



2023 : DHC : 9282



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

Date of decision: 20.12.2023

+ **CM(M) 850/2018**

THE ORIENTAL INSURANCE CO LTD Petitioner

Through: Mr.Pankaj Seth, Adv.

versus

JITENDRA KUMAR & ORS

..... Respondents

Through: Mr.Nitin Prakash, Mr.Aayush
Khetarpal, Advs for R-1
alongwith R-1 in person

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 11.04.2018 (hereinafter referred to as the 'Impugned Order') passed by the learned Motor Accidents Claims Tribunal-01 (Central-District), Delhi (hereinafter referred to as the 'Tribunal') in Misc. No.705/2017, titled as *Jitender Kumar v. Joras Art Studio*, dismissing the application filed by the petitioner herein, seeking review of the Order/Award dated 21.08.2017 passed by the learned Tribunal on the Claim Petition filed by the respondent no.1/claimant.

2. Before advertng to the submissions made, it would be necessary to give a brief background of the facts giving rise to the present petition.



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3. The respondent no.1 filed a Claim Petition before the learned Tribunal under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), claiming compensation for the injuries sustained by him in a Motor Vehicular Accident that had taken place on 18.10.2009. The learned Tribunal, vide its Award dated 21.04.2017, awarded compensation of Rs.2,51,100/- in favour of the respondent no.1, along with interest at the rate of 9% per annum from the date of the filing of the Claim Petition, that is, 28.01.2010, till the passing of the Award.

4. Thereafter, the respondent no.1/claimant filed an application under Order XLVII Rule 1 of the Code of Civil Procedure, 1908, seeking review of the Award and praying for an enhancement of compensation, by annexing with the application, original medical bills amounting to Rs.5,18,599.32 purportedly pertaining to the treatment of the respondent no.1.

5. The said application was disposed of by the learned Tribunal, vide its order dated 21.08.2017, enhancing the compensation amount to Rs.4,93,279/-. The said order was passed by the consent of the learned counsel for the petitioner, who was appearing before the learned Tribunal, who stated that the bills submitted by the respondent no.1 have been duly verified and a discrepancy with respect to the bills amounting to Rs.23,310/- only could be detected and only the same should not be allowed. The learned Tribunal accepted the submission of the learned counsel appearing for the petitioner, and therefore, limited the compensation amount to only Rs.4,93,279/-.

6. The petitioner, claiming that the respondent no.1 had, in fact,



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availed of the EWS Scheme while being admitted at Sir Ganga Ram Hospital for treatment between the period 04.11.2009 to 07.12.2009, and claiming that the respondent no.1 was, therefore, not entitled to reimbursement/compensation of Rs.2,50,429/-, filed an application seeking review of the order dated 21.08.2017 passed by the learned Tribunal.

7. The said application was dismissed in default by the learned Tribunal, vide order dated 28.02.2018.

8. Instead of seeking restoration of the application, the petitioner filed a fresh application, seeking review of the order dated 21.08.2017, raising similar plea as raised in the earlier application.

9. The said application has been dismissed by the learned Tribunal by the Impugned Order, observing that the said application is not maintainable and also that the order dated 21.08.2017 was passed with the consent of the parties and therefore, there is no ground for the review of the said order made out.

10. The learned counsel for the petitioner reiterates that the respondent no.1 has availed of the EWS Scheme with respect to the medical treatment at Sir Ganga Ram Hospital, amounting to Rs.2,50,429/-. He submits that the respondent no.1 is, therefore, not entitled to receive compensation for the said amount.

11. On the other hand, the learned counsel for the respondent no.1, while denying the above submission of the petitioner, submits that the medical bills submitted by the respondent no.1 were duly verified by the Investigator appointed by the petitioner. He also places reliance on the report dated 05.07.2017 of the Investigator appointed by the



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petitioner, which had duly verified the bills submitted by the respondent no.1 and reported that the bills for the amount of Rs.4,93,279.82 stand verified.

12. He submits that, in any case, the application filed by the petitioner was not maintainable before the learned Tribunal, the earlier application seeking review having been dismissed by the learned Tribunal.

13. I have considered the submissions made by the learned counsels for the parties.

14. I find merit in the objection raised by the learned counsel for the respondent no.1 on the non-maintainability of the second application filed by the petitioner seeking review of the order dated 21.08.2017 passed by the learned Tribunal. The earlier application filed by the petitioner seeking review of the said order had been dismissed, though in default by the learned Tribunal. In fact, even this application, which seeks review of an order passed on an application seeking review of the original Award, itself was not maintainable. In any case, the petitioner could not have maintained the second application seeking review of the said order.

15. The learned counsel for the petitioner, in fact, submits that the learned Tribunal does not even have the power to review its Award, and the only remedy to the aggrieved party is to file an appeal under Section 173 of the Act.

16. This Court need not consider the said submission, as pursuant to the order dated 01.12.2023, this Court had also directed the petitioner to produce Dr.Arun Aggarwal, on whose report the Insurance



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Company is placing reliance. The respondent no.1 was also directed to appear in person before this court. The learned counsel for the petitioner informs that Dr.Arun Aggarwal has since expired. The respondent no.1, who appears in person, reiterates that he had not availed of any benefits under EWS Scheme. Even otherwise, I am informed that the amount awarded by the learned Tribunal by its order dated 21.08.2017, has also been released in favour of the respondent no.1.

17. I, therefore, do not deem it appropriate to exercise my jurisdiction under Article 227 of the Constitution of India in the present petition.

18. Accordingly, the present petition is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 20, 2023/Arya/ss

Click here to check corrigendum, if any