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

% **Date of Decision: 21st February, 2018**

\+ MAC.APP. 821/2017 and C.M. Appl. Nos.33274-75/2017

BAJAJ ALLIANZ GENERAL
INSUREANCE CO LTD ..... Appellant
Through: Mr. A.K. Soni, Advocate

versus

DEVKI NADAN KUMAR & ANR ..... Respondents
Through: Mr. R.K. Pandey and Mr. P.S. Jha, Advocates for respondent No.1

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.2,30,46,731/- has been awarded to respondent No.1.

2. Respondent No.1 filed an application for compensation under Sections 166 and 140 of the Motor Vehicles Act claiming compensation on the averments that on 13th April, 2012 at about 01:45 p.m., he was going on the motorcycle bearing registration No.DL-9S-AD-8844 from Dhaula Kuan to his house when he was hit by car bearing No.DL-4C-AD-8162 from behind near Pararde Ground Road, Delhi Cantt. whereupon he fell down and suffered multiple grievous injuries; PCR van came to the spot and took him

to Safdarjung Hospital where his MLC was prepared; later on 16th April, 2012, he was admitted to Mata Chanan Devi Hospital and was discharged on 18th April, 2012; he thereafter took treatment from different hospitals; he suffered loss of eye sight, loss of hearing, loss of memory power, loss of smell power, six teeth broken, right hand fracture and other multiple injuries; he claimed to have incurred Rs.20,00,000/- as medical expenses; he was aged 47 years at the time of the accident and practicing before Supreme Court as a panel lawyer for different banks and was earning Rs.2,50,000/- per month.

3. The appellant is the insurer of the car bearing No.DL-4C-AD-8162. The appellant disputed the accident and denied all the averments made in the claim petition except that the offending vehicle was insured with the appellant.

4. The Claims Tribunal framed the following issues on 08th July, 2013:

> *" 1. Whether Sh. Devki Nandan sustained injuries in a motor vehicle accident dated 13.04.2012 due to rash and negligent driving of vehicle no.DL 4C AD 8162 being driven by R1? OPP*
> *2. Whether the petitioner is entitled to claim compensation, if so, what amount and from whom? OPP*
> *3. Relief."*

5. Respondent No.1 appeared in the witness box as PW-4 and reiterated the averments made in the application for compensation. He deposed that he was a practicing lawyer on panel of different banks i.e. Punjab National Bank, Allahabad Bank, UCO Bank, United Bank of India, Oriental Bank of Commerce, Punjab and Sind Bank and Canara Bank and his monthly income was Rs.2,50,000/- per month at the time of the accident. The membership

card of the Bar Council and Supreme Court Bar Association was marked as Ex.PW-4/1C, the Income Tax Return as Ex.PW-4/2, PAN Card as Ex.PW-4/3, medical bills as Ex.PW-4/4, medical treatment record as Ex.PW-4/5, conveyance charges as Ex.PW-4/6 and the estimated bills as Ex.PW-4/7 and Ex.PW-4/8. Respondent No.1 filed an additional affidavit and deposed that his treatment was continuing in various hospitals namely, AIIMS, Janak Puri Super Specialty Hospital; Janak Puri Super Specialty Hospital, Neurology Department; AIIMS Hospital ENT Department. Respondent No.1 was cross-examined by respondent no.2 in person on 5th May, 2014. However, the Claims Tribunal closed the appellant's right to cross-examine respondent no.1 on 25th July, 2017 by a cryptic order.

6. On 05th August, 2014, the appellant filed an application under Order 11 Rule 14 of the Code of Civil Procedure seeking production of the following documents from respondent No.1: -

> "*1. Form 26AS of 3 financial years before the accident date and 3 financial years after the accident date.*
> *2. ITR of 3 financial years before the accident dated and 3 financial years after the accident date*
> *3. copy of statement of account for each financial year*
> *4. copy of empanelment letters received by him from organizations in which is a panel advocate*
> *5. copy of proximity card used in Hon'ble Supreme court for entry*
> *6. copy of orders (10 at least) pronounced by Hon'ble Supreme Court showing his attendance in the matters*"

The Claims Tribunal dismissed the aforesaid application vide order dated 01st December, 2015.

