

Hdfc Ergo General Insurance Co Ltd vs Mukesh Kumar & Ors on 4 November, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

\$~15

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ MAC.APP. 218/2020, CM APPL. 26908/
26909/2020
HDFC ERGO GENERAL INSURANCE CO LTD Appellant
Through: Mr. A.K. Soni, Ad

versus

MUKESH KUMAR & ORS.

Through: Mr. Dilawar Singh

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 04.11.2020 The hearing was conducted through video conferencing. CM APPL. 26907/2020 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off. MAC.APP. 218/2020, CM APPL. 26908/2020 & CM APPL. 26909/2020
3. Issue notice.
4. The learned counsel named above accepts notice on behalf of the claimant/R-1.
5. At joint request, the appeal is taken up for disposal.
6. The learned counsel for the appellant states, upon instructions, that in view of the unfortunate circumstances of the case - which involves the amputation of a leg of the victim of the motor vehicular accident -

the other points raised in the appeal are not being pressed, except for the fact that the compensation for the prosthetic limb has been left is open-ended. The injured victim is to be provided a prosthetic limb, for which, it is stated, an estimate or quotation has not been presented to the insurance

company. The impugned award, in this regard, reads as under:

"....

32. It was claimed by the petitioner PW1/Mukesh Kumar that he would require a prosthetic limb to enable him in his day to day activities, which would cost him about Rs.3,44,985/- as per quotation dated 13.09.2018. In support of his claim, petitioner examined PW2/Ms.Shilpi Kushwaha, Prosthetist and Orthotist, who testified that Quotation (Ex.PW1/13) amounting to Rs.3,08,022/- plus GST was issued by P&O International Pvt. Ltd. in favour of injured/petitioner Mukesh Kumar.

33. Admittedly, petitioner has not procured any prosthetic limb till date. It is, accordingly, held that in case, petitioner acquires any prosthetic limb, the cost of the same shall be borne by the insurance company/respondent No.3, subject to production of original bills. It is also made clear that in case, petitioner needs replacement of any component of his Prosthetic limb, the expenses for its replacement, if any, will also be borne by the insurance company/respondent No.3 subject to production of original medical bills.

...."

7. With consent, the impugned award dated 22.01.2020 passed by the learned MACT in Petition No.129/2018, is modified to the extent that the claimant/R-1 shall be supplied a prosthetic limb of good quality which is suitable and comfortable to him. It shall carry a lifetime warranty. Should it be required to be replaced/repared at any stage, the insurance company will do so. The insurer will enquire from the victim, at least twice a year, as to the working condition of the prosthetic limb, through his e-mail address and telephone number, as well as through his counsel's e-mail address and telephone number. The details are as under:

Claimant's/R- Claimant's/R- Counsel's Counsel's E-

1's Mobile No.	1's e-mail address	Mobile No.	mai
9999634760	mukeshkumark780@gmail.com	9811451160	yash.l ial.co

8. In case of any difficulty apropos the prosthetic limb, the claimant may intimate the insurer through e-mail addresses and/or telephone numbers of three officers of the insurer, as supplied to him. These details shall be provided to the claimant within 2 weeks from today.

9. It will be open to the claimant to communicate the quotation or estimate for a suitable prosthetic limb to the insurance company at the e-mail addresses and telephone numbers provided by the learned counsel for the insurer. The impugned

order is modified to this extent.

10.The learned counsel for the appellant submits that the default depositing the awarded amount was on account of the delayed appeal, which in turn, was on account of the prevailing pandemic, which has slowed things down. Therefore, the penal interest of 12% may not be imposed. The learned counsel for the claimant/R-1 has no objection to the same.

11.Accordingly, let the awarded amount be deposited, along with interest accrued thereon @ 9%, before the learned Tribunal, within 3 weeks from today, to be disbursed to the beneficiary of the Award in terms of the scheme of disbursement as specified therein.

12.The appeal, along with pending applications, is disposed-off in terms of the above.

13.The order be uploaded on the website forthwith.

NAJMI WAZIRI, J NOVEMBER 04, 2020 AB