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

Date of decision: 17.05.2023

+ MAC.APP. 823/2019
GAURAV GUPTA

.....Appellant

Through: Mr. Sameer Nandwani, Mr. Amit Grover, Ms. Nikita Sharma, Mr. Rohin Singh Pande, Advs.

versus

AMARJEET @ SONU & ORS (M/S CHOLAMANDLAM MS
GENERAL INSURANCE CO LTD)

..... Respondent

Through: Mr. Pankaj Gupta, Adv. for
Ms.Suman Bagga, Adv. for R-3

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal preferred by the claimant under section 173 of the Motor Vehicles Act seeks enhancement of the compensation awarded by the learned Motor Accidents Claim Tribunal. Vide the impugned award dated 23.01.2019, the learned Tribunal has awarded a sum of Rs. 6,50,000/- along with interest @9% p.a as compensation to the appellant.

2. It is the case of the appellant that on 19.01.2011 at about 7.30 am, while the appellant Shri Gaurav Gupta was travelling with his colleague Shri Sumit Vij from his residence at Ghaziabad to his office in Gurgaon, in a car bearing registration number UP-17T-0803 being driven by one Shri Rajkumar, a tyre of the car got punctured. The car was therefore parked on the left side of the road near Rajasthan Petrol Pump, Nitish Kunj, NH-8. While the driver was changing the tyre, a Tavera car bearing registration

number HR-55DT-9200 being driven in a rash and negligent manner came from behind and collided with them, resulting in grievous injuries to the appellant. The appellant was rushed to the Neelkanth Hospital Gurgaon, where he remained hospitalised for 18 days. As the appellant's kidneys got damaged on account of injuries suffered by him due to the accident, he preferred a claim petition before the learned Tribunal, claiming a sum of Rs.20,00,000/- as compensation.

3. On the basis of the evidence led before it, the learned Tribunal came to a conclusion that the injuries sustained by the appellant were caused due to the rash and negligent driving of the car insured with respondent no. 3 and consequently awarded a sum of Rs. 6,50,000/- as compensation to the appellant along with interest @9% p.a. from the date of filing the claim petition till 23.04.2012 and thereafter from 20.08.2018 till the date of realization. This amount included a sum of Rs. 1,00,000/- as compensation towards pain and suffering and a sum of Rs. 50,000/- towards special diet, conveyance and attendant charges besides a sum of Rs. 5,00,000/- as compensation under the head of shortening of life. For awarding this amount of Rs. 5,00,000/- by way of compensation towards shortening of life the learned Tribunal relied on the testimony of Dr R.K Yadav, Assistant Professor, Department of Nephrology, AIIMS, Delhi/ PW2 who had categorically stated that the left kidney of the appellant was not functioning at all and he was already at stage-III of chronic kidney disease with no chances of revival. For the sake of convenience the heads under which the appellant has been granted compensation may be noted hereinbelow in a tabular form:-

S.No	Heads	Amount of compensation
1.	Pain and Suffering	Rs. 1,00,000/-
2.	Special Diet, Conveyance and Attendant Charges	Rs. 50,000/-
3.	Shortening of life	Rs. 5,00,000/-
	Total Compensation	Rs. 6,50,000/-

4. Being aggrieved, the appellant has preferred the present appeal seeking enhancement of the compensation awarded by the Tribunal.

5. In support of the appeal, learned counsel for the appellant has made three submissions. His first and foremost submission being that the learned Tribunal erred in refusing to grant any interest to the appellant for the entire period between 23.04.2012 and 19.08.2018 on the erroneous presumption that the hearing of the claim petition during this period was being deferred only on account of the appellant's fault. The learned Tribunal failed to appreciate that most of the adjournments were being sought only on account of the failure of the doctors summoned by the appellant to appear before the learned Tribunal. He submits that the learned Tribunal ought to have appreciated that unless the summoned doctors appeared in Court, the appellant could not prove the percentage of his disability. In support of this plea that in such circumstances, when the claimant alone cannot be faulted for delay in adjudication of his claim petition, he should not be denied

interest for the period during which the petition remained pending adjudication, he seeks to place reliance on the decision of a Coordinate Bench in *Paras Ram vs Makkay Singh 1992 SCC OnLine Del 63*.