7. Respondent No.1 examined PW-1 Rakesh Kumar, Medical Record Clerk from Mata Chanan Devi Hospital, who produced the record of

hospitalization of respondent No.1 in Mata Chanan Devi Hospital from 16th April, 2012 to 18th April, 2012. The discharge summary, treatment record, tests reports and medical bills totaling to Rs.18,839/- were marked as Ex.PW-1/1 to Ex.PW-1/4. Respondent No.1 examined two chemists as PW-2 and PW-3 from whom respondent No.1 claimed to have purchased the medicines and the copies of their retail invoices were marked as Ex.PW-2/1 and Ex.PW-3/1.

8. Respondent No.1 examined Dr. Taru Dewan, Eye Specialist, Dr. Ram Manohar Lohia Hospital, New Delhi as PW-5 who proved the documents pertaining to the examination/investigation of respondent No.1 as Ex.PW-5/A and report of the Medical Board constituted by the Medical Superintendent of Dr. Ram Manohar Lohia Hospital, New Delhi.

9. Respondent No.1 examined Dr. R.P. Beniwal, Assistant Professor (Psychiatry) from Dr. Ram Manohar Lohia Hospital, New Delhi as PW-6 who proved the discharge summary of respondent No.1 as Ex.PW-6/A and report of the Medical Board constituted by the Medical Superintendent of Dr. Ram Manohar Lohia Hospital, New Delhi as Ex.PW-6/B.

10. The Claims Tribunal did not permit the appellant to cross-examine PW-6 on the ground that the appellant has filed an application dated 22nd February, 2016 for seeking the opinion of the Medical Board on the following important aspects: -

"(a) Disability assessed should be also only the disability caused due to the accident and not the overall disability if any.

(b) Looking at the MLC, are the injuries grievous in nature? Grievous that they might cause vision loss and hearing loss to the patient?

(c) Is it possible that his vision loss is due to some other reason and not due to accident?

(d) *Partial optic nerve damage has been mentioned. Have there been conducted any tests to confirm of the same? Is it a consequence of the accident?*

(e) *First CT scan done after the accident (13.04.2012) shows normal study. MRI (21.05.2012) done after 1.5 months shows a different scenario. Is it possible that the person had another accident in between those days to cause such changes in the MRI or is it possible for late changes to appear in the scans?*

(f) *A contrast MRI done on 16th June, 2012 again shows no abnormality.*

(g) *Mild degenerative changes are seen in the articular surfaces of distal radius and ulna, whereas no mention of hand injuries in the first reports and MLC.*

(h) *A Perimetry analysis has been done which shows vision loss, agreeable, no other tests mention optic nerve injury is it not? Is it possible that this vision loss is due to some other reason?*

(i) *MLC does not mention any pain in tooth, however a month later, the person has pain in tooth and removal of 4 teeth, looking at the dental records."*

11. The Claims Tribunal issued notice on above application to respondent No.1 on 1st March, 2016 but no reply was filed by respondent No.1. However, The Claims Tribunal however did not pass any order on the aforesaid application filed by the appellant.

12. The appellant examined Dr. Sonune Vaibhav Bhaurao as R2W1 who proved his opinion Ex.R2W1/2 according to which impairments sustained by the appellants were not the result of road accident; the injuries sustained in the road traffic accident were of simple nature and the impairments allegedly sustained could be a result of pre-existing disease of appellant.

13. Vide order dated 01st December, 2015, the Claims Tribunal directed Medical Superintendent of AIIMS to constitute a Medical Board to examine respondent No.1 with regard to his injuries/ various medical problems

suffered by respondent No.1 in the road accident dated 13th April, 2012, in pursuance to which AIIMS constituted a Board and submitted its report dated 05th December, 2016 to the Claims Tribunal.

14. The Claims Tribunal held that respondent No.4 suffered injuries in the accident dated 13th April, 2012 caused by rash and negligent driving of respondent No.2 on the basis of which FIR No.93/2012 under Sections 279/337 IPC was registered by the police. The Claims Tribunal awarded Rs.3,42,240/- towards the medical expenditure, Rs.2,97,500/- towards the attendant charges, Rs.3,67,500/- towards conveyance, Rs.1,00,000/- towards special diet, Rs.10,29,269/- towards future treatment, Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- towards loss of enjoyment of life and Rs.10,00,302/- towards loss of income. The Claims Tribunal took the income of respondent No.1 as Rs.20,00,604/- per annum, added 30% towards future prospects, applied the multiplier of 13, took the functional disability of 58% and awarded Rs.1,96,09,920/- towards loss of earning capacity. The total compensation awarded by the Claims Tribunal is Rs.2,30,46,731/-. The Claims Tribunal further awarded interest @ 10% per annum on the award amount except on Rs.10,29,269/- towards future treatment.

