



2024:DHC:10173



\$~13 & 14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 10th December 2024***+ **MAC.APP. 347/2019, CM APPL. 11349/2019 (stay)**

IFFCO TOKIO GENERAL INSURANCE CO. LTD.Appellant

Through: Mr. A.K.Soni, Advocate.

versus

1. SURAJ PAL (Injured)
S/o Sh. ParemeshwarRespondent No.1
2. ANKIT (Driver)
S/o Sh. RotashRespondent No. 2
3. PRADEEP KUMAR DAGAR (owner)
S/o Sh. Krishan PalRespondent No. 3
Through: Mr. Kartikey Nayyar, Advocate for R1.

14

+ **MAC.APP. 54/2020**

SURAJ PALAppellant

Through: Mr. Kartikey Nayyar, Advocate.

versus

1. IFFCO TOKIO GENERAL INSURANCE CO. LTD.
.....Respondent No.1
2. SHRI ANKIT
S/o Sh. Rotash ...Respondent No. 2
3. SHRI PRADEEP KUMAR DAGAR
S/o Sh. Krishan PalRespondent No.3



2024:DHC:10173



Through: Mr. A.K. Soni, Advocate for R1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

MAC.APP. 347/2019

1. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act', *hereinafter*) has been filed on behalf of the Appellant/Insurance Company against the impugned Award dated 14.01.2019 *vide* which the compensation in the sum of Rs. 52,88,000/- along with the interest @9% p.a., has been granted to Sh. Suraj Pal, for the injuries suffered by him in the road accident on 20.07.2015.

2. The IFFCO TOKIO General Insurance Co. Ltd./Appellant, has *challenged the impugned Award, on the following grounds:-*

- i. that the compensation under *Non-Pecuniary Heads*, such as Pain and Suffering, Mental and Physical Shock, Loss of Expectancy of Life etc. are all duplicated and needs to be revised; and
- ii. that it is contrary to the Judgment of *Raj Kumar vs. Ajay Kumar*, (2011) 1 SCC (Cri) 1161.

MAC.APP. 54/2020:

3. The Cross-Appeal under Order 41 Rule 22 of the Code of Civil Procedure, 1908 ('CPC' *hereinafter*) *has been filed on behalf of the Injured*, Mr. Suraj Pal, to seek enhancement of Compensation on the following grounds:-

- i. that Mr. Suraj Pal had produced his Identity Card issued by Jan Kalyan Samiti (Reg.) East Delhi, Ex.PW-1/6, to



2024:DHC:10173



show that he was working in Delhi despite which *Minimum Wages of Uttar Pradesh* have been taken;

- ii. that the *Attendant Charges* have been given in the sum of Rs.7,000/- per month for 14 years; despite the Attendant having deposed that he was taking Rs.10,000/- per month. Also, the Attendant Charges should have been granted not for 14 years but for 20 years.

4. **Submissions heard and Record perused.**

5. *Briefly stated*, on 20.07.2015 at about 10:17 AM, injured-Sh. Mr. Suraj Pal who was driving his motorcycle bearing No. DL-7SAZ-2011, reached in front of DTC Bus Depot, Seema Puri, Delhi, when suddenly the Offending vehicle bearing No. DL-14DT-9864, driven by the Mr. Ankit/Respondent No. 2 in a rash and negligent manner, hit his motorcycle resulting in the accident and consequent grievous injuries to the injured.

6. FIR No. 1028/2011 was registered under Sections 279/337/338 of the *Indian Penal Code, 1860* ('IPC' hereinafter) at P.S. Seemapuri.

7. The Petition under Section 166 and 140 of the M.V. Act was filed for *grant of compensation* by the Injured/Claimant.

Non-Pecuniary Heads:

8. The *first ground* for challenge to the Award by the Insurance Company is that compensation under *Non-Pecuniary Heads*, has been duplicated. The Ld. Tribunal observed that the Injured *suffered 100% Permanent Disability* of his whole body as per his Disability Certificate Ex.PW1/2 proved by PW2 Dr. Nikhil Verma Sahu who had deposed that the injured has to spend his whole life on bed.



2024:DHC:10173



9. Undeniably, a person who sustained permanent disability of 100% and also went through such lengthy medical process is bound to suffer great pain and suffering, mental & physical shock, and shall be liable to incur attendant charges in the future.

10. Accordingly, the Ld. Tribunal has rightly awarded following amounts under non-Pecuniary Heads:

Pain and Suffering	Rs.3,00,000/-
Attendant Charges	Rs. 13,86,000/-
Loss of Income during treatment	Rs.1,61,640/-
loss of conveyance & special diet	Rs.2,00,000/-
mental & physical shock	Rs.3,00,000/-
loss of amenities of life	Rs.3,00,000/-
damage for inconvenience and hardship Discomfort, frustration & disfigurement	Rs.3,00,000/-
loss of matrimonial prospects	Rs. 1,00,000/-
towards future expenses	Rs.5,00,000/-
loss of expectation of life	Rs.2,00,000/-

11. The Ld. Tribunal has reasonably and correctly assessed the Compensation and accordingly, granted compensation under Non-Pecuniary heads in the impugned Award.

