

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3184 of 2002 (O&M)
Date of Decision: March 03, 2017

Smt. Nisha Manuja

..Appellant(s)

Versus

Daljit Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Pritam Saini, Advocate
for the appellant.

Respondent no.1 already *ex parte*.

Mr. Vipul Sharma, Advocate for
Mr. Nitin Mittal, Advocate
for respondent no.2.

Mr. V.M. Gupta, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

This is the claimant's appeal, dissatisfied with the award of compensation allowed to her by the Motor Accidents Claims Tribunal, Panipat.

Briefly detailing the facts first. Nisha along with some others was travelling in a car which met with an accident on 09.01.1998. Four claim petitions were filed. The present appeal is only on behalf of Nisha. She had sustained a fracture and dislocation of the right hip. It was claimed that she was 50 years old and was teaching students at home and her income was Rs.3,000/- per month. It was pleaded that she had spent Rs.2 lacs on her treatment and her treatment

was still going on and she had become totally disabled and she was unable to attend the call of nature without the assistance of a attendant. It was also pleaded that she would have to go to America for further treatment and some amount would be spent for travel and other expenses. A claim of Rs.20 lacs was filed.

The claim was resisted by the respondents who denied the involvement and the liability and pleaded that the claim was exaggerated and the claimant should be put to strict proof.

The Tribunal considered the bills Ex.P-23 to P-177 for the sum of Rs.83,722/-. It noted that she had got the substantial medical bills reimbursed from Oriental Insurance Company, vide certificate Ex.P-37, which was for a sum of Rs.58,831/- and held that since she had been sufficiently compensated, therefore, she was not entitled to any amount spent on the purchase of medicines. It also rejected the amount spent on air travel to U.S. holding that there was no need to go to U.S. for treatment as it was available in India. A lump sum amount of Rs.1,50,000/- was awarded.

The submission on behalf of the appellant is that the claimant was entitled to the entire amount which she had spent on the treatment and purchase of medicines as she had paid premium to buy a policy. It was urged that there was no reason to disallow the balance amount. It was urged that the claimant had suffered a disability and the certificate had been produced on record, which was not considered. It was urged that the claimant was also entitled to attendant charges and they had produced the bills and separate amount should have been

awarded for physiotherapy, attendant charges, transportation and future medicines and special diet.

The submission on the other hand was that there is no evidence that the claimant was admitted in any hospital and the accident took place in January, 1998 but the documents available on record pertain to a period much later in point of time. It was urged that no disability certificate had been produced nor any Medical Officer had been examined and the certificate Ex.P-36 was not issued by the Medical Board. It was urged that the claimant was not entitled to any amount spent on the travel to US as treatment is available in India and there was no reason for her to go to America and the added liability could not be placed upon them.

The discharge and follow-up card shows that Nisha was admitted in the Government Medical College & Hospital, Sector 32, Chandigarh on 10.01.1998 and was discharged on 13.04.1998. Therefore there was admission in the hospital for four months. The discharge was taken for further treatment at Delhi/USA as desired by the patient. The record shows that there was dislocation of the hip and there was a fracture of the Acetabulum. The record also shows that the claimant had been attending physiotherapy sessions at Panipat. The bills of purchase of medicines are up to the year 2001 i.e. even after three years after the accident.

No evidence was led by the claimant to show that she was working or had any income, therefore, she could be taken to be a housewife. It is not in dispute that the claimant had taken a policy and she

was reimbursed some amount by Oriental Insurance Company. The amount is noted in Ex.P-37 and is Rs.64,422/-. The bills of Rs.24,891/- were not reimbursed. No evidence was led to show how much premium was paid for the policy. Therefore, some addition can be made by guess work. The appellant is not entitled to any amount for travel to U.S. as it is not her case that the same treatment was not available here. The claimant had failed to examine any doctor to prove the disability. The claimant did suffer a fracture, which is evident from the discharge card but the claimant failed to examine the doctor to prove that there was any disability.

It is known that a hip dislocation or in case of fracture, the treatment is long and when the injury is after the age of 50, the recovery is slow. There are some bills which show that Rs.50/- each was paid to the physiotherapist in 1999-2000. I also find that though there are no prescriptions but medicines had been purchased till the year 2001 and the paraffin wax bath for the knee had been taken, which was not affected in the accident. It could be that the claimant had developed some problem in the knee but it was unrelated to this accident and could be due to age. The amount which totals up to Rs.1,50,000/-, which could be allowed on various heads would be the following:-

Difference in the medical bill	-	Rs.24,000/-
Premium for policy	-	Rs.5000/-
Physiotherapy (Rs.50 x 100)	-	Rs.5,000/-
Pain and sufferings	-	Rs.50,000/-
Transportation	-	Rs.20,000/-
Special diet	-	Rs.10,000/-
Attendant Charges (Rs.3000/- x 6)	-	Rs.18,000/-
Loss of services to the family	-	Rs.18,000/-
TOTAL		= Rs.1,50,000/-

Since the Tribunal had already awarded Rs.1,50,000/-, no further amount is payable to the appellant.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

March 03, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No