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

% ***Date of decision: 25th October, 2024***

\+ MAC.APP. 483/2013, CM APPL. 60029/2023 (under Order XXII Rule 4 read with Order 1 Rule 10 and Section 151 CPC), CM APPL.60030/2023 (delay)

IFFCO TOKIO GENERAL INS. CO. LTD. .....Appellant
Through: Mr. Brijesh Bagga, Advocate.

Versus

SHARDA NAND CHAUDHARY THR AMITESH KUMAR & ORS. .....Respondents
Through: Ms. Suhani Mathur, Advocate for R4.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>J U D G M E N T</u> ***(oral)***

1. The Appeal under *Section 173 of the Motor Vehicle Act, 1988* has been filed on behalf of the Appellant against the impugned Award dated 15.03.2013 *vide* which Rs.11,39,696/- along with interest @ 9% p.a., has been granted to the respondent No. 1/injured.

2. The Insurance Company/Appellant is aggrieved by the quantum of compensation under the following heads:-

(i) Considering the temporary disability of 70%; *loss of future prospects* in the sum of Rs.1.94 Lakhs has been granted. It is submitted that it was only a temporary disability and no evidence has been produced either about there being any consequent permanent disability or in regard to the loss of future prospects.

(ii) The reimbursement of Medical *Bills in the sum* of Rs.1,75,000/- on the basis of photocopy without producing the original bills, could not have been granted;

(iii) The *future expenses* in the sum of Rs.1,00,000/- has been granted for which there is no justification.

(iv) The loss of income has been calculated by taking the Minimum Wages of skilled worker for Rs.8,112/- p.m. The injured was having a shop and thus, the wages of unskilled worker i.e. Rs.6,656/- should have been taken for calculating the loss of income for nine months; and

(v) Rs.3,00,000/- granted towards *pain and suffering*, are on the higher side.

3. *Learned counsel on behalf of the Respondent No.1/Injured* has submitted that the injured in his testimony, had explained that the original bills had got misplaced and had placed on record the photocopy bills of Rs.1,75,000/- even though the expenditure incurred was more than Rs.4,00,000/-. These bills of Rs.1,75,000/- have been verified by the Investigating Officer and had been submitted along with the DAR as well. There is no infirmity in grant of the compensation on account of reimbursement of medical bills or on under any of the other heads. The Appeal is without merits and is liable to be dismissed.

4. **Submissions heard.**

5. *The first ground of challenge* is to the reimbursement of the Medical bills of Rs.1.75 lacs. It has been explained by the injured that the original

bills had got misplaced. Due explanation has been given for nob-production of the original Bills. He further deposed that he has not taken reimbursement of the medical bills from any source. These Bills were duly verified by the IO and submitted along with the DAR.

6. Learned Tribunal was right in considering the extent of injuries suffered by the injured and the Medical Bills, though photocopies produced, to grant reimbursement for the medical treatment in the sum of Rs.1,74,000/-.

7. *The second ground of challenge* is that a sum of *Rs.1,00,000 has been granted towards future treatment expenditure.* It is pertinent to observe that the extensive injuries suffered by the injured resulted in lacerated wounds over right eyebrow, ear canal, bony injuries over left thigh and he was referred to ENT, Ortho for further treatment. He had suffered fracture of left femur, injuries of ear, right side of head; external fixator was applied; active toe movement and medicines were advised by the Sushruta Trauma Centre and he was referred to Higher Centre for treatment.

8. The injured thereafter, went to Parnami Hospital on 09.01.2012 for treatment of head injury, fracture of left femur, dislocation of C-5, C-6 ; bone grafting, plate fixation of C-5, C-6 bone of spine with interlocking nailing of left femur was carried out. He was reported to be suffering from *quadriparesis, loss of bladder and bowel control, with advice of active and passive exercises of all 04 limbs, care of bed sores, medicines and review. He was discharged on 23.01.2012.* Even though no future medical treatment record was filed, but his temporary disability was assessed to the extent of 75% of the whole body which was likely to improve over a period of two years.

9. PW-2 - Dr. Vivek Pathak was examined in regard to the disability of the Petitioner, who stated that despite *spinal cord injury*, the injured was capable of moving with support; however, it was difficult to predict about the complete healing of the injury. It was also stated that it was difficult to predict as to whether the petitioner would suffer any Permanent Disability. The Disability Certificate is Ex.PW2/1.

10. The learned Tribunal considering extensive nature of injuries and that the injured had temporary disability of 75% of whole body, which was likely to improve over a period of two years, *has rightly granted Rs.1,00,000 for the future treatment.*

11. It is pertinent to mention here that though not necessarily as a consequence of injuries suffered, but the injured has died on 18.02.2023 i.e. after about eleven years of the alleged accident.

12. The *grant of Pain and Suffering in the sum of Rs.3,00,000/- cannot be considered to be on the higher side in the light of the extensive injuries suffered by him,* resulting in temporary disability which may get recovered after over a period of two years.

13. *Another grievance* of the Insurance Company is that the Petitioner has, in his own testimony stated that he was running a shop and thus, his income should have been taken as that of an unskilled worker i.e. Rs.6,656/- which has been erroneously taken as that of a skilled worker for Rs.8,112/- per month.

14. Again, this argument of the Insurance Company is not tenable, as the petitioner has deposed that he was in General Store Business and was earning Rs.15,000/- per month. His testimony as to his monthly income was not believed since he failed to corroborate it by producing any document;

but running a Store definitely entail some special skills and the Minimum Wages as per a skilled worker, has been rightly taken by the learned Tribunal.

15. There is no infirmity in the Impugned Order passed by the learned Tribunal. The appeal is hereby dismissed.

16. The Appeal is disposed of accordingly.

17. The statutory deposit be returned to the Insurance Company.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 25, 2024
Rs/r