IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2256 of 2014 (O&M)
Date of decision: 12.12.2019

Devi Singh ... Appellant

Versus

Lelu and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep K. Yadav, Advocate for the appellant.

Mr. Rajbir Singh, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 10.12.2012.

The Tribunal awarded Rs.3,59,856/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.31,000/-
Loss of amenities of life	Rs.1,00,000/-
Loss of income for absent from duty	Rs.1,73,856/-
Special diet, attendant charges and transportation charges	Rs.20,000/-
Pain and sufferings	Rs.35,000/-

Counsel for the appellant would argue that the injured was working as Test Rider with Hero Moto Corporation Ltd., Dharuhera proved by Ram Kanwar PW2. It is argued that due to sustaining of injuries rendering him disable to the extent of 50%, the appellant can no longer work as Test Rider. It is argued with vehemence that even if the claimant continued working with the aforesaid company, he is entitle to loss of income due to disability. For this purpose, reference has been made to Division Bench judgment of Kerala High Court **Kerala Minerals and Metals Ltd. Vs. Raman Nair, 1998(1) Ker L.J. 254** and judgment of this Court **Raj Kumar Vs. Surender, FAO No.3064 of 2011, decided on 27.07.2012.**

Counsel would argue that the Tribunal has wrongly rejected claim with regard to attendant charges to the tune of Rs.27,500/- paid to Naresh Singh PW3. The claimant spent approximately Rs.7 lakh on his treatment, out of which more than Rs.6,35,000/- was paid by his employer but insurance company cannot escape liability to pay this amount. He would argue that aforesaid amount was paid to the hospital by the company with which the claimant was working as a medi claim policy was obtained and premium was deducted from his salary. In addition, it is argued that claimant examined Dr. Rajesh Kumar PW9 to prove expenses incurred on physiotherapy but Tribunal has wrongly rejected his claim, in this regard.

The claimant examined Ram Kanwar PW2, Assistant Manager, HR Hero Moto Corporation Ltd. (hereinafter referred to as 'the company') to prove employment and income of the victim. The injured was working as Test Rider at monthly salary of Rs.27,165/-. He is still working with the aforesaid company but has been assigned different work. Counsel for the appellant has failed to point out any materials on record that due to sustaining of injuries, he has suffered any loss of salary except for the period, he remained absent from duty. There is also no evidence that had the claimant continued as Test Rider in the aforesaid company, he would have been entitle to better financial status viz-a-viz his present assignment. The Division Bench judgment of Kerala High Court in **Kerala Minerals and Metals Ltd.'s case (supra)** deals with the Workmen's Compensation Act, 1923 (in short 'the Act') as Raman Nair sustained injury during the course of employment and claimed compensation under the Act. This Court in **Raj Kumar's case (supra)** by relying upon the judgment in **Kerala Minerals and Metals Ltd.'s case (supra)** has held that since the injury is identified as one of the 'Schedule injury' under the Act, the same principle will have to be applied for a claim under the Motor Vehicles Act, 1988 also. Counsel for the appellant, in response to a query, would fairly inform that the injury suffered by the victim does not fall within the purview of Schedule injury under the Act. That being so, the appellant cannot derive any advantage to his contention from the referred authorities. As such, he is not entitle to loss of income on account of disability of 50%.

The Tribunal awarded Rs.20,000/- for special diet, transportation and services of an attendant. The claimant examined Naresh Singh to prove that he was engaged as an attendant to look after the claimant w.e.f. 15.01.2013. The claimant remained on leave w.e.f 01.01.2013 to 12.07.2013. Taking into consideration testimony of Naresh Singh, the claimant is awarded additional amount of Rs.20,000/- with regard to services of an attendant.

The appellant produced bills in respect of medical expenses amounting to Rs.6,65,536/-. After deducting more than Rs.6,35,000/- paid directly to the hospital by employer of the appellant, the Tribunal allowed reimbursement of medical expenses to the tune of more than Rs.30,000/- rounded off to Rs.31,000/-. The appellant has failed to adduce any evidence that a medi claim policy was obtained by his employer much less premium with regard thereto was deducted from his salary, therefore, the appellant cannot press for extending benefit of aforesaid amount by way of unjust enrichment.

The claimant examined Dr. Rajesh Kumar, Ayush Physiotherapy Center, Mohindergarh to substantiate his claim of approximately Rs.1 lakh in respect of expenses incurred on physiotherapy. The Tribunal rejected his claim, in this regard for reasons assigned in para 24 of the award.

A relevant extract therefrom, reads as follows:-

> Now, a bare perusal of original bill book shows that there is cutting in the date mentioned on different bills in the bill book. Further, the respondents has exhibited bill dated 19.07.2013 as Ex.R1 in the said bill book and after that bill, which is dated 19.07.2013, there is bill in the name of Devi Singh which is dated 31.01.2013 and before the bill dated 19.07.2013, there is bill in the name of Devi Singh which is undated and the petitioner has not claimed the amount thereof for the best reasons

> known to him. All these things go on to show that bills Ex.PW9/A to Ex.PW9/G are not genuine and therefore, the amount of bills Ex.PW9/A to Ex.PW9/G cannot be granted to the petitioner on account of expenses incurred on treatment.

In previous para No.23, the Tribunal has noticed that in detail the facts elicited in cross examination of Dr. Rajesh Kumar PW9 with regard to cuttings and non mention of serial number on certain bills etc. The claimant appeared in the witness box and tendered into evidence his affidavit dated 20.05.2013 attested on 05.07.2013. Though in para 2 of the affidavit, there is reference to his treatment as indoor as well as outdoor patient and his having incurred expenses of Rs.10 lakhs on treatment but there is no reference that he had ever undergone any physiotherapy or was still getting physiotherapy much less from Dr. Rajesh Kumar of Ayush Physiotherapy Center, Mohindergarh. The claimant also examined Naresh Singh PW3 to establish his claim for attendant charges paid to said Naresh Singh. He tendered into evidence his affidavit Ex.PW3/A by way of examination in chief. In cross examination, the witness had stated that he had been going to the hospital with the claimant and Devi Singh was treated in Max Hospital, Gurgaon. His testimony is also conspicuously silent if Devi Singh had received physiotherapy treatment much less from Dr. Rajesh Kumar. Taking into consideration the various discrepancies brought-forth in cross examination of Dr. Rajesh Kumar noticed in para 23 of the award coupled with aforesaid, it is difficult to accept contention of the appellant that either he received physiotherapy from Dr. Rajesh Kumar continuously since his discharge from the hospital till July, 2013. The serial number of Ex.PW9/A is '4' but there is cutting of the date. In Ex.PW9/B, again there is cutting of the date and serial number is not clear. Similarly, there is cutting of date in Ex.PW9/C and serial number is not clearly written. In the remaining documents Exs.PW9/D to PW9/G, the serial numbers are missing. It further appears that all these receipts have been prepared in a single sitting to support cause of the claimant to get additional compensation. That being so, I do not find any reason to interfere in findings of the Tribunal rejecting claim of the appellant for reimbursement of expenses of physiotherapy.

No other point has been raised.

In view of the above, claimant is entitle to additional amount of Rs.20,000/-, payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

12.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No