12. The reliance by Insurance company on Raj Kumar (Supra) does not aid their case, as the challenge therein was on account of Income of the injured and deduction on account of personal and living expenses, which



2024:DHC:10173



does not apply to the facts and circumstances of the present case. In fact, the Apex Court has observed in Raj Kumar (Supra) that the Tribunal has to first decide whether there is any Permanent Disability and if so, the extent of such permanent disability for granting compensation, which has been correctly assessed by Ld. Tribunal in the impugned Award.

13. There is no merit in the MAC Appeal No. 347/2019 of the Insurance Company, which is liable to be dismissed.

MAC.APP. 54/2020:

14. *In the Cross-Appeal filed by Injured/Claimant*, the first ground on which enhancement is sought is that Mr. Suraj Pal had produced his Identity Card issued by Jan Kalyan Samiti (Reg.) East Delhi, Ex.PW-1/6, to show that he was working in Delhi despite which Minimum Wages of Uttar Pradesh have been taken to calculate loss of income.

Income of Injured:

15. The Ld. Tribunal has observed that the injured was a permanent resident of Uttar Pradesh ('UP' hereinafter), and Minimum Wages of UP have been taken as he was unable to produce any proof of his doing the work in Delhi.

16. The Injured/Claimant had produced his Identity Card issued by Jan Kalyan Samiti (Reg.) East Delhi, Ex.PW-1/6 to prove that he was selling vegetables in weekly market in Delhi, which has not been questioned by the Insurance Company.

17. This Identity Card merely permits the deceased to sell his vegetables in a weekly market. However, in this I-Card as well, the address of the deceased is indicated as that of Ghaziabad. Moreover, this ID Card merely



2024:DHC:10173



permits him to sell the vegetables in a weekly market but it nowhere reflects that the deceased was regularly selling his vegetables in Delhi. From his address and the evidence on record, the learned Tribunal has rightly concluded that he was earning his livelihood by selling vegetables as a vegetable vendor in Uttar Pradesh and the minimum wages of Uttar Pradesh at Rs.6,735/- per month i.e. Rs.80,820/- per annum, has been rightly taken by the learned Tribunal. The vocation of vegetable selling comes under the unorganised sector for which there can neither be any document or any other evidence to prove the occupation or the earnings. However, the document relied upon by the Appellant/Injured himself leads to the inevitable conclusion of his place of earning being Uttar Pradesh. *No interference is warranted where the minimum wages of unskilled worker of Uttar Pradesh, have been taken by the learned Tribunal.*

Attendant Charges:

18. The *second ground* pressed by the Injured/Claimant to seek enhancement is that the that the *Attendant Charges* have been given in the sum of Rs.7,000/- per month for 14 years. Though, he should have been granted the *Attendant Charges* for 20 years @ Rs.15,000/- per month.

19. The Plaintiff had examined PW4/Dharamvir Singh who has deposed that he was engaged as an Attendant for the Injured and was assisting him in bathing, cleaning, changing of clothes, giving medicines, etc. since 01.09.2015 till date and receiving Rs. 15,000/- pm in cash. It is further deposed that another attendant Ramesh was also working in night shift.

20. Though, the Appellant has examined PW-4, who has claimed to be the Attendant of the Appellant but pertinently no documentary proof either



2024:DHC:10173



by way of any receipt or Bank Account, has been placed on record. Even if as per PW-4, the amount of Rs.7,000/- per month was being given to him in cash, he would have been crediting it in his Bank Account. No evidence whatsoever has been produced in this regard. Furthermore, he has claimed that there was another Attendant, Mr. Ramesh for the night shift but again, there is no proof produced in this regard. The Appellant may have claimed that he had actually engaged two Attendants per day but there is no cogent evidence adduced in this regard. It can also not be overlooked that the Appellant himself is a vegetable vendor, who himself has not been able to produce any evidence of his earnings, which have been taken as per the minimum wages in the sum of Rs.6,735/- per month. A person who is barely earning Rs.6,735/- per month prudently cannot be held capable of engaging two Attendants @Rs.15,000/- per month. The learned Tribunal, therefore, has rightly considered the circumstances holistically to conclude that no cogent evidence has been led to prove that a sum of Rs.15,000/- per month is being paid to the Attendants.

21. Therefore, the claim of the Appellant, to claim Rs.15,000/- per month towards the *Attendant Charges*, is over ambitious. It cannot be also overlooked that the learned Tribunal already has generously granted the Attendant Charges @Rs.7,000/- per month for 14 years. No further modification on this Account is merited.

22. The Appeal stands disposed of along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/RS