

\$~R-443

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th November, 2017

+ MAC.APP. 39/2012

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga, Mr. Pankaj
Gupta & Ms. Anjali Chawla,
Advts.

Versus

MAJOR SHYAM LAL DAHIYA & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent (claimant) had served Indian Army in the rank of major and was released from army service w.e.f. 1.12.2001. On 26.03.2007 when he was aged 57 years, while travelling on motorcycle bearing registration no. HR 26AA 4809, he came to be involved in a motor vehicular accident due to negligent driving of car bearing registration no. HR 26M 5731 which was insured against third party risk with the appellant (insurer) for the period in question. He instituted accident claim case (MAC Petition No.359/2008) on 03.10.2007 seeking compensation impleading the driver, owner and insurer of the car as party respondents. The tribunal held inquiry and thereafter, by judgment dated 05.08.2011, held that the accident had been caused due to negligence on the part of the car driver (second

respondent). Since the car was registered on the relevant date in the name of the third respondent (owner), both the said driver and owner were held jointly and severally liable to pay compensation. The tribunal concluded, on the basis of evidence led, that the claimant had been rendered permanently disabled due to the injuries suffered, he having been certified (Ex.PW-1/O) by a board of Dr. Ram Manohar Lohia Hospital, New Delhi to be a case of cervical injury with quadriparesis, the physical impairment being 75% in relation to the whole body. Taking into account, however, the other factors including the age of the claimant and also the nature of job in which he was then engaged, the tribunal concluded the functional disability suffered to be to the extent of 50%, note also being taken of the fact that amongst the injuries suffered, there was vitreous haemorrhage in the eye besides loss of three upper teeth. The tribunal awarded total compensation in the sum of Rs. 14,00,000/- calculating it thus:-

S.No.	Heads	Compensation
1.	Medicines & Treatment	Rs. 1,85,000/-
2.	Loss of Income	Rs. 50,000/-
3.	Loss of Earning Power	Rs. 10,80,000/-
4.	Loss of Amenities	Rs. 25,000/-
5.	Pain & suffering	Rs. 40,000/-
6.	Conveyance & spl. Diet	Rs. 20,000/-
	Total	Rs. 14,00,000/-

2. The liability to pay the above-mentioned amount was fastened on the insurer with interest @ 9% per annum levied.

3. The appeal at hand was brought by the insurance company questioning the award on various grounds, particularly, the assessment of functional disability and the award towards medical treatment. During the course of the proceedings arising out of the appeal, on 03.11.2016, it was pointed out that one of the documents submitted to show medical expenditure is an OPD card issued by Project Hospital, Nathpa of Satluj Jal Vidyut Nigam Limited, State of Himachal Pradesh on 02.04.2007, it indicating the condition of quadriplegia to be old one. On the basis of the said document, argument was raised that the condition of quadriplegia was pre-existing and, therefore, could not be related to the injuries suffered in the accident. It was also argued by the appellant that since the claimant was entitled to treatment from Army, his medical records for the period of two years before the accident required to be called for and examined. The claimant was directed to produce relevant records of such treatment as well as record relating to disability pension which had been granted by the Army for the period two years prior to the accident.

4. Pursuant to directions given by the order dated 03.11.2016, the claimant submitted affidavit (Ex.RW1/A) that had been sworn by him on 01.12.2016. In the wake of further directions by subsequent order dated 10.04.2017, the claimant was examined further (as RW1) on 28.04.2017 in course of proceedings arising out of the appeal. His deposition on the strength of affidavit (Ex.RW1/A) has been subjected to cross-examination by the counsel for the insurer.

5. It is noted that by way of additional evidence, it has come on record that after release from Army service w.e.f. 01.12.2001, the

claimant had taken up re-employment with Aviation Research Centre under the Directorate General of Cabinet Secretariat, New Delhi w.e.f. 09.12.2003. He has affirmed on oath that prior to such re-engagement he had been again examined and was permitted to take up such re-employment only upon being declared medically fit. He has also proved the pension documents (Ex.RW1/7) which confirm his assertion that at the time of discharge from the army service he had been granted disability pension to the extent of 30% which was on account of acute paranoid reaction (psychopathological condition). As an ex-serviceman, the claimant is a member of Ex-servicemen Contributory Health Scheme (ECHS) since 03.06.2004. He has proved on record that he had tried to obtain copies of the record of treatment for two years prior to the date of accident but the same has not been made available since the authorities in ECHS preserve such records not for more than three years (RW1/4).

6. Crucially, in the context of above-noted concern expressed by the insurer relating to the prescription from the Project Hospital at Nathpa of Satluj Jal Vidyut Nigam Limited, in the State of Himachal Pradesh, the claimant has produced a certificate (Ex.RW1/1) confirming that at the time of such examination, on 02.04.2007, the condition of quadriparesis was not found to be connected with any old medical history prior to the date of accident i.e. 26.03.2007.

7. During the course of arguments, the counsel for the insurer submitted that since the Project Hospital at Nathpa of Satluj Jal Vidyut Nigam Limited was in the State of Himachal Pradesh, it was unusual for the claimant to visit such place against the medical advice of

keeping himself in warmer climate, particularly on account of injuries suffered. The claimant is an ordinary resident of Gurgaon in State of Haryana. He has stated on oath that he consults doctor in Nathpa Jhakri near Rampur, Himachal Pradesh because he trusts him. Even if such explanation were to be kept aside, given the facts and circumstances of the case, this court finds no good reason to disbelieve the treatment record or the expenditure corresponding thereto which was proved at the inquiry before the tribunal by formal evidence, no such questions having been raised at that stage.

8. The insurer then argued through counsel that the evidence of the claimant had showed that after the treatment for two and half months, he had resumed duty and then proceeded on leave which according to the claimant was attributable to the injuries suffered after a gap of nine months. The argument raised is that if the claimant could resume duty for a period of nine months, the assessment of functional disability is incorrect. The argument must be rejected for two reasons. The gap of nine months referred to by the tribunal is based more on assumptions than any concrete material. There is nothing in the evidence of the claimant or otherwise on which it could be inferred that for the entire said nine months he was as active as he would ordinarily be. The second reason is that it has to be remembered that the functional disability is to be assessed in light of medical opinion. The disability certificate (Ex.PW-1/O) confirms that on account of cervical injury he is rendered a case of quadriparesis to the extent of 75%. This undoubtedly would affect his working capacity and quality of life.

9. The conclusions reached by the tribunal in the impugned judgment, therefore, do not call for any interference.

10. No other point was pressed at the hearing of the appeal. It is dismissed.

11. By order dated 10.01.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified, the said amount being initially put in fixed deposit receipt in UCO Bank, Delhi High Court Branch, initially for a period of one year with provision for auto renewal. By order dated 18.05.2012, Rs. 4,00,000/- was permitted to be released to the claimant. By subsequent order dated 16.09.2013, further amount of Rs. 5,00,000/- was permitted to be released. The registry shall take steps to release the balance with accrued interest to the claimant in terms of the judgment of the tribunal.

12. The statutory amount shall be refunded.

R.K.GAUBA, J.

NOVEMBER 09, 2017

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