

(2020) 01 DEL CK 0647

In the Delhi High Court

Case No : MAC.APP. No. 1015 Of 2018, Civil Miscellaneous Application No. 47973 Of 2018, 22068, 22069 Of 2019

Reliance General Insurance Co. Ltd

APPELLANT

Vs

Avtar Singh & Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Citation : (2020) 01 DEL CK 0647

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Pankaj Seth, Amit Kumar Pandey, Vishnu, Bharat Bhushan

Final Decision : Disposed Of

Judgement

Najmi Waziri, J

CM APPL. 22069/2019 (for delay)

1. This application seeks condonation of delay in filing of the Cross Objections. For the reasons mentioned in the application, the delay is condoned. The application stands disposed-off.

CM APPL. 22071/2019(Exemption)

2. Allowed, subject to all just exceptions.

3. The application stands disposed-off.

CM APPL. 22068/2019 (Cross Objections by R-1)

4. Let the Cross-Objections be numbered and registered as a separate MAC Appeal.

MAC. APP. 1015/2018 & MAC.APP. ____/2020 (Cross Objections)

5. These appeals impugn the award of compensation dated 29.09.2018 passed

by the learned MACT in MAC Petition No. 5199/2016, wherein the insurer and the claimants respectively seek reduction and enhancement of the award of compensation. It is the insurer's case that there is an error in the computation inasmuch as while awarding actual compensation for one year, the compensation towards 'loss of future income' has been granted with a multiplier of 14. The learned counsel for the respondents submits that albeit the multiplier of 14 would necessarily have to be applied, but he concedes fairly that for the year for which total compensation has been granted, the quantum of only that year be deducted. The said contention is fair and valid. Accordingly, the monies payable for one year i.e. Rs. 1,05,768/- [Rs. 8,814/- (minimum wages) x 12 (months)] shall be deducted from the amount of Rs. 8,32,923/-, awarded towards 'loss of future income'.

6. The learned counsel for the insurer next argues, that compensation towards 'attendant charges' has been granted by applying the multiplier method and the amount of Rs. 8,40,000/- [Rs. 5,000/- x 12 (months) x 14 (multiplier)] towards the same is erroneous. He admits that no doubt the injury sustained by the injured in his brain has rendered him incapable but the permanent disability of 45% in relation to the whole body as assessed by the learned Tribunal is erroneous because the neurological extent of the damages and the consequent disability is assessed at 100%. This issue has been discussed by the learned Tribunal as under:

"37. As per testimony of PW5 Dr. Vibha Sharma, Associate Professor, Clinical Psychology, IHBAS who was one of the members of Medical Board constituted at IHBAS, the petitioner was found to have suffered 45% permanent disability in relation to whole body. She further explained that from the side of neuro psychological examination, the patient Avtar Singh has suffered with severe dysfunction in the areas of memory visuo spatial perception and verbal intelligence. She further explained that in view of disability suffered by the injured, he will have deficit in his day to day functioning because of deficits in higher cognitive functions like memory and intellectual ability. He would likely to have problems in planning and executing even simple tasks which require thinking and understanding and also recalling and recognizing. He would also not been able to perform duties requiring judgment of distance, space and visual coordination. On the specific question that whether the injured being a driver, would be able to perform his duties as driver in future or not, PW5 explained that it is very unlikely that he would be able to drive because of his cognitive deficits (unfit for driving). She further explained that injured may perform even simple day to day activities only with the assistance of some person. He may be imparted training to perform his simple day to day activities but even there is every possibility that he may still not be able to perform his day to day activity in future. During her cross-examination on behalf of respondent no.3, she admitted that in disability certificate Ex. PW4/1, there was no mention that the disability suffered by patient Avtar Singh, is permanent in nature. She denied the suggestion that the disability suffered by patient Avtar Singh was not permanent

in nature or that disability of said patient was not permanent in nature or that disability of said patient was not properly assessed by members of Disability Board in accordance with the regulation issued by Ministry of Social Welfare and Empowerment Govt. of India. She admitted that if proper training will be given to the patient, his condition may or may not be improved relating to simple day to day activities. Respondents no.1&2 did not cross-examine this witness.

38. In view of the ocular testimony of PW5 and the Disability Certificate (Ex.PW4/1) and calculation sheet (Ex.PW5/1), I am of the view that it would not be possible for injured to carry on any kind of avocation without help of any other person as he is suffering from memory loss and his mental disability is shown to be 45%. The activeness of mind is required in order to carry out any kind of avocation. Hence, his functional disability is taken as 45% with regard to whole body."

7. The Court is of the view that to ensure 'just compensation', the result of the injury on the human body has to be seen. Insofar as the doctor has opined that: (i) the injured will never be able to manage his day-to-day functions all by himself, (ii) coupled with the fact that he has suffered memory visuo-spatial perception and verbal intelligence, (iii) which would result in his day-to-day functioning because of deficits in higher cognitive functions like memory and intellectual ability, and (iv) he would be likely to have problems of planning and executing even simple tasks which require thinking and understanding and also recalling and recognizing.

8. Quite clearly, it is established that as a result of the said extensive injury, the unfortunate individual would not be able to perform duties requiring judgment of distances space and visual coordination. He being a driver by vocation would never be able to drive a vehicle. In fact, he would not be able to discharge any function which could possibly help him earn a livelihood. In the circumstance, his functional disability is considered as 100% and compensation shall be granted accordingly.

