

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

% ***Date of Decision: February 27, 2017***

(i) + **MAC.APP. 24/2009**

AMITABH HOSKOTE Appellant
Through Mr. Manu Shahalia, Advocate

Versus

ROHIT BHATIA & ORS. Respondents
Through Mr. P. Acharya, Advocate

(ii) + **MAC.APP. 756/2014**

UNITED INDIA INSURANCE CO. LTD Appellant
Through Mr. P. Acharya, Advocate

Versus

MAJOR AMITABH HOSKOTE Respondent
Through Mr. Manu Shahalia, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

Above captioned two appeals are directed against impugned Award of 27th September, 2008 which grants compensation of ₹15,42,000/- with interest @7.5% per annum to Claimant, who was injured in a road accident on 25th August, 2003. Above captioned first appeal is by Claimant, who is an Army Officer, a bachelor aged 33 years, to seek

enhancement of compensation. Additional evidence has been led by Claimant-Injured in this appeal to seek compensation of ₹24 lacs towards future medical treatment whereas in above-captioned second appeal, Insurer seeks reduction of compensation while asserting that it is a case of contributory negligence and on the ground, Claimant must have received reimbursement of his medical expenses as he is a government employee.

With consent of learned counsel for the parties, both the above-captioned appeals have been heard together and are being decided by this common judgment.

Facts are already noted in the impugned Award and so need no reproduction. Suffice to note that apart from evidence of Claimant-Injured, there is evidence of other official witnesses, who have proved medical treatment and service record of Claimant-Injured. Pertinently, Insurer has not led any evidence. On the basis of evidence recorded, learned Tribunal has rendered impugned Award.

Breakup of compensation awarded by learned Tribunal is as under:-

S. No.	Head	Amount in ₹
1	Medical treatment	₹1,75,000/-
2	Conveyance charges	₹1,00,000/-
3	Special diet	₹25,000/-
4	Attendant charges	₹40,000/-
5	Loss of income	₹1,14,000/-

6	Loss of earning capacity	₹5,38,000/-
7	Loss of promotional avenues	₹3,00,000/-
8	Loss of matrimonial prospects	₹1,00,000/-
9	Future treatment	₹50,000/-
10	Pain and agony	₹1,00,000/-
Total		₹15,42,000/-

To seek reduction of quantum of compensation awarded, learned counsel for Insurer submits that Claimant was under influence of liquor and that it is so evident from MLC of Claimant-Injured and thus, contributory negligence of Claimant-Injured is 50%. It is also submitted by learned counsel for Insurer that Disability Certificate disclosing 50% disability is inadmissible in evidence as it has not been duly proved on record. It is further submitted that conveyance charges includes travel of Claimant-Injured from Akola, where he was taking his treatment, to Delhi to give evidence and so, such conveyance charges ought to be excluded. It is next submitted by learned counsel for Insurer that under the head of *Loss of income* ₹1,14,000/- has been erroneously granted as Claimant-Injured has not remained on leave without pay and had drawn full salary. It is next submitted by learned counsel for Insurer that medical expenses of ₹1,75,000/- have been wrongly granted to Claimant-Injured as he had obtained treatment from Army Hospital where medicines are free. So, it is submitted that compensation granted deserves to be suitably reduced.

On the contrary, learned counsel for Claimant-Injured submits that compensation granted by learned Tribunal is inadequate and it needs to be suitably enhanced as '*future prospects*' have not been taken into consideration. It is pointed out by learned counsel for Claimant-Injured that net salary of Claimant has been taken into consideration and not his gross salary. It is further submitted that medical bills of ₹4 lacs are already on record and ₹1,75,000/- only under this head has been granted. It is submitted that apart from medical expenses of ₹4 lacs, additional compensation of ₹24 lacs ought to be granted to Claimant to enable him to obtain medical treatment with *Ilizarov* techniques. It is pointed out by learned counsel for Claimant-Injured that the advanced medical techniques are not available in the Army or Government hospital and this treatment would enable Claimant to walk. Thus, it is urged that on the basis of additional evidence led, medical expenses of ₹24 lacs towards future medical treatment ought to be granted. Lastly, it is submitted by learned counsel for Claimant-Injured that compensation under the head "*pain and suffering*" is wholly inadequate and needs to be suitably enhanced from ₹1 lac to ₹1.50 lacs. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award and evidence on record, I find that Claimant-Injured was undoubtedly under the influence of alcohol, but that by itself is not sufficient to impute contributory negligence to injured-claimant for the reason that Section 185 of *the Motor Vehicles Act, 1988* mandates that level of alcohol in blood of driver involved in accident, ought to be in excess of 30 mg, per 100 ml of blood and this is to be detected by *Breath Analyser Test* and no such

test has been conducted in the instant case to find out the level of alcohol in blood of Claimant-Injured. So, no contributory negligence can be attributed to Claimant-Injured. Similar view has been taken by a Coordinate Bench of this Court in *National Insurance Co. Ltd vs. Taj Tappa & Ors.*, (2012) SCC Online Del 4538.