6. Mr. Nandwani, learned counsel for the appellant, next submits that despite there being categorical medical evidence before the Tribunal to show that the appellant was already stage III Chronic Kidney Disease, his condition was likely to deteriorate with time, due to which he would be required to take further medical treatment in the future, the learned Tribunal has failed to give any amount towards his future medical expenses. In support of his plea that some reasonable amount should be awarded towards future medical expenses, he seeks to place reliance on the decisions of the Apex Court in *Chaus Taushif Alimiya Etc. v Memon Mahmmad Umar Anwarbhai & Ors. 2023 0 Supreme(SC) 125* and *S.B.Sinha and Lokeshwar Singh Patna, JJ. v United India Insurance Co. Ltd. & Anr. 2008 7 SCC 613*. He finally submits that even the amount of Rs.1,00,000/- awarded towards pain and suffering under the head of loss of enjoyment of life is inadequate and therefore, prays that the same be enhanced.

7. On the other hand, Mr. Gupta, learned counsel for the respondent seeks to support the impugned award by contending that once the appellant was utterly negligent in prosecuting the claim petition, the learned Tribunal was justified in not granting interest for the period between 23.04.2012 and 19.08.2018, specially when the appellant was already put to caution by the learned Tribunal in this regard. In support of his plea that no interest should be paid to a claimant for the period during which the adjudication of the claim petition is delayed due to the claimant's fault, he seeks to rely on a decision of the Karnataka High Court in *New India Assurance Co. Ltd., vs*

Shanthi Mascarenhas & Anr. 2018 SCC OnLine Kar 4027. He further submits that the claim of the appellant for compensation towards the cost of future medical treatment has been rightly rejected by the learned Tribunal as the appellant had failed to lead any evidence as to what treatment he would require treatment in future, and the cost thereof. Finally, he submits that even the compensation awarded by the learned Tribunal under the head of pain and suffering and enjoyment of life is inadequate. He, therefore, prays that the appeal be dismissed.

8. From the rival submissions of the parties, it emerges that the first question which is required to be considered by this Court is as to whether the appellant can be said to be entirely responsible for the adjournments between 23.04.2012 and 19.08.2018. Having perused, with the assistance of the learned counsel for the parties, the record of the proceedings before the learned Tribunal, I find that the appellant is justified in urging that some of the adjournments which he was compelled to seek, were on account of the summoned doctors not appearing before the learned Tribunal. It is, however, also evident that on some of the dates between 23.04.2012 and 19.08.2018, the matter had to be adjourned only on account of the appellant not taking the requisite steps for summoning the concerned doctors. I am, therefore, inclined to accept respondent's plea that the appellant cannot be granted interest for the entire period between 23.04.2012 and 19.08.2018. However, it is clear from the record that on some of these dates the appellant was helpless and the matter had to be adjourned simply because the summoned doctors were not appearing before the learned Tribunal, which fact the learned counsel for the respondent has also not been able to deny.

9. I have also considered the decision in *Paras Ram* (Supra) relied upon

by the appellant, but find that in the said case the Court was dealing with a delay which was only of about one year. The said decision is, therefore, not applicable to the facts of the present case. Similarly, the decision in *Shanthi Mascarenhas (Supra)* of the Karnataka High Court also does not forward the case of the respondent in any manner. The same only lays down that the interest should not be awarded for the period during which unnecessary adjournments are sought by the claimant. What, therefore, emerges is that the question whether the interest should be granted or denied for any part of the period during which the claim petition remained pending adjudication, would ultimately depend on the facts of each case.

10. Having given my thoughtful consideration to the factual position in the present case, I am of the considered view that interest of justice would be met if the appellant is granted interest for a part of the aforesaid period between 23.04.2012 and 19.08.2018 and denied the same for the remaining period. This would take care of the dates on which the matter had to be adjourned only on account of the appellant's inaction and default. It is, accordingly, directed that the appellant would be entitled to receive interest w.e.f. 16.09.2015 as against the interest from 20.08.2018 as directed under the impugned award. Consequently, the appellant would not be entitled to receive any interest for the period between 23.04.2012 and 15.09.2015 but would receive interest @ 9% p.a. for the remaining period during which the claim petition remained pending as also for the subsequent period till realisation of the awarded amount. It is, however, made clear that this order for granting interest w.e.f. 16.09.2015 has been passed in the peculiar facts of this case as this Court has found, on detailed examination of the proceedings, that on some of the dates the appellant was not at all at fault for

the matter being adjourned before the Tribunal.

