

Master Jatin Alias Jatin Bhardwaj vs Hdfc Ergo General Insurance Co. Ltd. & ... on 8 December, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

\$~13

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC.APP. 258/2020

MASTER JATIN alias JATIN BHARDWAJ

Through: Mr. Manish Maini, Advocate
versus

HDFC ERGO GENERAL INSURANCE CO. LTD. & ANR.

....Respondents

Through: Mr. Sameer Nandwani, Advoc
Insurance Company.
Mr. Satinder Singh Bawa, A
Ramesh Singh, Standing Cou
GNCTD. (bawa.legal@gmail.c

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 08.12.2020 The hearing was conducted through video conferencing. CM APPL. 31790/2020 (Exemption) 1 Exemption allowed, subject to all just exceptions. 2 The application stands disposed-off.

3 This appeal impugns the award of compensation dated 12.02.2020, on the ground that for a person who has admittedly suffered both cognitive and locomotive disability, the functional disability has been assessed only at 70%.

4 The learned counsel for the appellant submits that that when there is a cognitive disability, the person is rendered incapable of assessing things in front of her/his or is otherwise disoriented most of the time; such person would require assistance throughout her/his life. The said submission is valid and is accepted.

5 Apropos permanent disability, the award inter alia records as under:

"Permanent Disability/Loss of Amenities

26. As already stated above, the petitioner is shown to have sustained 70% permanent disability in relation to whole body as evident from disability report dated 28.01.2019 of Post Graduate Institute of Medical Education and Research, Dr. Ram

Manohar Lohia Hospital, New Delhi vide disability certificate Ex. PW-4/1. PW-4 Dr. Ajay Chaudhary in his testimony has deposed that neuropsychological assessment of the petitioner Jatin was done and as per record, he was found to have 50% mental disability and thereafter, locomotors disability was separately assessed which has been found at 40%. He further deposed that after using combination formula for disability assessment, the overall disability in relation to whole body was assessed at 70%. He also deposed that the petitioner is having difficulty in walking and various motor movements alongwith cognitive dysfunction which means decreased/diminished mental performance. In his cross examination by the Ld. Counsel for respondent no. 3/insurer he has deposed that after perusal of entire medical record of the petitioner including MLC, he assessed the disability as per the guidelines issued by the Ministry of Social Justice and Empowerment. He further deposed that he has not brought the guidelines as the same are available on NET. He deposed that he was the part of the team who have conducted all the tests and thereafter disability certificate was issued in favour of petitioner. The witness has also deposed that there is no chance of scientific improvement in disability of child since 2 years have already been passed after the injuries. He further deposed that the disability is permanent and there is no chance of further improvement. During cross examination, the tribunal has put the question as to what is his assessment of permanent disability in terms of percentage in relation to whole body. To this the witness has answered that the Board has already assessed the permanent disability of the petitioner Jatin at 70% in relation to whole body. The tribunal has again put a question as to what is his assessment of functional disability of injured when compared to the permanent disability as per his report Ex. PW-4/1 and Ex. PW-4/2. To this the witness has answered that the petitioner Jatin is having difficulty in walking and various motor movements alongwith cognitive dysfunction which means decreased/diminished mental performance. It is worthwhile to mention here that the disability of the petitioner was got assessed in terms of the directions issued by the tribunal vide order dated 17.07.2018. From the medical record of the petitioner, it is proved that the petitioner has suffered head injury with united fracture right femur with traumatic amputation of right great toe.

27. Ld. Counsel for the insurance company Sh. Sanjay Kumar has argued that 50% of the said disability assessed by the medical authorities may be taken as the disability in relation to the whole body as no special factor for considering it otherwise have been shown or proved on record. This argument of the Ld. Counsel for the insurance company is declined as the disability has even been assessed by the doctors in relation to whole body.

28. In the above view, the functional disability suffered by the petitioner is accepted at 70% as it has already been assessed by the doctors in relation to whole body. Therefore, Rs. 4,00,000/- (Rupees Four Lakhs) is awarded under the head of permanent disability and loss of amenities. Reliance is placed upon "Kumari Kiran through her father Harinarayn (supra) and Master Mallikarjun (supra)."

