



2024:DHC:10195



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 9th December, 2024**

+ **MAC.APP.1007/2018 & CM APPL.47649/2018**

THE CHAIRMAN,

Rajasthan State Road Transport Corporation

Sikar, Rajasthan

.....Petitioner

Through: Dr. Ritu Bhardwaj, Advocate.

versus

1. SANJAY MATHUR

S/o Late Sh. R.B. Mathur,

R/o: 10415, GaliNo.1, Bagichi Allauddin,

Multani Dhanda, Pahar Ganj, New Delhi-55

.....Respondent No. 1

2. MOHAN LAL

S/o Late Sh. R.B. Mathur

R/o Ram Nagar, Raghunath Garh,

Sikar, Rajasthan

.....Respondent No. 2

Through: Mr. S.N. Parashar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of the **Appellant/Rajasthan State Road Transport Corporation** to challenge the Award dated 08.06.2018 vide



which compensation in the sum of Rs.4,56,000/- along with interest @ 9% per annum, has been granted to the Respondent No.1/Injured for the injuries suffered by him in a road accident on 13.08.2015.

2. The *main grounds of challenge* by the Appellant are : -

- (i) that the driver of the car in which the injured was travelling, was driving the car *negligently on the wrong side*, whose left side had hit the bus. There is no negligence proved on behalf of the vehicle of the Appellant;
- (ii) That the *quantum of compensation* is liable to be revised:
 - (a) the injured did not suffer *any loss of income* since he had availed his leave;
 - (b) that the *medical expenses in the sum of Rs.2,16,616/- have been incorrectly granted*, since he is a Government employee entitled to go to the empanelled hospitals and claim the reimbursement. He cannot chose to go to a private hospital and then make a claim for the bills;
 - (c) that *Special Diet* has been awarded in the sum of Rs.10,000/- without there being any evidence;
 - (d) that *Attendant Charges* of Rs.10,000/- has been given even though there is no evidence;
 - (e) that the compensation granted on account of *Mental and Physical Shock, Pain and Suffering* in the sum of Rs.35,000/- each separately, is unwarranted.
 - (f) that *Loss of Inconvenience/hardship* granted in the sum of Rs.10,000/- could not have been awarded under a separate



head for Pain and Suffering.

It is, therefore, submitted that the compensation needs to be revised.

3. ***Learned counsel on behalf of the Complainant*** submits that he was only an occupant and not the driver of the car and has deposed about the manner of the accident which establishes that there was no negligence of the driver of the car in the accident.

4. In so far as the quantum of compensation is concerned, it is explained that the injured had availed three months leave and therefore, he has been rightly granted the Loss of Leave for three months, Medical Expenses have been granted on the basis of original bills. The accident had taken place in Rewari and he was taken to Medanta Hospital which cannot be faulted. He had suffered injury in his jaw and, therefore, special Diet has been awarded though it is on a lower side. The Attendant charges and other compensations are well justified.

5. It is, therefore, submitted that there is no merit in the Appeal and it is liable to be dismissed.

6. **Submissions Heard and Record Perused.**

Negligence of the Roadways Bus:

7. The *first ground* of challenge by the Appellant/Rajasthan State Transport Corporation is that the accident occurred due to the sole negligence of the Driver of EECO Car bearing registration No.DL6CP 4515 in which the injured/Respondent No. 1, Sanjay Mathur, was travelling and no compensation could have been awarded against it.

8. The injured/Sanjay Mathur had appeared as PW1 and deposed that on 13.08.2015 he was travelling in the EECO Car bearing registration



NO.DL6CP 4515 which was being driven at a normal speed by Shri Harish and one Sunil Wadhwa was also travelling with them. He deposed that at about 3:45 P.M., they reached near Nadha Mod, Narnaul, District Rewari, Rajasthan, when offending Rajasthan Roadways Bus bearing registration NO.RJ 23 PA 6596 (offending vehicle) came at a high speed and changed its lane to come on the wrong side to overtake a truck and thereby hit the EECO Car, resulting in the accident in which injuries were suffered by injured Sanjay Mathur and other occupants.

