

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

XV

S.L.P (C) No.20678 of 2022

Rajesh Joshi

.....Petitioner

- Versus -

National Insurance Co. Ltd. & Ors,

...Respondents

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Sl. No.	Description	Copies	Court Fee (Rs.)
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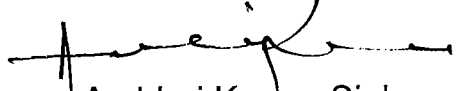
Matdliya

Mr. Rishi Matloya

Advocate for the petitioner)



Filed By


Ambhoj Kumar Sinha

Advocate for the respondent No.4

Filed on: 4 .09.2024

Rahul Meena

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S.L.P (C) No.20678 of 2022

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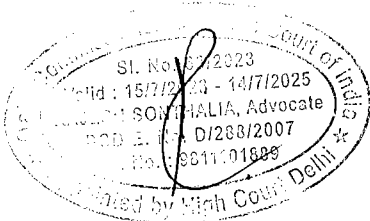
National Insurance Co. Ltd.

...Respondent

COUTNER AFFIDAVIT ON BEHALF OF
THE RESPONDENT NO.1

I, Jeet Singh Khurana, Asst. Manager (Legal), National Insurance Company Limited, National Legal Vertical, 2E/9 Jhandewalan Extension (2nd Floor), New Delhi-110055, do hereby solemnly affirm and state as follows:-

- A. That, I am Asst. Manager (Legal) in the National Insurance Company Limited having its office at National Legal Vertical, 2E/9, Jhandewalan Extension (2nd Floor), New Delhi-110055, arrayed as respondent No.1 in the aforesaid matter and, am also conversant with the facts and circumstances of the case and, am

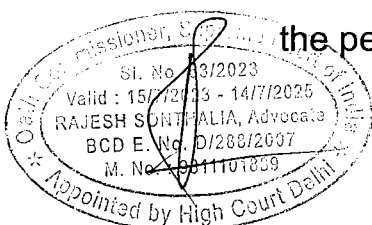


therefore, competent to swear the present affidavit on behalf of the said company in my official capacity.

B. That, I have gone through the SLP under reply and, I say at the outset that, all the averments and submissions mentioned in the said SLP are wrong, misleading and misconceived hence, the same are categorically, denied unless admitted specifically hereunder:

C. **Facts of the case in brief.**

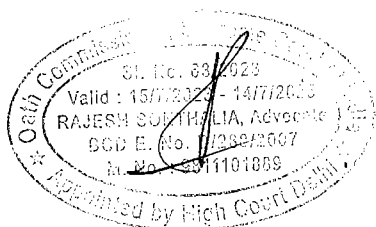
The claimant/petitioner while moving on his motorcycle was hit by an another motorcycle, resulting into accident in which the claimant got one of his legs fractured. The offending vehicle was insured with the answering respondent. The claimant was under medical treatment and also under hospitalisation for a period of about 12 days. The claimant filed a claim petition u/s 166 of M.V. Act against the driver/owner of the offending vehicle and its insurer, the answering respondent. The petitioner claimed to have suffered 15% permanent disability to his affected leg and in support thereof, he submitted a medical certificate. The claim petition was allowed by the MACT awarding a sum of Rs. 5,97,692/- out of which 5 lacs had been awarded erroneously towards the loss of income and loss of future earning incurred by the petitioner/claimant.



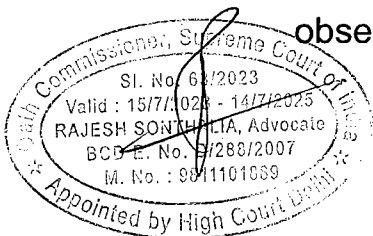
The answering respondent moved an appeal before the High Court challenging the said award particularly the amount of compensation awarded by the Tribunal towards the loss of income and future earning. The petitioner/claimant also moved an appeal before the High Court seeking enhancement of compensation on account of loss of income and future prospect. The Hon'ble High Court allowed the appeal filed by the answering respondent reducing the compensation from Rs. 597,782/- to a sum of Rs. 2,58,000/- which included the expenses towards medical treatment and other miscellaneous expenses incurred by the claimant and also a sum of Rs.70,000/- towards the loss of income suffered by him due to being hospitalized for about a period of 12-15 days. The appeal filed by the claimant being devoid of merits was dismissed by the High Court.

