



\$~3

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

Date of decision: 12.09.2023

+ **MAC.APP. 770/2018 & CM APPL. 35171/2018, 43617/2019**

NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Pankaj Seth, Adv.

versus

SURAJ KUMAR & ORS Respondents
Through: Mr.K.K. Dubey, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 21.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, District Shahdara, Karkardooma, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.765/2016, titled *Suraj Kumar v. Sh.Lal Giri & Anr..*

2. The facts leading to the filing of the claim petition before the learned Tribunal are that on the intervening night of 05/06.07.2013, the claimant/respondent no.1 herein, Suraj Kumar was travelling as a conductor on the truck bearing no. RJ-14-2G-9415, being driven by the deceased- Rajesh Kumar. While they were returning from Jaipur to Delhi, at about 12.30 a.m., when the truck of the victims reached



bearing No. HR-55B-1891 (hereinafter referred to as the ‘Offending Vehicle’), which was going ahead of the vehicle of the victims, suddenly applied brakes without any indication and in a rash and negligent manner, which resulted in crashing of the vehicle of victim into the Container from behind. The driver of the truck died in the accident, and the claimant suffered grievous injuries. The claim petition was filed by the claimant/respondent no.1 seeking compensation before the learned Tribunal.

Challenge of the Appellant:

3. The appellant challenges the Impugned Award on the following grounds:

- a. That the claimant/respondent no.1 was a resident of District Jaunpur, Uttar Pradesh (in short, ‘UP’); the accident had taken place in Gurugram (previously referred to as ‘Gurgaon’); the deceased was driving the truck which was registered in Rajasthan; the insurance for the offending vehicle was also taken in Noida, UP; and the respondent no.2, the driver of the offending vehicle, was a resident of District Champawat, Uttarakhand. It is contended that, therefore, the learned Tribunal lacked the territorial jurisdiction to adjudicate the Claim Petition filed by the respondent no. 1;
- b. The appellant challenges the award of compensation under various heads, claiming the same to be exorbitant;
- c. That the learned Tribunal has erred in not granting a right to the appellant to recover the compensation amount from



the driver and owner of the offending vehicle, that is, the respondent nos.2 and 3 herein, as the offending vehicle was being driven without a valid permit. The respondent nos.2 and 3 had failed to produce a valid permit for the truck in spite of a notice being sent to them for the production thereof.

Territorial Jurisdiction:

4. On the challenge of the territorial jurisdiction of the learned Tribunal to adjudicate on the claim petition, I would note that the claimant/respondent no. 1 had stated that though he is a permanent resident of District Jaunpur, (UP), however, at the time of filing of the claim petition, he was residing at Nand Nagari, Shahadra, Delhi. The owner of the offending vehicle was also claimed to be a resident of Delhi. There was no challenge to the above assertions from any of the respondents, that is, the driver, owner, or the Insurance Company. In absence of any challenge to the above averments, the submission of the appellant of lack of territorial jurisdiction of the learned Tribunal, cannot be accepted. Section 166(2) of the Motor Vehicles Act, 1988, empowers the claimant to file an application seeking compensation on the option of the claimant either to the Claims Tribunal having jurisdiction over the area in which the accident has occurred or within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides. In the present case, with the averment of the claimant, they have satisfied two out of the three criteria to invoke the jurisdiction of



the learned Tribunal. I, therefore, find no merit in the challenge of the appellant to the Impugned Award on this ground.

Recovery rights:

5. The last challenge of the appellant to the Impugned Award is on the non-grant of right to recover the compensation paid to the claimants, from the respondent nos.4 and 5 herein, being the driver and the owner of the offending vehicle.

6. The learned counsel for the appellant submits that in spite of the notice being served, the respondent nos.4 and 5 had failed to produce a valid permit as on the date of the accident for the offending vehicle. However, he fairly admitted that in the written statement filed before the learned Tribunal, this plea was not taken by the appellant nor any evidence on this led before the learned Tribunal. In absence thereof, no fault can be found with the finding of the learned Tribunal in not granting a right to the appellant to recover the compensation paid to the respondent nos.1 to 3 herein, from the respondent nos.4 and 5. I therefore, find no merit in the said challenge and the same is rejected.

Challenge to the Impugned Award under various heads of compensation:

7. The next challenge of the appellant to the Impugned Award is on the various heads on which compensation has been awarded by the learned Tribunal in favour of the respondent no.1 herein.

