

\$~9

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

Date of Decision: October 05, 2016

+ MAC.APP. 657/2014

SHRIRAM GENERAL INSURANCE CO. LTD Appellant

Through: Mr.Sameer Nandwani, Advocate

versus

BABY MUSKAN & ORSRespondents

Through: Mr. Satish Kumar and Mr. Sunil
Kumar Ohha, Advocates for
respondent No.1

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT
(ORAL)

%

Received on transfer.

C.M.No.11751/2014 (delay)

There is delay of 20 days in filing the accompanying appeal.

Learned counsel for appellant submits that no relief is claimed against respondents No.2 & 3. So, notice to these respondents is dispensed with.

Upon hearing and in view of the averments made in paragraphs

No.2 to 4, I find that sufficient cause is shown for the delay occasioned.

The application is allowed and the delay stands condoned.

MAC.APP. 657/2014 & C.M.11749/2014

In proceedings under *the Motor Vehicles Act, 1988*, impugned Award of 3rd April, 2014 directs appellant to pay compensation to the tune of ₹8,90,000/- on account of disability suffered by injured in the accident in question. Learned counsel for the appellant has assailed the Award dated 3rd April, 2014. The first respondent had filed a claim petition under Sections 166 and 140 of *the Motor Vehicle Act, 1988* for grant of compensation of ₹25 lacs for injuries suffered by baby Muskan, a minor aged about 9 years in a vehicular accident, which took place on 7th February, 2012 outside Kalkaji Public School, New Delhi with a TATA Tempo.

The Tribunal while relying upon the evidence of the parties, came to a conclusion that the claimant-baby Muskan sustained injuries due to the rash and negligent driving of the driver of the Tempo.

Vide impugned Award, the Tribunal awarded the compensation under the following heads:-

- | | | |
|-------|---|---------------|
| (i) | Compensation for medical expenses | : ₹1,50,000/- |
| (ii) | Compensation for future medical expenses | : ₹4,00,000/- |
| (iii) | Compensation for conveyance | : ₹20,000/- |
| (iv) | Compensation for special diet and Attendant charges | : ₹20,000/- |
| (v) | Compensation for pain, sufferings, loss of marriage prospects/loss of income/amenities of life etc. | : ₹3,00,000/- |

Total

: ₹8,90,000/-

Learned counsel appearing for appellant seeks to challenge the compensation awarded for medical expenses, pain, sufferings and loss of amenities. He has submitted that the compensation for pain, sufferings and loss of amenities is too high as the claimant is suffering from permanent physical disability to the extent of 16% only in her left lower limb as per Disability Certificate Ex.P-1.

For awarding compensation for pain and sufferings and loss of income/amenities, the Tribunal has relied upon the decision of the Supreme Court in Civil Appeal No.7139/2013 titled *Master Mallikarjun vs. Divisional Manager, National Insurance Company Limited and Anr.* rendered on 26th August, 2013.

The Tribunal also took into account the medical record of the claimant and the evidence of PW-2 Dr. Vipul Sud, Sr. Consultant (Plastic Surgery), Batra Hospital and Medical Research Centre, New Delhi who has deposed that the claimant was admitted to the hospital on 7th February, 2012 and apart from the other injuries, she suffered a crush injury on her left leg and foot. She was discharged on 10th February, 2012. She was again admitted on 17th February, 2012 and discharged on 18th February, 2012 when devitalized tissues were removed and skin grafting was done. On the earlier occasion also, the same treatment was done.

Keeping in view the age of the child, the kind of injuries suffered and repeated hospitalisation, this Court finds that the Award of

₹3 lacs as compensation for pain, sufferings and loss of amenities of life is justified.

Learned counsel for the appellant has also challenged grant of compensation for future medical expenses. A perusal of the relevant portion of the Award reveals as follows:-

“PW-2, Dr.Vipul Sud, Sr.Consultant (Plastic Surgery), Batra Hospital and Medical Research Centre, New Delhi has proved his certificate, Ex.PW1/12 and has averred that the petitioner was lastly examined by him in July, 2012 and she required expansion of her normal skin by surgery to cover the effected/injured portion of her left leg and she would require multiple operations for curing the disfigurement. He has also averred that the approximate cost of the surgery, hospitalization, medicines etc. for expansion of her normal skin to cover the effected/injured portion of the left leg would be about ₹4 lacs.”

Keeping in view the testimony of PW-2, this Court finds that the compensation awarded for future medical expenses is just and in consonance with the evidence placed on record by respondent-claimant.

During the course of hearing, an apprehension was expressed by appellant’s counsel that respondent would not be spending the awarded compensation of ₹4 lacs towards the medical expenses for the necessary operation of respondent-claimant and that interest on the compensation awarded for future medical expenses ought not to be awarded. To submit so, reliance is placed upon Supreme Court’s decision in *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors.*, AIR 1995 SC 755.

Learned counsel for respondents supports the impugned order, but

fairly states that in view of the Supreme Court's decision in *R.D. Hattangadi (supra)*, the interest on the future medical expenses is not to be awarded. He, however, submits that the medical expenses are increasing day-by-day and first respondent could not undergo the necessary operations because her injuries have not yet healed.

Regarding the penal interest awarded @12% per annum, it is submitted by learned counsel for respondents that if penal interest is not awarded, then the insurance companies would never deposit the awarded amount in time.

Upon hearing and on perusal of impugned order and the evidence on record, I find that though in view of the dictum of Supreme Court in *R.D. Hattangadi (supra)*, interest on future medical expenses is not payable, but while taking into consideration the fact that medical expenses are rapidly increasing, the interest granted on account of "*future medical expenses*" is adjusted towards the increased cost of obtaining the medical treatment.

Regarding the penal interest @12% per annum on delayed deposit of awarded amount, I find that the statute provides limitation of 90 days for filing a statutory appeal and so, impugned order awarding penal interest @12% per annum for the period of 90 days is not justified. While entertaining this appeal, appellant was granted time to deposit the awarded amount and so, the penal interest is not payable in the instant case.

In the facts of this case, the impugned Award is modified to the extent that the penal interest awarded is set aside. In view of the interim

orders in this appeal, a sum of ₹4 lacs has been already released to respondents and now the balance amount deposited is ₹6,20,208/- has been secured by converting into Fixed Deposit Receipt by the Registrar General of this Court.

To ensure that the remaining awarded compensation is not frittered away by the guardians of first respondent, it is deemed appropriate to direct the Registrar General of this Court to remit the balance of deposited compensation with interest thereon, to the trial court forthwith with liberty to first respondent to seek its periodical withdrawal after filing appropriate applications duly supported by medical proof.

Trial court record be remitted back forthwith.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 05, 2016

S