15. Learned counsel for the appellant urged the following submissions at the time of the hearing of the appeal: -

15.1. The impugned award passed by the Claims Tribunal is perverse and contrary to the well settled principles of law and procedure.

15.2. Respondent No.1 claims to have met with an accident on 13th April, 2012 and was taken by PCR to Safdarjung Hospital where his MLC was recorded and he was discharged on the same day. The investigating officer

visited the hospital to record the statement of respondent No.1 who neither gave any statement nor lodged any complaint. After two days of the accident day i.e. 16th April, 2012, respondent No.1 was admitted in Mata Chanan Devi Hospital where he remained upto 18th April, 2012. On 21st April, 2012 i.e. after 8 days of the alleged accident, respondent No.1 visited the police station to lodge an FIR against car bearing registration No.DL-4C-AD-8162 which was insured with the appellant. Respondent no.1 did not examine any independent witness to prove the accident.

15.3. There appears to be a clear collusion between the respondent No.1 and respondent No.2 which is clear from the fact that respondent No.1 compounded the matter with respondent No.2 by accepting compensation of Rs.25,000/- before the learned Metropolitan Magistrate. Respondent no.2 appeared in person before the Claims Tribunal and cross-examined the respondent no.1 to support the case of respondent no.1. It is also pertinent to mention that the police registered the case of simple injuries under Section 279/337 IPC and the respondent No.1 did not raise any objection for not adding Section 338 IPC which refers to the grievous injuries.

15.4. The alleged accident resulted in simple injuries to respondent No.1 which is clear from the MLC recorded by Safdarjung Hospital. According to that MLC, respondent No.1 suffered abrasion on left and right elbow, abrasion on left and right hand, abrasion on middle finger and ring finger of left hand, abrasion on right and left knee, abrasion on right ankle, swelling of middle finger of left hand. Respondent No.1 has not suffered the alleged disabilities because of the alleged accident. Respondent No.1 has not led any evidence whatsoever to prove that the alleged disabilities resulted from the alleged road accident dated 13th April, 2012.

15.5. Respondent No.1 has raised a false claim with respect to his income of Rs.2,50,000/- per month. Respondent No.1 filed copy of Income Tax Return for the year 2012-13 six months after the accident i.e. 06th October, 2012 in which he declared his income to be Rs.20,00,604/- per annum. However, the copies of the balance sheet, profit and loss account and other documentary evidence in support of Income Tax Return were not placed before the Court. Respondent No.1 claimed to be a practicing lawyer at Supreme Court as a panel lawyer with different banks such as Punjab National Bank, Allahabad Bank, UCO Bank, United Bank of India, Oriental Bank of Commerce, Punjab and Sind Bank and Canara Bank but no document to show his empanelment was produced; no order sheet with respect to his Court appearance or any document with respect to the payment of professional fees or even deduction of TDS was produced before the Claims Tribunal. Respondent No.1 also failed to produce the ITRs for the last three years before the date of accident.

15.6. The Claims Tribunal recorded the statement of respondent No.1 on 02nd August, 2017 when he admitted that he was having income from ancestral property and interest from the FDRs. The single Income Tax Return filed six months after the accident without producing the copies of the previous Income Tax Returns and without producing the balance sheet and profit and loss account coupled with the statement made by respondent No.1 before the Claims Tribunal that the source of his income was ancestral property and interest from the FDRs, was not sufficient to prove his professional income. Moreover, in the admission form of Mata Chanan Devi Hospital Hospital, the income of respondent No.1 has been declared as Rs.35,000/- per month.

15.7. The appellants' application under Order 11 Rule 14 of the Code of Civil Procedure seeking production of the relevant documents by respondent No.1 was dismissed by the Claims Tribunal in an erratic manner.

15.8. The Claims Tribunal has taken the functional disability of respondent No.1 as 58%. However, no medical expert was examined by respondent No.1 to prove that the alleged disabilities occurred due to the alleged road accident. Respondent No.1 has long standing history of diabetes.