6 Clearly, the doctors have opined that the claimant has difficulty in walking and in executing various movements; he is also afflicted with cognitive dysfunction -- which is indicative of decreased/diminished mental performance. In other words, he would never be able to earn a living for himself and would be a dependent for the rest of his life on somebody else monetarily, simply to survive. Additionally, he would be required to be taken care of for his movements round the clock. Therefore, his functional disability is 100%. He has been awarded of Rs.4 lakhs for 70% functional disability. The same is enhanced to Rs.6 lakhs, in view of the maximum compensation fixed in Kumari Kiran through her father Harinarayn vs. Sajjan Singh and Others in Civil Appeal No. 8632/2014 decided on 11.09.2014 and Master Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. & Anr. 2013 ACJ 2445.

7 Compensation should be meaningful and have a reparative character i.e., the injured should be put in same position as she/he was before the injury. In the present case, the doctors have opined that there is no likelihood of any improvement in the appellant's condition. Indeed, his condition is only likely to worsen. He should therefore be provided the basic but necessary assistance of attendants who could care for his rudimentary needs, such as to go to the toilet, to sit up, to put on clothes, to eat and other human activities. The 100% disabled appellant would require two attendants/care-givers in 12-hour shifts. Let the same be provided to him.

8 Presently, the appellant may have the benefit of his caring parents but they cannot be expected to be present with him at all times, as they may be engaged in other activities and/or be employed to make provisions for the family's needs. In the circumstances, the appellant shall be paid compensation towards the procurement of the assistance of two semi-skilled worker on the basis of minimum wages, from the date of the accident and for the rest of the appellant's life. 9 The arrears towards the same shall be paid by the insurer, on the basis of notified minimum wage rates applicable to a semi-skilled worker. The arrears shall be deposited directly into the bank account of the appellant, jointly operated by his parents, in a month's time, along with interest accrued thereon @ 9% p.a. Payments apropos 'attendant charges' in the future shall also be ensured by the insurer. The current minimum wage rate of a semi-skilled workman is approximately Rs. 18,000/-. Accordingly, Rs.36,000/- per month would be required to be paid to the appellant. These rates are revised twice a year. Therefore, prudently provision should be made for automatic crediting of the current and future wages into the appellant's bank account. Logically, the insurance company should assure about Rs.50,000/- per month as DFR interest. According to the current FDR rates, a deposit Rs.60 lakhs is likely to fetch about Rs.50,000/- per month as interest. Let Rs.60 lakhs be kept in an interest-bearing FDR by the insurer in its own bank. The interest earned therefrom, shall be credited into the appellants' account by the 10th day of each Gregorian calendar month, on the basis of notified minimum wages for two attendants.

10 Should the minimum wages be subsequently enhanced to a quantum which does not meet the interest generated from the FDR, the insurer shall augment the deposit to meet the shortfall. The insurer shall have a lien on the deposit, which it shall encash on the demise of the claimant.

11 This Court had earlier directed similar arrangement in Anju Mahajan vs. Nasir Ali & Ors. in MAC APP No. 155/2018 decided on 05.12.2019, against which SLP (C) No. 7882/2020 filed by the

insurance company was dismissed on 10.07.2020. 12 Computation as regards the amounts payable in terms of the notified minimum rates shall be filed by the appellant court and shall also be shared with the learned counsel for the insurance company, for the same to be credited into the bank account of the appellant. 13 This case raises a peculiar situation where an innocent adolescent has been rendered permanently disabled and would be dependent on his parents who are not economically well-off. The amount of compensation granted to him is only for his physical care. However, insofar as he himself would be unable to earn any monies, some arrangements must be made where he could be cared for by any foster/special care home or any such facility which may have been set up by the State or private institutions. The government's policy in this regard would need to be examined. In the circumstances, the Government of National Capital Territory of Delhi (GNCTD) is impleaded as R-3. Amended Memo of Parties be filed before the next date 14 Issue notice to GNCTD through its Standing Counsel (Civil). Mr. Satinder Singh Bawa, Advocate accepts notice on behalf of the GNCTD. Copy of the petition has been supplied to him during the course of hearing through e-mail. Reply be filed within four weeks.

15 The learned counsel for the appellant submits that this is a tragic case in which the young victim of 11 years remained in a coma for about five months. He further submits that upon regaining consciousness thereafter, he was unable to recognise his parents for seven months. The trauma was not his alone, but extends to his parents. The feelings of loneliness and discomfiture in both the child and his parents is unimaginable.

16 List on 02.02.2021.

17 The order be uploaded on the website forthwith.

NAJMI WAZIRI, J DECEMBER 08, 2020 RW