up today with an application filed by insurance company under Section 152 CPC for correction of award dated 9.3.2010 by pointing out that in Para 15 and 16 of the award at Page 9 it has been mentioned that petitioner has proved the bill as Ex.PW2/12 which is of the gross amount of ₹2,53,594/- out of which hospital gave discount of ₹25,651/- and with respect to the balance amount the father of the injured paid ₹82,500/- from family health plan insurance and the net bill of ₹145,443/- was paid by the father of the injured. The other medical bills of the amount of ₹35,134/- were also proved on record. This court had allowed the medical charges for the amount of ₹2,63,077/- by adding the

amount of ₹ 2,27,943/- plus 35,134/-. It has been submitted that amount of ₹ 1,45,443/- which was actually paid by the father alongwith amount of ₹ 35,134/- totaling ₹ 1,80,577/- should have been awarded to the petitioner and awarding of ₹ 2,63,077/- is a mathematical mistake. Therefore, Para 16 has been asked to be amended accordingly alongwith necessary correction made in Para 26 on Page 13 and in Para 28 where the total compensation has been calculated. The amount awarded to the petitioner on account of medical charges as mentioned in Para 16 of the award does not need any interference. The insurance company cannot be given benefit of the amount of ₹ 82,500/- received by the father of the injured from family health insurance plan. Accordingly this amount of ₹ 82,500/- alongwith ₹ 1,45,443/- actually paid by the father of the injured comes to ₹ 2,27,943/- which alongwith the amount of ₹ 35,134/- incurred on account of medical bills makes the amount of ₹ 2,63,077/- which has been awarded to the petitioner. There is no mathematical mistake or any other mistake in calculation which needs correction. Application is dismissed. File be consigned to record room.”

5. The learned counsel for the appellant submitted that the impugned award needs to be corrected to the extent thereby medical expenses in the sum of ₹ 2,63,077/- were awarded and that the learned tribunal was further in error by granting ₹ 50,000/- as damages for the leave of absence taken by the parents during the treatment of the claimant, on the ground that there was no corresponding loss of salary.

6. In spite of due notice, the respondents have not been appearing over the last several dates of hearing. The appeal was filed in 2010 and there was no reason why it should be deferred yet again.

7. Having heard the learned counsel for the appellant (insurance company), this Court finds substance in the appeal to the extent the deduction of ₹ 82,500/-, already reimbursed to the father of the claimant

under the health insurance plans, was not allowed. Since the amount of ₹ 82,500/- was not incurred by the claimant or his family, the same cannot be claimed yet again under the cover of compensation. The said amount will have to be deducted.

8. But there is no merit in the contention with regard to the salary for the period of leave of absence of the parents. The father of the claimant was working as Manager in National Dairy Development Board while the mother was working as a teacher in DAV Public School. The leave is a privilege of an employee on account of services rendered. The leave account is a valuable asset and it is available for personal needs as and when they arise. The fact that the parents were constrained to avail the leave of absence is for the reasons of the injuries suffered and, thus, the erosion of leave account needs to be suitably compensated. Therefore, the objection to this effect must be repelled.

9. No other ground was pressed.

10. In the result, the appeal is partly allowed. The amount of ₹ 82,500/- is deducted and, therefore, the claimant is held entitled to compensation of ₹ 7,71,077/-, rounded off to ₹ 7,72,000/-. It shall carry interest at the rate determined by the tribunal in the impugned judgment. Needless to add, the claimant will have to refund the excess amount in terms of these directions.

11. The statutory amount, if deposited, shall be refunded.

12. The appeal is disposed of in the above terms.

13. Lower court record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 02, 2016/nk