15.9. The Claims Tribunal erred in not considering the evidence of medical expert R2W1, Dr. Sonune Vaibhav Bhaurao who proved his opinion Ex.R2W1/2 that the impairments sustained by respondent No.1 were not the result of road accident, as the injuries sustained in the road traffic accident were of simple nature.

15.10. The Claims Tribunal awarded Rs.10,29,269/- towards the future treatment without any evidence in support thereof.

15.11. The Claims Tribunal erred in awarding Rs.2,97,500/- towards attendant charges. No evidence was led by respondent No.1 to prove the payment of the alleged attendant charges made to the attendant.

15.12. The Claims Tribunal awarded Rs.3,67,500/- towards conveyance and Rs.1,00,000/- special diet without any evidence in support thereof.

15.13. The award of loss of earning capacity of Rs.1,96,09,920/- as well as Rs.10,00,302/- towards loss of income is perverse and not based on any evidence.

15.14. The compensation of Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- towards loss of enjoyment of life is exorbitant.

15.15. The Claims Tribunal has awarded interest @ 10% per annum which is on a higher side considering that this Court is consistently awarding interest @ 9% per annum.

16. The appellant has filed an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to lead additional evidence. The appellant seeks setting aside of the order dated 1st December, 2015 passed by the Claims Tribunal whereby the appellant's application under Order 11 Rule 14 of the Code of Civil Procedure was dismissed by the Claims Tribunal. The appellant also seeks the opinion of the Medical Board in terms of the application dated 22nd February, 2016, which was not decided by the Claims Tribunal. Learned counsel for the appellant seeks permission to cross-examine respondent No.1 (PW-4) on the ground that the cross-examination was closed by the Claims Tribunal by an erratic order dated 25th July, 2017. Learned counsel for the appellant also seeks to cross-examine Dr. R.P. Beniwal (PW-6) who was not permitted to be cross-examined by the Claims Tribunal.

17. Learned counsel for the respondent no.1 urged at the time of hearing that the respondent No.1 duly proved his entire claim before the Claims Tribunal and the Claims Tribunal had awarded a fair compensation in accordance with law.

Findings

18. This Court is of the view that the Claims Tribunal gravely erred in closing the cross-examination of respondent No.1 (PW-4) by the appellant on 25th July, 2017. The Claims Tribunal also erred in not permitting the appellant to cross-examine Dr. R.P. Beniwal (PW-6). The order dated 25th July, 2017 is set aside and the appellant is permitted to cross-examine

respondent No.1 (PW-4) and Dr. R.P. Beniwal (PW-6) before the Claims Tribunal.

19. The Claims Tribunal gravely erred in dismissing the appellant's application under Order 11 Rule 14 of Code of Civil Procedure on 1st December, 2015. The order dated 1st December, 2015 is perverse and hereby set aside. The appellant's application under Order 11 Rule 14 of the Code of Civil Procedure is allowed and respondent No.1 is hereby directed to produce all the documents mentioned in the application under Order 11 Rule 14 of the Code of Civil Procedure before the Claims Tribunal.

20. The Claims Tribunal also erred in not deciding the appellant's application dated 22nd February, 2016 seeking opinion of the medical experts on the questionnaire mentioned in the application. The application dated 22nd February, 2016 is allowed and the Medical Board of Safdarjung Hospital is directed to examine the respondent No.1 and give opinion on the questionnaire reproduced in para 10 above. The Medical Board shall also give opinion as to whether respondent no.1 has suffered any disability from the injuries suffered in the road accident dated 13th April, 2012.

21. Respondent No.1 has not examined any independent witness to prove the factum of alleged accident which was necessary considering that the respondent No.1 did not lodge any compliant on 13th April, 2012 and the FIR was lodged 8 days after the accident. There is no explanation on record for the delay in lodging the FIR.

