

\$~ R-729 & R-730

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

Decided on: 12th January, 2018

+ MAC. APP. 60/2013

RAVINDER UPPAL Appellant

Through: None.

versus

SUDERSHAN SINGH & ORS Respondents

Through: Mr. A.K. Soni, Advocate for
R-3.

+ MAC. APP. 264/2013 & CM 4828/2013

SUDERSHAN SINGHAppellant

Through: None.

versus

RAVINDER UPPAL & ORSRespondents

Through: Mr. A.K. Soni, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ravinder Uppal (appellant in MAC. Appeal No. 60/2013 and first respondent in MAC. Appeal No. 264/2013) had instituted an accident claim case (Suit No. 194/07) on 14.08.2007 seeking compensation for injuries suffered by him in a motor vehicular accident that had occurred on 17.03.2007 due to negligent driving on

the part of Sudershan Singh (appellant in MAC. Appeal No.264/2013 and first respondent in MAC. Appeal No.60/2013) of truck bearing registration No. PB-10BV-8610. The Tribunal held inquiry and, by judgment dated 27.08.2012, upheld his case for compensation holding the said Sudershan Singh (driver) responsible for the accident.

2. The Tribunal awarded compensation in the total sum of Rs.22,53,600/-, the said amount inclusive of damages on account of medical expenses and physiotherapy charges (Rs.7,75,600/-), special diet and conveyance (Rs.1,00,000/-), attendant charges (Rs. 1,20,000/-), loss of income during the period of treatment (Rs.6,58,000/-), loss of future income due to disability assessed at 10% (Rs.2,75,000/-), loss of marriage prospects (Rs.1,00,000/-), damages for pain and suffering (Rs.75,000/-), loss of amenities of life (Rs.75,000/-) and loss of expectation of life (Rs.75,000/-).

3. The claim petition had been presented before the Tribunal by Ravinder Uppal (the claimant) through his father and attorney Mr. Pradeep Kumar Uppal. In the wake of objection being taken to the maintainability of the petition presented by a person allegedly without authority, an additional issue was framed by the Tribunal on 28.08.2010. The claimant, however, amended the petition to bring on record the additional facts of filing the petition through attorney. The said order was challenged before this Court but rejected by order dated 26.05.2011. In terms of the said order of this Court, the liability to pay interest for the period wherein the petition in question had remained pending in this Court, was placed at the door of the driver (the first respondent). Thus, the Tribunal, while directing the

payment of compensation in the total sum of Rs.22,53,600/- by judgment dated 27.08.2012, called upon the insurer (respondent No.3) to pay the said amount with interest @ 9% per annum fastening the liability also of interest for the aforementioned period on the first respondent.

4. The claimant filed the appeal (MAC Appeal 60/2013) submitting grievance that the compensation awarded is not adequate. On the other hand, the driver has also filed appeal (MAC Appeal No.264/2013) submitting primarily that the petition was filed without authority, the conclusions reached about the involvement of the vehicle in question or negligence on the part of its driver, being unfounded and that the award of compensation granted is excessive.

5. Both the appeals were put in the list of 'Regulars' as per orders dated 26.04.2016 and when they are called out for hearing on their own turn, there is no appearance on behalf of either of the appellants. The counsel for the insurer only is present and with his assistance the record has been perused.

6. A perusal of the Tribunal's record reveals that the petition was filed in the name of the claimant but was signed and verified by his father Mr. Pradeep Kumar Uppal who had also submitted his affidavit in its support, claiming himself to be attorney duly appointed by the claimant. The claimant concededly moved an application on 12.05.2009 seeking to amend the petition, *inter alia*, to bring on record that the petition had been filed through attorney. It is admitted in the appeal of the driver (MAC Appeal No.264/2013) that the challenge to the order allowing the amendment of the petition by

CM(M) No.1253/2010 was dismissed by this Court by order dated 26.05.2011 burdening him (the driver) with the liability to pay interest for the period the petition had remained pending in the High Court. The appellant submitted that pursuant to the liberty granted by the Supreme Court, by order dated 02.01.2012, in Civil Appeal No.20867/2011, he had submitted an application for review before this Court in the proceedings arising out of CM(M) No. 1253/2010. It may be mentioned here that as per the documents filed on record by the claimant by CM No. 8592-93/2013, the review petition No.149/2012 submitted by the driver was dismissed by order dated 15.02.2013 (Page No.98 of the paperbook of MAC. Appeal No. 264/2013).

7. Having perused the record of the Tribunal and having heard the learned counsel for the insurer who only is present, this Court finds no merit in either of the two appeals. The conclusions reached by the Tribunal with regard to the involvement of the vehicle in question and negligence on the part of its driver are based on proper appreciation of the evidence adduced, primarily of the claimant himself appearing as PW-1. His word is supported by the testimony of Vikas Jain (PW-23), an eye-witness. The denial of his complicity, as deposed to by the driver (RW-1) has been rightly disbelieved in the light of the record of the corresponding criminal case (Ex.PW1/303-309).

8. The conclusions about the earnings of the claimant were rightly reached on the basis of evidence led including the salary certificate (Ex.PW1/5). Therefore, it is not correct on the part of the driver to contend in his appeal that the compensation under the heads of loss of income during the period of treatment or in future was unfounded.

This Court finds no error or deficiency in the awards under various heads. The grievance of the claimant in his appeal that adequate compensation has not been granted under the heads of loss of marriage prospects, pain and suffering, loss of amenities of life, special diet, conveyance or attendant charges, is unfounded. The Tribunal has taken an appropriate view on the basis of material brought before it during the inquiry.

9. The grievance of the claimant about the deduction of the amount received under the medi-claim policy is also not acceptable. There cannot be a double advantage gained. The amount which he has already received as reimbursement under the medi-claim policy cannot be included in the medical expenditure incurred for which the claimant deserves to be compensated.

10. Thus, both appeals are devoid of merits and are dismissed.

JANUARY 12, 2018

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R.K.GAUBA, J.

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