9. From his testimony, it is evident that the sole negligence was of the Roadways Bus which came on the wrong side of the road after overtaking the truck because of which the accident occurred. Pertinently, there is no evidence produced by the Appellant from where it could be established that there was any negligence on the part of the Driver of the EECO Car. In any case, the injured was an occupant in the Car and cannot be held responsible for negligence in any manner.

10. *The learned Tribunal has rightly concluded negligence on the part of the Rajasthan State Transport Bus/offending vehicle. There is no infirmity in the findings of the learned Tribunal.*

Quantum Of Compensation:

11. *Leave Encashment:* The ground of challenge is that the Respondent injured could not have been compensation for 96 days in the sum of Rs.1,19,136/- because he did not suffer any Loss of Income, since *he had availed the leave as was available in his leave account.*

12. This contention of the Appellant has no merit for the simple reason that though the injured may have been able to avail Medical and other Leave



2024:DHC:10195



in his account, but the fact remains that he has been compelled to exhaust his available leave on account of the injuries suffered in the accident. Had there been no accident, he would have been utilize his leave as per his own requirement. Now in future, if the need arises to taken the leave, he would be compelled to suffer loss of salary on account of his leave, which have already been availed on account of the accident. ***The learned Tribunal for cogent reasons have awarded Loss of Income and there is no ground to interfere with the same.***

13. ***Medical Reimbursement:*** The Appellant has contended that the injured is a Government employee and was entitled to treatment at the empanelled Hospital and for the reimbursements. He should not have taken his treatment at private hospital, and thus, a sum of Rs.2,16,616/- awarded on account of his treatment in private hospitals, is not payable.

14. The injured had explained that the accident had occurred in District Rewari and he was immediately taken to Medanta Hospital. Merely because the injured was government employee, does not mean that in case of emergent need as in the present case, he should have been taken to the empanelled Hospital which may be far and in the process may have suffered complications because of the injuries suffered by him. The injured was fully justified in taking his treatment at the private Hospital. Moreover, merely because he is a government employee, does not compel him only to take treatment at the government hospital.

15. ***The compensation so awarded on account of medical bills cannot be faulted.***

16. ***Special Diet:*** The Appellant has claimed that no bills for Special Diet



have been furnished and the compensation in the sum of Rs.10,000/- on account of Special Diet, is on the higher side.

17. It cannot be over looked that the injured had suffered grievous injuries and had remained under treatment for three months. It is a known fact that Special Diet would be required for him for recuperation and proper recovery.

18. ***Compensation of Rs.10,000/- awarded by the learned Tribunal to the injured towards Special Diet is fully justified.***

19. *Attendant Charges:* The Appellant has claimed that there is no proof of any Attendant having been engaged by the injured and therefore, Rs.10,000/- granted as Attendant Charges are not justified.

20. The learned Tribunal had noted that the injured had suffered *fracture left Mandibular Conidial* and would have required some Attendant or the family member and consequently granted Rs.10,000/- towards Attendant Charges.

21. It cannot be over looked that a person who suffers injuries and especially of the kind as in the present case, would need some special attention which may be given by a family member or by a paid Attendant. Even if there is no evidence adduced of any Attendant having been engaged, but it cannot be overlooked that he remained under treatment for three months and some family member would have been definitely burdened with extra work of taking care of the injured. ***The compensation of Rs.10,000/- so awarded towards Attendant Charges are fully justified.***

22. *The learned Tribunal has granted Rs.35,000/- each on account of Mental and Physical Shock and Pain and Suffering which having regard to*



2024:DHC:10195



the nature of injuries and the period of treatment, cannot be held as excessive.

23. The compensation granted towards *Loss of Inconvenience/hardship in the sum of Rs.10,000/-* again cannot be questioned for the simple reason that the injured a fracture of '*Mandibular Conidial*' and would have faced immense difficulty in eating and his day to day activities.

24. *Compensation of Rs.10,000/- cannot be considered as excessive under this head.*

Conclusion: -

25. In the light of aforesaid discussion, it is held that there is no merit in the present Appeal, which is hereby dismissed.

26. The Statutory amount deposited, be returned to the Appellant.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 9, 2024

Rk/Va