22. On 13th April, 2012 at about 12:30PM, the respondent was taken by the PCR van to Safdarjung Hospital where his MLC was prepared at about 02:55 P.M. As per the MLC, respondent No.1 suffered simple injuries namely abrasion on left and right elbow; abrasion on left and right hand;

abrasion on middle finger and ring finger of left hand; abrasion on right and left knee; abrasion on right ankle and lat moleoles and swelling of middle finger of left hand. As per the MLC, respondent No.1 did not suffer any head injury or injuries on the face and dental region and the nature of injuries suffered by the respondent No.1 were simple in nature and not of grievous nature. Safdarjung Hospital discharged respondent No.1 after prescribing medicines for the simple injuries the same day. The relevant portion of the MLC issued by Safdarjung Hospital is reproduced hereunder:-

"Particulars of Patient: MLC No. Cl 589849 – 2:55 PM Date of Examination 13-4-12
Name Devki Nand Father Name Ganga Prasad
Age 57 Religion Occupation
Residence RZ D-3/63 Palam
Marks of identification Black mole on the left side nose
PARTICULARS OF INJURY OR SYMPTOMS AND SIGNS IN CASE OF POISONING

Brought by PCR

A/H/O – RTA

Date and Time of injury - 13/4/12 at 12:30 PM

H/o – LOC for 15 minutes
No H/o – Vomiting ENT Bleed
O/E – Pt. is conscious, oriented
Pulse =80/min
BP =126/80
GCS =15/15

– abrasion on left and right elbow
– abrasion on left and right hand
– abrasion on middle and ring figure of left hand
– abrasion on right and left knee
– abrasion on right ankle and lat moleoles
– swelling of middle finger of left hand.

Adv- A/S/O - 105
– Inj. Tetvac 1ap1/m
– Inj. Tetvac 1ap1/m
– X ray both hand
– Ref to NS ward 4
– Ref to EOJ 31 after wd A Clearance

Nature of injuries……Blunt…… "

- *(Simple) / grievous / or Dangerot/s*

……

23. On 16th April, 2012, respondent No.1 went to Mata Chanan Devi Hospital with the complaint of chest pain, anxiety, sweating, body ache mild abdomen pain. The hospital conducted x-ray of right hand and right shoulder which were normal. The X-ray of right ankle was also done which was also

normal. The hospital further conducted X-ray of right hand and wrists which showed an old fracture of right distal radius. The hospital also conducted NCCT head, ECG Kidney and Urine and CBC tests which were all normal. Respondent No.1 was discharged from the hospital on 18th April, 2012 in a stable condition. The discharge summary of respondent no.1 issued by Mata Chanan Devi Hospital records that respondent no.1 responded well to the treatment given.

24. Respondent No.1 claims to have suffered 50% disability in intellectual impairment, 40% visual disability, 84% hearing disability and mild weakness in right hand grip. However, no medical expert has been examined by respondent No.1 to prove that the aforesaid disabilities have resulted from the injuries suffered by respondent No.1 in the road accident dated 13th April, 2012.

25. Respondent No.1 is relying on the disability certificate dated 05th December, 2016 issued by AIIMS. However, no medical expert from AIIMS has been examined by respondent No.1 to prove that the disabilities mentioned in the disability certificate dated 05th December, 2016 resulted from the injuries suffered by respondent No.1 in the accident dated 13th April, 2012.

26. Respondent No.1 examined Dr. Taru Dewan, Eyes Specialist from Ram Manohar Lohia Hospital as PW-5 who deposed that respondent No.1 has 40% visual disability due to damage to right optic nerve. However, PW-5, Dr. Taru Dewan admitted in cross-examination that he did not examine the MLC or the discharge summary of respondent no.1. PW-5 admitted in cross-examination that the damage to right optic nerve can be pre-existing or due to some other reason. PW-5, therefore, did not prove the respondent's

claim of having suffered visual disabilities due to the injuries suffered in the road accident dated 13th April, 2012.

27. Respondent No.1 examined Dr. R.P. Beniwal, Assistant Professor (Psychiatry) from Dr. Ram Manohar Lohia Hospital who proved the medical report Ex.PW-6/B issued by Ram Manohar Lohia Hospital, New Delhi. PW-6 was not subjected to cross-examination by the appellant and, therefore, his testimony could not have been taken into consideration.