9. The Court is of the view that the 'attendant charges' should be paid to the injured apropos his need for an attendant, round the clock. In this regard, the learned Tribunal has reasoned as under:-

"35. At this juncture, it may be noted that the case of petitioner is that of severe head injury. The discharge slip (which is part of DAR EX PW1/5 colly) of LNJP Hospital, would show that case of petitioner/injured was that of moderate traumatic brain injury with right frontal and right temporal regions, hemorrhagic contusion with acute SAH right side with left occipital bone fracture. The said treatment record would also reveal that injured was admitted in said Hospital on 08.01.13 and he was discharged on 19.01.13. It also stands established on record from the testimony of PW5 that injured may perform even simple day of day activities only with the assistance of some person. Thus, he would definitely require the help of one attendant round the clock throughout his life in order to

do his routine day to day activities. Hence, I am of the considered opinion that just and appropriate amount should be awarded to the injured, to meet the expenses to be incurred by him as payment for attendant for looking after him during rest of his life. The age of deceased was more than 45 years as on the date of accident and multiplier of 14 is application as already noted above. Accordingly, a sum of Rs. 8,40,000/- (Rs. 5,000/-x12x14) is awarded to the petitioner under this head."

10. Albeit, the injured would require an attendant round the clock but charges for the same have been granted for a period of 12 hours only. Although the claimant is able to move about, but he does so with extreme difficulty. Should his condition worsen, it will be open to the injured to seek attendant charges round the clock. However, charges of Rs. 5,000/- as awarded in the impugned order is not, realistic for the simple reason that it should be based atleast upon the minimum wages applicable to an unskilled workman. Accordingly, the claimant shall be paid these charges as per the minimum wages notified by the Government of NCT of Delhi for an unskilled workman from 08.01.2013 i.e. the date of the accident. For the past, the same shall be:

Year

Minimum Wages

Amount

2013

[Rs. 7,722/- + Rs. 8,086/- ÷ 2 x 12]

Rs. 94,848/-

2014

[Rs. 8,554/- + Rs. 8,632/- ÷ 2 x 12]

Rs. 1,03,116/-

2015

[Rs. 9,048/- + Rs. 9,178/- ÷ 2 x 12]

Rs. 1,09,356/-

2016

[Rs. 9,568/- + Rs. 9,724/- ÷ 2 x 12]

Rs. 1,15,752/-

2017

[Rs. 13,584/- + Rs. 13,584/- ÷ 2 x 12]

Rs. 1,63,008/-

2018

[Rs. 13,896/- + Rs. 14,000/- ÷ 2 x 12]

Rs. 1,67,376/-

2019

[Rs. 14,468/- + Rs. 14,842 ÷ 2 x 12]

Rs. 1,75,860/-

TOTAL

Rs. 9,29,316/-

11. For compensation payable towards 'future attendant charges', the insurance company shall deposit an amount of Rs. 10,00,000/- with the claimant's bank, over which the insurer shall have a lien. Monthly amounts in terms of the notified minimum wages shall be released by the banker from this deposit to the claimants towards attendant charges. When the monies get exhausted, it shall be replenished by a similar amount to be disbursed towards further notified rates for the life time of the claimant. Should there be a balance of this deposited amount upon the demise of the claimant, the same shall be returned to the insurer. The monies already paid shall be set off. In view of the extensive nature of the injury sustained by the injured, the compensation towards 'loss of general amenities and enjoyment of life' is enhanced from Rs. 1,50,000/- to Rs. 5,00,000/-.

12. The learned counsel for the respondents submits that the injured who is now 51 years of age behaves like a child because of the brain injury. Therefore, he requires an attendant all the time because he is not in a position to take care of himself. The logical sequitor of such a condition would be the provision of the assistance of someone who can maintain and take care of the amount awarded to him and which can be used for his maintenance and needs. Therefore, the learned Tribunal shall ensure that the monies are released only for the benefit of the claimant. The learned counsel for the claimant submits that thus far, no monies have been released to him. Ever since the occurrence of the unfortunate accident, an expense of Rs. 2,24,899/- towards his medical treatment, has been taken care of by his brother thus far. In the circumstance, an amount of Rs. 6,00,000/- be released right away to the claimant in his bank account maintained near his place of residence. The remaining amount shall be released in terms of the scheme of the disbursement specified in the award.

13. The aforesaid awarded amount, alongwith interest @ 9% from the date of filing of the claim petition till its realization, shall be deposited by the appellant before the learned Tribunal, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

14. Since the insurer has succeeded partly in its appeal, let the statutory amount along with interest accrued thereon be returned to the insurer.

15. The learned counsel for the insurer submits that to ensure that the monies are used only for the benefit of the claimant whenever the FDRs are matured, it will be appropriate that the same be monitored by a third party.

16. In the circumstances, Mr. A.K. Soni, Advocate (mobile phone no. 9811404055) is appointed as Court Commissioner, who shall assist the learned Tribunal whenever a request is made for the release of the monies which are kept in FDRs. He has been called to the Court and apprised of this order. He assures the Court of full assistance.

17. A copy of this order, along with entire paper book, be supplied to Mr. A.K. Soni.

18. The appeals are disposed-off in the above terms.