(2012) 09 DEL CK 0518

In the Delhi High Court

Case No : MAC. APP. 928 of 2011

Smt. Nihalo — APPELLANT

Vs

Arvind Kumar and Others — RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0518

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Vikas Sharma, for the Appellant; S.L. Gupta, for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant Nihalo impugns a judgment dated 01.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ` 5,500/- in favor of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 13.10.2008, the Respondent No. 3 Insurance Company was exonerated of its liability. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.

2. There is twin challenge to the judgment. Firstly, it is urged that the compensation awarded is very low. Secondly, it is contended that the vehicle was duly insured, yet, the Claims Tribunal exonerated the Insurance Company on the ground that it (the Insurance Company) had successfully established the breach of the terms of the policy. It is urged that the Respondent Insurance Company failed to prove the willful breach of the terms of policy. Hence, it could not avoid its liability.

3. The Claims Tribunal dealt with the issue of compensation as under:-

...Petitioner PW-3 after the accident dated 13-10-2008 was taken to Sanjay Gandhi Hospital and her MLC shows that she had suffered simple injuries due to complaint of body pain. Her MLC does not reveal any fresh external injury or bleedings. Petitioner was pregnant at the time of accident but alleged accidental injuries have not affected her pregnancy in any manner as she admitted in her cross examination that she delivered her baby normally. Her medical record also does not reveal any complication or abnormality arisen to her baby. She might have been taken to hospital due to some shock of accident from the spot or body pain. She was not admitted in hospital even for a single day and was advised only some medicines to be taken for few days. The medical record shows that petitioner never visited hospital again after the date of accident. The version of the petitioner that she suffered grievous injuries is not correct and not supported by any medical record. There is no medical bill produced by petitioner. Her deposition that she spent sum of Rs. 30,000/- upon her medical treatment is liable to be rejected because petitioner got all her treatment from govt. hospital where it was given free of costs. Petitioner was even not advised any bed rest or was prohibited to do work. Her statement that she could not do work for five months and her life had been spoiled due to this accident is unbelievable.

Petitioner alleged that she spent Rs. 8,000 to 10,000/- upon conveyance and Rs. 10,000 to 15,000/- upon special diet but this claim is highly excessive and exorbitant because after the date of accident she never visited to hospital as OPD patient as per medical prescription. Thus she is not entitled to any expenses on account of conveyance charges. She is however entitled to sum of Rs. 500/- only towards special diet in lump sum as normally in case of injuries/body pain, some healthy food, milk and fruit juices etc. is provided in addition to the normal food.

Petitioner might have suffered some pain and sufferings due to simple injuries/ body pain and might have remained under shock of accident. Keeping in view of nature of injuries as simple and period of treatment, she is granted lump sum amount of Rs. 5,000/-under this non pecuniary head towards pain and sufferings etc...

4. It is apparent that the Appellant did not suffer any external injury. She was granted compensation of Rs. 500/- towards special diet and Rs. 5,000/-towards pain and suffering, which can be said to be for shock on account of the accident. The compensation awarded is just and reasonable.

5. In a separate judgment of this Court in Beerpal & Ors. v. Arvind Kumar & Ors., MAC APP.963/2011 decided by this Court by an order of even date relating to this very accident, I have dealt with the issue of the liability of the Insurance Company in Paras 10 to 21 of the Judgment. In Para 21, I have concluded as under:-

21. Since the report of the Transport Authority was not proved in accordance with law, the same is not admissible in evidence. Once the report Ex. R3W1/8 is excluded from the evidence there is no material on record to show that the driving licence No. 5875/98 available on record was a fake driving licence. The Insurance Company, therefore, was not entitled to avoid the liability.

6. Respondent No. 3 the New India Assurance Company Limited is directed to deposit the compensation awarded along with interest with the Claims Tribunal within six weeks and shall be released to the Appellant on deposit.

7. The Appeal stands disposed of in above terms. Pending Applications stand disposed of.