28. The Medical Report of Dr. Ram Manohar Lohia Hospital (Ex.6/B) records that the poor vision on the left eye is not explainable by trauma, however poor vision in right eyes may either be pre-existing or caused by trauma. As such, the Medical Report does not prove the respondent's claim of having suffered visual disabilities due to the injuries suffered in the road accident dated 13th April, 2012. The Medical Report issued by Ram Manohar Lohia Hospital, New Delhi dated 15th February, 2014 Ex.PW-6/B is reproduced as under :-

> *"The board meeting was held on 29th November, 2013 in the presence of all board members and the board opined as, the patient complaint of poor vision in both eyes due to trauma. On the basis of examination & investigations it is felt that poor vision on the left eye is not explainable by trauma , however poor vision in right eyes may either be preexisting or cause by trauma. His present disability on the basis of present eye i.e. 6/36 in the better eye and 6/60 in worse eye is 40% which is not explainable by trauma . there was no other disability detected*
>
> | | | |
> |---|---|---|
> | *Signed* | *Signed* | *Signed* |
> | *Dr.Satish Kumar* | *Dr. Jyoti Garg* | *Dr. Taru Dewan* |
> | *Sr. Ortho Surgeon* | *Neurologist* | *Eye Specialist* |
> | *(on leave)* | *Signed* | *Signed* |
> | *Dr. Ashok Kumar* | *Dr. Ajay Chaudhary* | *Dr.R.P.Baniwal* |
> | *ENT Specialist* | *Neurosurgery* | *Psychiatrist"* |

29. Respondent No.1 claims to have taken treatment from Dental World, Jeewan Park, Uttam Nagar; Dr. Col APS – Ex Senior – Consultant, Mata Channan Devi Hospital; Janak Puri Super Speciality Hospital; Ameda Hospital; Dr. Suneja Mri & Diagnostic Centre; IBHAS, Dilshad Garden; RML Hospital, Orthopaedic; G.B. Pant Hospital, GNCTD; Prime Speech & Hearing Aid Centre; Jain Clinic; Dr. Ravi Manocha; Dr. Abha Bhatnagar; Dr. Dharmesh Jain; Physiotherapy; AIIMS, Orthopaedic; AIIMS,Psychiatry; AIIMS,Cardiothoracic and neuroscience Centre; AIIMS, ENT. However, no doctor who treated respondent No.1 was examined as a witness.

30. The Claims Tribunal erred in not considering the evidence of Dr. Sonune Vaibhav Bhaurao as R2W1 who proved his opinion as Ex.R2W1/2 which is reproduced as under:-

> *" …… I am of the opinion that impairments sustained by Sh. Devki Nandan Kumar, are not the result of road accident, as the injuries sustained in the road traffic accident are of simple nature, which are corroborated by supporting medical documents.*
>
> *Said impairments can be a result of pre-existing disease of Sh. Devki Nandan Kumar."*

Date and document provided	*c/o*	*Hospital/ doctor*	*Diagnose*	*Investigation Treatment*	*Remarks*
13/04/12 MLC	*RTA*	*Safdarjung Hospital*	*I.*	*I. Abrasion on left and right elbow II. Abrasion on left and right hand III. Abrasion middle and ring figure of left hand IV. Abrasion*	*GSC 15/15 Patient Conscious* *No head injury or facial orbital injuries were noted down, no nasal ENt bleeding notes were made.*

				on right and left knee V. Abrasion on right ankle at lateral moleoles VI. Swelling of middle finger of left hand	
13/04/12		*Discharge summary not provided*			*Patient is a known case of type 2 diabetis which is ,ost possibly related ethiology for his diminished vision as pe his complains, the discharge summary should contain the records in the treatment provided, discharge summary is not been provided. Kindly get the same.*
17/05/12 OPD Ticket	*c/o visual disturbanc e /memory infringeme nt*	*Govt of NCT delhi Regd no 12816*	*Known Case DM*	*Managed with anti diabetic medictions.*	*Note : Patient is a known case of DM, his subsequent complains of diminished vision, syncopal intervals may have a nexus with his BSL from time to time. Generally for a type 2 DM Eye damage (retinopathy). Diabetes can damage the blood vessels of the retina (diabetic retinopathy), potentially leading to blindness. Diabetes also increases the risk of other serious vision conditions, such as cataracts and glaucoma. which may be cause of diminished vision*
17/10/12 Opd ticket	*Tingling sensation of hand feet for 1-2 months tremors +*	*Janakpuri super speciality*	*Neuropat hy*	*Neurobion prescribed*	*Note : it takes around 3-5 yrs for a DM patient to develop neuropathy, though tingling could be also noted if initial high levels uncontrolled BSL*
16/04/12 to 18/04/12 discharge sheet		*Janakpuri multi speciality*	*CAD angina*	*NCCT head normal study,*	*Normal discharge*
07/01/13	*Consultant eye surgeon*		*Note: No complains noted by attending doctor n*	*Not made clear if he is suspecting partial nerve injury or diagnosing.*	*NO nexus with RTA proved.*