PRELIMINARY SUBMISSIONS:-

1. No question of law, much less the substantial question of law of general and public importance is involved in the SLP under reply warranting indulgence of this Hon'ble Court under Article 136 of the Constitution of India. The SLP under reply is devoid of merits and thus, deserves to be dismissed with costs.



2. Admittedly, the petitioner/claimant was a government employee working as an Associate Professor in a government university at the time of accident and continues to be in the service. He was never out of service due to the purported disability suffered by him due to the accident. As such, the petitioner cannot claim to have suffered any loss of income or his future earning having been adversely affected and therefore, the compensation awarded by the learned Tribunal towards the loss of future earning was illegal and unjustified and the Hon'ble High Court vide the order as impugned herein, has rightly allowed the answering respondent's appeal and dismissed the one filed on behalf of the petitioner reducing the compensation by five lacs which had been awarded by the learned Tribunal towards loss of future earning.
3. There is no adverse impact on the earning ability of the petitioner as he continues to be in the government employment as Associate Professor getting all the benefits admissible to a government employee.
4. There is no admissible proof of disability suffered by him. The petitioner himself admitted during the cross examination that he could move without any support. It would also be evident from the observation made by the learned Tribunal that, the petitioner



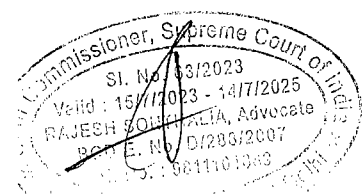
remained standing during the entire court proceedings without making any complaint of pain or discomfort. The relevant portion of observation made by the learned Tribunal in paragraph 28 of its order dated 28.10.2020, is reproduced as under:

“The applicant has admitted in his cross examination that, today he can move-above in the court without any support; but cannot remain standing upto more time. During the course of recording of his entire statements, he remained standing in the Court and he had also not made any complaint about his having remaining standing and now also it has been expressed to be healthy in good manner.”

5. There was no basis for calculating the loss of income yet, the learned Tribunal calculated the loss of income and assessed the same as Rs. 5 lakhs without any basis and erroneously, awarded a sum of Rs. 5,00,000/- (five lakhs) to the petitioner/claimant towards loss of ‘future earning’.

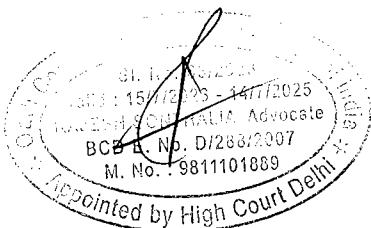
6. The Hon’ble High Court while allowing the answering respondent’s appeal has rightly observed as under:

“In the present case, it is not in dispute that the claimant is government employee posted as Associate Professor in the Government College. On account of injury sustained in the accident, no loss of earning has been caused to the claimant. He



is continuing in service. In the case of Raj Kumar (supra) the Hon'ble Apex Court held that 'what requires to be assessed by the Tribunal is the effect of permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money to arrive at future loss of earning.'. In the present case, since no loss of income has been caused to the claimant on account of his injury, learned Tribunal grossly erred in awarding compensation in the head of loss of income. He is not entitled for loss of income, however, instead he may be awarded sufficient amount for pain and suffering."

"From the perusal of the impugned judgment, it is also evident that no basis for calculating the loss of income of Rs. 5 Lakhs has been discussed. In the considered opinion of this court, awarding lump-sum amount in such a manner is not permissible in view of the well settled principles of law as laid down by the Hon'ble Apex Court in various judgments. Disability certificate Exhibit-P/50 shows that 20% of the disability was assessed on account of fracture in the leg only. No disability has been shown to be caused to the claimant on account of other injuries suffered by the claimant on other parts of the body as stated by the claimant in his statement on oath before the



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Tribunal. Claimant in his statement also did not disclose the grounds on the basis of which, it can be said that claimant suffered loss of future prospectus in his life."

7. Admittedly, the petitioner received a sum of Rs. 1,65,000/- under Medclaim policy also, yet, a sum of Rs. 68,000/- has been awarded by the High Court towards expenses on medicine and nursing.

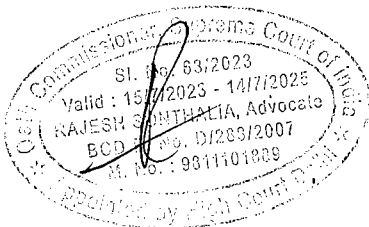
8. The petitioner being a government employee is entitled to medical leave also and he must have received the salary even for the period during which he was hospitalized for medical treatment. However, a sum of Rs. 70,000/- was awarded to the petitioner on account of loss of earning during the period of medical treatment.

