IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1774 OF 2007

	National Insurance Company Ltd. Br. Office, Post Box No. 751, Labbipeta, Vijaypada-10	]]]	Appellant
	Versus		
1	Suraj Ramchandra Lotke Age 19 years Occupation – Trade, Residents of Vita, Tal. Khanapur, Dist : Sangli	]]]]	
2	Kollapalli Sriniwas Rao Age 45 years, A/p Bhupesh Guptanagar, Vijaywada, Dist : Krishna (A.P.) (Deleted vide pursis Ex.16)	]]]]	
3	Sri. K. V. Natsaib S/o. Shri Ratna Murthy, A/p Vijaywada-2 (A.P.), Masid St. Governoet, Vijaywada	]]]]	Respondents

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Ms. Poonam Miital, Advocate for the Appellant.
Mr. V. B. Rajure, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.
DATE : 23rd APRIL, 2024

ORAL JUDGMENT :

1. The issues involved in this appeal are compensation is awarded on higher side and rate of interest is awarded on higher side.

2. It is contention of learned counsel for the appellant/Insurance Company that to prove the disability doctor has not been examined by the claimant but the Tribunal has not considered this fact. No disability certificate is produced on record. The Tribunal has awarded 12% interest on the compensation amount which is on higher side. Hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent/claimant that due to accidental injuries claimant has suffered injury to his brain. he was admitted in Jaslok Hospital and Wanless Hospital at Miraj. The Tribunal has awarded compensation on lower side it be increased as there was injury to the brain of the claimant. Learned counsel further submitted that to prove the injury the claimant has examined Sou. Gayatri PW-2, Senior Record Medical Officer in Jaslok Hospital. The Tribunal has considered all the aspects while passing Judgment and Order, no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Jaisingpur (for short "**the Tribunal**"). To prove the injury the claimant Suraj has examined himself, he has stated that due to accident he has sustained injuries on his forehead over right eyebrow, cut injury on his right cheek. The skull above right eyebrow was cut into pieces, he was admitted in the private hospital at Sangli and then he was shifted to Walness Hospital, Miraj. There he was treated as indoor patient from 04.02.1994 to 18.03.1994. Operation was done upon him and cut pieces of skull bone were removed. He further stated that he has incurred expenses on medical treatment and bills have been produced at Exh. 29 to 47 collectively. In support of his evidence the claimant has examined PW-2 Gayatri, Senior Medical Officer at Jaslok Hospital, she has stated that the Petitioner had approached their hospital for treatment from Dr. Doleria and Dr. S.K. Pandya for cranio plastic surgery. The expenditure of surgery was around Rs.2,00,000/-. The certificate is at Exhibit-72. The claimants have examined Dr. Chitre from Walness hospital, Miraj who has treated the claimant, he has stated that C.T.Scan of the brain of the claimant showed that there was depressed fracture of scalp. It was corrected by him on 08.02.1994. Though the wound healed up within 10 days but there was defect in the skull in form of loss of bone in the particular area. One plastic surgery was done on the patient within 40 days as indoor patient, but still it is not cured. He further stated that the claimant can do his daily activities, but he is running in danger. He further stated that he had again examined the claimant in Jhangir Hospital, Pune for correcting the skull deformity. The said surgical correction can be made only at Mumbai or Pune. The testimony of this witness is supported by PW-4 Dr. Nitin Joseph. The claimant has consulted him on 05.09.2001 for plastic surgery. Considering the evidence on record, the Tribunal has observed that there is defect of right frontal bone and a pulasatile brain beneath.

The claimant is running in danger as his brain has directly come under the skin and there is no bonny part on the scalp. The operation is necessary which can be performed only at Mumbai or Sangli. The claimant is residing at Vita, Dist. Sangli. On that ground Tribunal has granted Rs.2,00,000/- for future medical treatment and has allowed the compensation by awarding Rs.2,70,550/-. I do not find infirmity in it. In my view, claimant has examined doctors to prove his disability no production of the disability certificate cannot be a ground to say that claimant has not suffered disability due to accidental injuries as PW-3 and PW-4 who are expert witnesses have categorically stated that claimant has suffered injuries due to accident hence I do not see merit in the contention that without disability certificate. The Tribunal has awarded compensation which is not proper. The Tribunal has awarded rate of interest on compensation amount @12% in my view it is little higher side hence I am considering it at 9%.

5. In view of above, I pass following order.

<u>ORDER</u>

i. The appeal is partly allowed.

ii. The interest rate on the compensation amount shall be @9% instead of @12%. The claimant is entitled for Rs.2,70,550/- @9% interest per annum on this amount from filing claim petition till realisation of the amount.

iii. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

iv. The Insurance company is permitted to withdraw amount of excess rate of interest i.e. 3% from deposited amount. The claimant is permitted to withdraw the balance amount along with proportionate interest.

v. The Statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per rule.

6. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.05.08 15:57:58 +0530