8. Before proceeding to consider the challenge, the compensation awarded by the learned Tribunal in favour of the respondent no. 1

Signature Not Verified
Digitally Signed By: SUNIL
Signing Date: 15.09.2023
20:01:10

Under various heads is reproduced herein below:

MAC.APP. 770/2018



1.	Reimbursement of medical expenses:	Rs.26,629/-
2.	Pain and Suffering:	Rs.1,50,000/-
3.	Attendant charges for 12 months:	Rs. 7000 x 12 = 84,000/-
4.	Lose of Income during treatment period: (18 months)	Rs. 6500 X 18 = 1,17,000/-
5.	Loss of earning capacity including future due to this disability	NIL
6.	Conveyance & special diet:	Rs.75,000/-
7.	Compensation for mental and physical shock:	Rs.1,00,000/-
8.	Loss of amenities in life:	Rs.75,000
9.	Loss of matrimonial prospects:	Rs.1,50,000/-
10.	For future expenses:	Rs.50,000/-
11.	Damages for convenience, hardship, frustration and permanent disfigurement	Rs.75,000/-
	Total	Rs.9,02,629/- (rounded off Rs.9,03,000/-)

i. Compensation awarded towards pain and suffering, and mental and physical shock

9. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding a sum of Rs.1,50,000/- in favour of the respondent no.1 towards “pain and suffering” and Rs. 1,00,000/-



towards “mental and physical shock”. He submits that keeping in view the nature of the injury suffered and the period of hospitalization, the same is highly exorbitant.

10. I am unable to agree with the above submission. The learned Tribunal, in awarding the above compensation in favour of the respondent no.1, has held as under:

“22. Pain and Suffering: PW1 has proved that he sustained grievous injuries and also went through an operation consequent upon this accident. He sustained number of injuries including injuries on his private parts. Injured remained under treatment including his hospitalization during the period from 06.07.2013 to 09.10.2014 and is still under treatment as outdoor patient after operation of his penis. His medical condition is still being reviewed after every 3 months. He has suffered erectile dysfunction and has gone down his marriage prospects. It is not disputed that a person who sustained such injuries and went through such medical process is bound to suffer pain and sufferings and injured is entitled for compensation under this head.”

11. I find the compensation awarded to be just and fair and as warranting no interference from this Court.

ii. Compensation awarded for attendant charges

12. The learned counsel for the appellant challenges the award of sum of Rs.84,000/- in favour of the respondent no.1 towards attendant charges. The same have been awarded for a period of 12 months. He submits that no evidence in this regard was led by the respondent no.1 before the learned Tribunal.

13. I have considered the submission made.



14. As is noted hereinabove, due to the injuries suffered, the respondent no.1 remained hospitalized from 06.07.2013 to 09.10.2014. The respondent no.1 further stated that he remained hospitalized also between 29.06.2014 till 04.09.2014. He stated that he had to visit the hospital for follow-ups on his medical treatment on various occasions. At the same time, the respondent no.1 could not show that he required assistance of an attendant, more so for a period of 12 months.

15. I, therefore, find merit in the submission of the learned counsel for the appellant that attendant charges for a period of 12 months could not have been granted by the learned Tribunal in favour of the respondent no.1.

16. Taking into the account the overall circumstances and the nature of injuries suffered by the respondent no.1, and especially his period of hospitalization, in my view, the Award on the attendant charges for a period of 6 months would suffice. Accordingly, the compensation on account of attendant charges shall stand reduced to Rs.42,000/-.

iii. Compensation on loss of income during the treatment period

17. The next challenge of the appellant to the Impugned Award is on account of “loss of income during the treatment period”. As discussed hereinabove, the period of hospitalization of the respondent no.1 was between 06.07.2013 to 09.10.2014, and thereafter, from 29.08.2014 to 04.09.2014. There was no evidence led by the respondent no.1 of him not being able to work during the period of his



treatment. However, taking into account the nature of injuries suffered by him, he would have required time for recovering from the after-effects of the injuries suffered even after being discharged from the hospital.

18. Therefore, in my view, loss of income during the treatment period could have been awarded only for a maximum of nine months and not more. The Impugned Award shall stand modified to this extent and the compensation awarded in favour of the respondent no.1 towards loss of income during the treatment period shall stand reduced to Rs.58,500/-.

iv. Compensation awarded for conveyance and special diet

19. The next challenge of the learned counsel for the appellant is to the award of compensation in favour of the respondent no.1 towards “conveyance and special diet”. He submits that the same is also exorbitant.

20. I do not find any merit in the said challenge. The respondent no.1, in his evidence by way of affidavit, had clearly stated that he had to regularly visit the hospital for his follow-up for medical treatment. His period of hospitalisation has also been noted hereinabove.

21. Keeping in view the overall circumstance, the compensation awarded cannot be said to be unjust or unreasonable. The said challenge is therefore rejected.

Conclusion and Directions:

22. In view of the above, the appeal is partially allowed.



deposited the awarded amount with interest with the learned Registrar General of this Court. As the compensation amount stands reduced, the excess amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon. The balance amount shall be released in favour of the respondent no.1 in terms of the schedule of disbursal prescribed by the Impugned Award.

24. The Statutory Amount deposited by the appellant shall be released to the appellant along with interest accrued thereon.

25. The appeal and the pending applications stand disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 12, 2023/Arya/rp