				Also the injury he said in his statement made.	
08/01/13	*Follow up DM*	*Jain diabetic centre*	*the prescripti on letter*	*conclusion is not said to be RTA. no clear statement made.*	*Conservative TT for Diabetes*
30/01/13	*Follow up DM*		*Known case DM*		

MLC of Safdurjung hospital Given On The day of RTA dated 13/04/12 at 12:30 pm:

1) RTA H/o LOC for 15 minutes
2) On examination at time of admission Patient was conscious, Oriented, Pulse : 80/min, BP : 126/80, GSC 15/15, No h/o vomiting, ENT bleed;

I. O/E Abrasion of right & left elbow
II. Abrasion right & left had
III. Abrasion middle & ring finger of hand
IV. Abrasion right and left knee
V. Abrasion right ankle at lateral maleolus
VI. Swelling of middle finger of left hand

- *Kindly note At the time of preliminary examination as per MlC on the said day No Head injury or facial orbital injuries were noted down, no nasal ENt bleeding notes were made.*
- *In the later course of different admissions in the C/O loss of memory Diminishing of vision doesn't seem to have nexus with the above injuries on day of RTA."*

(Emphasis Supplied)

31. Respondent No.1 claimed to have paid Rs.2,97,500/- to the attendant and copies of cash bills were placed on record but the witness, who received the alleged payment, was not examined.

32. The Claims Tribunal neither considered the contentions urged by the appellant nor gave any reasoned finding in respect thereof. There is merit in

the contentions urged by learned counsel for the appellant before this Court and they warrant serious consideration by the Claims Tribunal.

33. This Court is of the view that the insurance companies are duty bound to verify every claim by appointing an Investigator to verify the genuineness of the claim as well as the material particulars of the claim and a surveyor to assess the loss suffered by the victim. In cases of grievous injuries, the insurance companies should also get the injured examined by an independent medical expert to examine the injured and verify the medical claim of the injured. However, the appellant, in the present case, does not appear to have appointed any Investigator or surveyor to verify and assess the claim of respondent No.1.

Conclusion

34. For the reasons discussed hereinabove, the appeal is allowed, impugned award is set aside and the case is remanded back to the Claims Tribunal. Pending applications are disposed of.

35. The Claims Tribunal shall consider all the contentions of the appellant and pass a fresh award, untrammeled by the observations made by the Claims Tribunal in the award dated 2nd August, 2017.

36. The parties shall appear before the Claims Tribunal on 20th March, 2018 when respondent No.1 shall produce the documents mentioned in the appellant's application under Order 11 Rule 14 of the Code of Civil Procedure. Since respondent No.1 was first taken to Safdarjung Hospital on the date of accident i.e. 13th April, 2012 and his MLC was recorded there, the Medical Superintendent of Safdarjung Hospital is hereby directed to constitute a Medical Board to examine respondent No.1 and give opinion as to the disability suffered by respondent No.1 from the injuries suffered in the

road accident dated 13th April, 2012, untrammeled and uninfluenced by any finding recorded in the earlier reports. The Medical Superintendent shall also give opinion on the questionnaire prepared by the appellant, which is reproduced in para 10 above. Respondent No.1 shall appear before the Medical Superintendent of Safdarjung Hospital on 10th March, 2018 when the Medical Superintendent shall intimate him the date of examination by the Medical Board. The Medical Board of Safdarjung Hospital shall permit the competent officer of the appellant and their medical expert to remain present at the time of examination of respondent No.1. Respondent No.1 is directed to produce his entire medical record before the Medical Board of Safdarjung Hospital. The report of the Medical Board of Safdarjung Hospital be submitted to the Claims Tribunal in a sealed cover within six weeks of the examination of respondent No.1. The Claims Tribunal shall fix the case for cross-examination of respondent No.1 (PW-4) and Dr. R.P. Beniwal, Assistant Professor (Psychiatry) from Dr. Ram Manohar Lohia Hospital (PW-6) after the receipt of the report of the Medical Board of Safdarjung Hospital.

37. The record of the Claims Tribunal be returned back forthwith.

J.R. MIDHA
(JUDGE)

FEBRUARY 21, 2018
rsk