11. Now coming to the appellant's plea for grant of compensation towards cost of future treatment. I find that while learned counsel for the respondent does not deny that amount towards cost of future treatment can be granted by the Tribunal in appropriate cases, his contention is that since no evidence was led by the appellant in this regard, the learned Tribunal was justified in not granting any amount under this head. I am, however, unable to agree with this plea of the appellant. Having perused the testimony of PW-2, Dr. R.K.Yadav, Assistant Professor, Department of Nephrology, AIIMS, New Delhi, I find that the appellant had led adequate evidence to show that he would indeed require future medical treatment. At this stage, it would be apposite to note the testimony of PW2 which reads as under:-

I have examined the patient Gaurav Gupta. The report dated 19.05.2016 has been prepared by me, copy of the same is Ex. PW-2/A (colly.) (3 pages). The left kidney of the petitioner Gaurav Gupta is not functioning at all. At present, the patient is in chronic kidney disease stage 3. In normal person, GFR of the kidney is around 125 ml/minute whereas in case the petitioner, the same is 57 ml/minute. Stage 3 is from 30 ml/minute to 60 ml/minute, whereas Stage 4 is from 15 ml/minute to 30 ml/minute, whereas Stage 5 is 0 ml/minute to 15 ml/minute. In stage 5, the patient needs dialysis / renal transplant. A patient under this condition has no chance of revival. A patient of this condition has every chance of deterioration or more damage and for transplant.

Q: Can you tell the physical and mental effect patient at this stage of disease which the petitioner is having?

Ans. In chronic kidney disease, the depression and hypertension are quite common and there is fatigue-ability and weakness in most of the cases. As the patient reaches to the next stage i.e. lower stage, his functional ability will

decrease. The concentration of the patient in his condition generally goes down. When the stage progresses, the weakness increases and a person gets physically weak.

Q: Can you tell what would be the difference in physical ability of a person whose kidneys are functioning 100% and a person of the condition in which the petitioner is?

Ans. The condition of the petitioner is such that in my opinion he has 30% less physical and mental capability than the normal person. It is certain that the life of a person under this condition reduces but there is no study on the basis of which it can be said how much the life of a person will be reduced.

As per rules, only a family member can donate kidney a approx. cost of the transplant comes to Rs. 4-5 lacs in the government hospital. Further, after the surgery, he has to take life long medicines.

XXXXX By Shri Kamaldeep, Counsel for Insurance Company.

The present kidney will not be stable and will definitely deteriorate. I cannot say as to how the kidneys of the petitioner were damaged, as he had approached us at a later stage for kidney function assessment. A person can survive with one kidney but will not lead a normal life and his chances of survival will be less. At the time of check up, we had taken the blood tests and nuclear medicine test. The hemoglobin was 13.8 gm% and serum creatinine was 1.5 mg%, both are abnormal.

12. A bare perusal of the statement made by PW2 shows that this specialist doctor from AIIMS had clearly opined that a patient like the appellant suffering from stage III Chronic Kidney Disease had no chances of revival and his condition was only likely to deteriorate with the passage of time. He had also categorically stated that the appellant may require a kidney transplant at a later stage in life. The appellant is presently less than 45 years of age and taking into account the average longevity, he is likely to live for

another 30 to 40 years and therefore, there is every likelihood that he would require further medical treatment in the future, if not a transplant. In these circumstances, I am of the view that the appellant should be granted a sum of Rs.2,00,000/- for future medical treatment. Insofar as the appellant's plea for enhancement of the amount granted towards pain and suffering as also loss of enjoyment of life, I find that the amount awarded by the learned Tribunal is slightly on the lower side. The same is, accordingly, enhanced from Rs.1,00,000/- to Rs.1,50,000/-.

13. The compensation awarded to the appellant would therefore stands enhanced to Rs.9,00,000/- under the following heads:-

S.No	Heads	Amount of compensation	Compensation awarded by this Court
1.	Medical Expenses	-	Rs.2,00,000/-
2.	Pain and Suffering and enjoyment of life	Rs. 1,00,000/-	Rs.1,50,000/-
3.	Special Diet, Conveyance and Attendant Charges	Rs. 50,000/-	Rs.50,000/-
4.	Shortening of life	Rs. 5,00,000/-	Rs. 5,00,000/-
	Total Compensation	Rs. 6,50,000/-	Rs.9,00,000/-

14. The aforesaid amount will bear interest @ 9% p.a. from the date of filing of claim petition till 22.04.2012 and thereafter from 16.09.2015 till the date of realisation.

15. The appeal is, accordingly, allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

MAY 17, 2023

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