Regarding exclusion of travel charges from Akola to Delhi for giving evidence, from conveyance charges, nothing has come in evidence of Claimant-Injured as to how much expenses were incurred by him to travel from Akola to Delhi to give evidence and so, there is no basis to reduce conveyance charges granted to him. Medical expenses have been claimed by injured-claimant on the basis of original medical bills and so, medical expenses cannot be disallowed, as there is no cross-examination of injured on this aspect.

Regarding the '*loss of income*', it has to be kept in mind that Claimant-Injured has availed his leave of the kind due and so, he had not remained on leave without pay. Therefore, on this ground, compensation granted under the head of '*loss of income*' cannot be disallowed or reduced. So far as medical expenses of ₹1.75 are concerned, this Court finds that evidence of Claimant-Injured that medical bills of ₹4,04,787.50/-, included conveyance charges, attendant charges and diet expense is to be considered. Even if expenses under the head of medical expenses, conveyance and attendant charges and diet expenses are clubbed together, still compensation awarded by learned Tribunal under these heads comes to ₹3,40,000/-, which is less than ₹4,04,787.50/-. Accordingly, charges under these heads are put under a composite head

of '*Medical Expenses*' and are enhanced from ₹3,40,000 to ₹4,04,787.50/- (round off to ₹4,04,800/-).

Compensation of ₹1 lac under the head "*pain and agony*" is apparently on lower side as in an injury case, Supreme Court in *Laxman vs. Oriental Insurance Co. Ltd.*, (2011) 10 SCC 756 has granted compensation of ₹1.50 lac under this head.

Supreme Court in *Sunil Sharma & Ors vs. Bachitar Singh & Ors*, (2011) 11 SCC 425 has reiterated that gross salary minus income tax, is to be considered as actual income and not as net salary. As per Salary Certificate (Ex. P-1), Gross salary of Claimant-Injured was ₹21,216/- per month and after deducting Income Tax of ₹2,860/-, it comes to ₹18,356/- p.m. Annual actual income comes to ₹18,356 X 12 = ₹2,20,272/-. While taking into consideration 20% functional disability and by applying multiplier of 12, '*loss of earning capacity*' is assessed at ₹6,16,761/-. So, compensation awarded under the head '*loss of earning capacity*' is enhanced from ₹5,38,000/- to ₹6,16,761/-.

Under the head of '*future treatment*', compensation of ₹50,000/- has been awarded by learned Tribunal without any evidence from medical expert. Additional evidence led by Claimant-Injured is regarding the medical certificate (Ex. AW1/1), which is not duly proved by the concerned doctor regarding effectiveness of treatment for reconstruction of left lower limb of Claimant-Injured. Evidence on this vital aspect is lacking. Considering the fact that original medical certificate has not been proved on record by doctor concerned, it is deemed appropriate to relegate Claimant-Injured to lead evidence before learned Tribunal to

seek compensation under this head of '*future medical expenses*. Such a course is adopted as Supreme Court in *Raj Kumar Vs. Ajay Kumar* (2011) 1 SCC 343 has reiterated that medical evidence is required to corroborate evidence of claimant to seek future medical expenses. So, compensation of ₹50,000/- under this head is disallowed for the time being, with liberty to Claimant-Injured to file fresh application to seek compensation under this head. Needless to say that Claimant-Injured would be provided an opportunity not only to lead his own evidence afresh but also to get the doctor, who issued medical certificate in May 2011, examined. Such a course is being adopted so that fresh medical evidence regarding effectiveness of this advanced treatment also comes on record to assess compensation payable under this head of '*future medical expenses*'".

In light of aforesaid, compensation payable to Claimant-Injured is reassessed as under:-

<i>Medical expenses etc.</i>	₹4,04,800/-
<i>Loss of income</i>	₹1,14,000/-
<i>Loss of earning capacity</i>	₹6,16,761/-
<i>Loss of promotional avenues</i>	₹3,00,000/-
<i>Loss of matrimonial prospects</i>	₹1,00,000/-
<i>Pain and suffering</i>	₹1,50,000/-
Total	₹16,85,561/-

Consequently, impugned Award is modified with liberty to Claimant-Injured to seek compensation from learned Tribunal under the head '*future medical expenses*' in the claim petition already in trial court record.

In view of Supreme Court's decision in *Kalpana Raj & Ors vs. Tamil Nadu State Transport Corp.*, (2015) 2 SCC 764, enhanced compensation, after adjusting the compensation already deposited/released to Claimant-Injured, shall carry an interest @ 9% *per annum* from the date of claim petition, till date of deposit. Insurer to deposit the enhanced compensation with interest within four weeks from today before the learned Tribunal.

Statutory deposit, if any, be refunded to Insurer as per Rules.

With aforesaid directions, both these appeals are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 27, 2017

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