9. Under the facts and circumstances of the case and keeping in view the settled laws of the land, the SLP under reply, deserves to be rejected outright.

PARA WISE REPLY

Para-1

The contents of Para 1 are a matter of record requiring no comment.



Para-2

No questions of law much less the substantial questions of law of general public importance have been raised in the petition under reply therefore, indulgence of this Hon'ble Court under Article 136 of the Constitution of India is unwarranted.

Paras-3

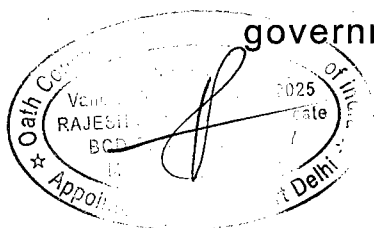
Matter of record and hence, no comments are required.

Paras-4

Matter of record and hence, no comments are required.

Para-5

The grounds raised by the petitioner in Para 5 of SLP are not valid either in law or on facts and hence, the same deserves to be rejected. As already mentioned above and as would also be evident from the observations of the courts below that, the disability of 15 or 20% as claimed by the petitioner has not caused any adverse impact either on his earning ability or physical ability. The petitioner continues to be in government employment in the same capacity i.e.



Associate Professor without any loss of income and without any adverse impact on his future prospect therefore, as has been rightly held by the High Court, he is not entitled to any compensation on account of loss of earning or future prospect.

Para-6

No grounds for interim relief as mentioned in the para under reply, are valid or available to the petitioner.

Para-7 & 8 (Colly)

In view of the facts and circumstances as stated above, it is submitted that, the petitioner is not entitled to any relief as prayed for in the para under answer and, it is therefore, prayed that the instant SLP may kindly be dismissed with costs.

Para-8

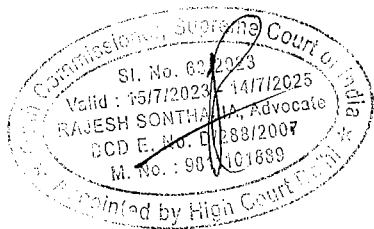
E. No facts which have not been pleaded before the courts below have been pleaded herein.

VERIFICATION

के लिए एवं की ओर से
For and on behalf of
नेशनल इश्योरन्स को. लि.
National Insurance Co. Ltd.

जीत सिंह खुराना
Jeet Singh Khurana

विधिवत गठित अटॉर्नी
Duly Constituted Attorney



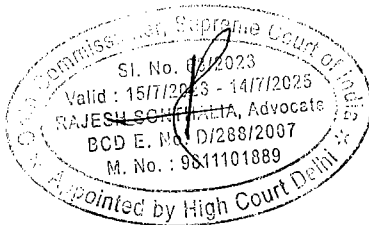
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Verified at New Delhi on this 4th day of September, 2024
that, the contents mentioned above are based on the
records maintained in the office of the answering
respondent's company and the same are believed to be
true and correct and nothing material has been
concealed or suppressed therefrom.

I Identify the deponent who has
Signed / Put T.I. in my presence

For and on behalf of DEPONENT
नेशनल इन्श्योरन्स कं० लि०
National Insurance Co. Ltd.

Jeet
3/9/24
जीत सिंह खुराना
Jeet Singh Khurana

विधिवत गठित अटॉर्नी
Duly Constituted Attorney



ATTESTED
RAJESH SONTHALIA, Advocate
OATH COMMISSIONER
SL. NO. 63/2023
SUPREME COURT OF INDIA
4/9/24



Ambhoj Sinha <ambhojsinha@gmail.com>

*Proof of Service***Service of advance copy of the counter affidavit.**

1 message

Wed, Sep 4, 2024 at 7:37 AM

Ambhoj Sinha <ambhojsinha@gmail.com>

To: "matoliyarishi@gmail.com" <matoliyarishi@gmail.com>, Nikhil Singh <nikhil.singh221@gmail.com>

To,
Mr. Rishi Matoliya
Advocate,
Supreme Court of India,
New Delhi.

Sir,
Ref: SLP (C) No. 20678/2022 (Rajesh Joshi VS. National Insurance Co. Ltd. & Ors.)

Please find herewith, a copy of the counter affidavit in response to the aforesaid SLP which is being filed on behalf of the respondent No. 1 (National Insurance Co. Ltd.).
Thanking you.

With due regards,

Ambhoj Kumar Sinha
Advocate for the Respondent No.1

**Counter (Rajesh V NIC) SLP 20678-22.docx**

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