

(2012) 09 DEL CK 0064

Delhi High Court

Case No: MAC App. 496 of 2004

Smt. Rajashree Gupta

APPELLANT

Vs

The Oriental Insurance Company
Ltd.

RESPONDENT

Date of Decision: Sept. 10, 2012

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

Bench: Single Bench

Advocate: S.P. Gupta, for the Appellant; Manjusha Wadhwa, for R-1, for the Respondent

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

The Appeal is for enhancement of compensation of Rs.1,24,000/- awarded in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 22.06.1997. While awarding the aforesaid compensation, the Motor Accident Claims Tribunal (the Claims Tribunal) held that the Respondent Insurance Company is liable to pay the compensation in the first instance and granted it right to recover the compensation from the Respondents No. 2 and 3. The finding on negligence or with regard to recovery rights is not challenged by any of the parties. Thus, the same has attained finality.

2. The Appellant suffered fracture shaft femur (right) and shaft humerus (right), fracture in mandible and dislocation of ring finger (left). The Appellant was covered by mediclaim policy and was reimbursed an amount of Rs.1,37,967.75P.

3. It was established that the Appellant was a qualified Civil Engineer. It was claimed that she was working as an Environmental Engineer with M/s. Anu Project Consultants & Engineers, 1209, Ansal Towers, 38, New Delhi and was drawing a salary of Rs.5,000/- per month. The Appellant was unable to prove her employment or the salary.

4. The Claims Tribunal found that the Appellant did not suffer any permanent disability. Keeping in view that the Appellant remained hospitalised in Apollo Hospital from 22.06.1997 to 05.07.1997 and must have taken a period of three months to recover from the injuries, the Claims Tribunal granted a sum of Rs. 9,000/- (3,000/- x 3) towards loss of income/loss of gratuitous services of a housewife on the basis of the judgment of the Supreme Court in [Lata Wadhwa and Others Vs. State of Bihar and Others](#), . The Claims Tribunal further awarded a sum of Rs. 75,000/- towards pain and suffering, Rs. 25,000/- towards loss of amenities in life and Rs. 15,000/- towards conveyance, special diet and attendant fee.

5. The following contentions are raised on behalf of the Appellant:-

(i) The Appellant got reimbursement from her Insurance Company on the basis of the mediclaim policy. The tortfeasor cannot gain at the expense of the Claimant.

(ii) The compensation awarded towards loss of income is on the lower side.

6. In National Insurance Company Limited v. R.K. Jain & Ors., MAC APP.346/2010 decided by this Court on 02.07.2012 while relying on the reports of the Supreme Court in [Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another](#), ; [Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others](#), ; and a report of a Division Bench of the Madhya Pradesh High Court in [Jitendra Jain Vs. Rahul Parihar and Others](#), , this Court held that since the reimbursement made by the Claimant or Insurer was towards the amount spent on accidental injury, the same was liable to be deducted from the compensation payable to the Claimant. Following the same, I hold that the Appellant would not be entitled to the said sum again as it would amount to double payment.

7. The Appellant could not prove her employment. The compensation of Rs. 9,000/- towards loss of income on the basis of the judgment in Lata Wadhwa was just and reasonable, particularly, when the minimum wages of a Graduate were less than about Rs. 3,000/- per month at that time.

8. The award of Rs. 75,000/- towards pain and suffering; Rs. 25,000/- towards loss of amenities and Rs. 15,000/- towards conveyance, special diet and attendant charges is just and reasonable.

9. The amount awarded does not call for any interference. The Appeal is devoid of any merit; the same is accordingly dismissed. Pending Applications stand disposed of.