(2016) 08 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : MP No. 2 of 2016 in Condl. (C) No. 18 of 2016 c/w CIMA No. 143 of 2016

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Nazir Hussain RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Citation : (2017) AAC 519 : (2016) 4 JKJ 147

Hon'ble Judges : Mr. Ramalingam Sudhakar, J.

Bench : Single Bench

Advocate : Mr. Qamar Zaman Qureshi, Advocate, for the Respondent-1/ Claimant; Mr. Ravinder Sharma, Advocate, for the Appellant/Peitioner

Final Decision : Dismissed

Judgement

Mr. Ramalingam Sudhakar, J. - MP No. 2/2016 in Condl. (C) No. 18/2016

Since both the parties have agreed for disposal of the main appeal, MP No. 2/2016, seeking release of 25% of the amount is disposed of

accordingly.

2. So far as Condl. (C) No. 18/2016, is concerned, there is delay of 163 days in filing the main appeal. Learned counsel for respondent-1/claimant

does not object to the condoning of delay in view of the fact that the main appeal is being taken up for final disposal.

3. Condonation of delay application is also disposed of accordingly.

Main Appeal (CIMA No. 143/2016)

4. Registry is directed to register and number the main appeal.

5. By consent of both the parties, the main appeal is taken on board for final disposal.

6. The Insurance Company primarily contested the award of the Tribunal on the quantum of compensation.

7. The accident in this case happened on 4th February, 2013. The claim under Section 166 of the Motor Vehicles Act was preferred. The injured

claimant, 35 years of age, was a mason by profession. He was returning from work on the Sakhi-Maidan-Kalai road at kilometer 28th.

Respondent No. 3, driver of the JCB, driving the offending vehicle in a rash and negligent manner, hit the petitioner resulting in serious injuries and

his left arm was crushed. He was shifted to CMC and Hospital, Jammu where his crushed left arm was amputated. He filed a claim petition for

compensation stating that he was working as mason and earning Rs. 25,000/- per month.

8. The Insurance Company, the owner and driver of the vehicle were arrayed as respondents. The offending vehicle insured with the Insurance

Company was the cause of the accident and injury was not disputed before the Tribunal. The Insurance Company and owner of the vehicle

appeared and filed their objections. The driver of the offending vehicle did not put in appearance and remained absent. The owner of the vehicle

after filing objections remained absent. Both were set at ex-parte by the Tribunal.

9. Claimant was examined as PW-1, besides he examined one Mohd. Farooq as PW-2, Mohd. Aslam as PW-3, Mohd. Maroof as PW-1 and

Dr. Manjeet Singh as PW-5. Appellant/Respondent has not examined any witness.

10. The Tribunal records that the Insurance Company/Respondent-1 as also Respondent-2, owner of the offending vehicle before the Tribunal

have admitted the accident and have not produced any evidence in rebuttal. Therefore, the plea of negligence on the part of the driver of JCB and

liability of the owner of the vehicle to compensate the victim was confirmed. The Insurance Company admittedly insurer of the offending vehicle

was held liable to compensate the claimant. That issue is no more in dispute.

11. The main plea in appeal is on the quantum of compensation. Based on the nature of accident, in which the claimant a 35 year old mason, who

was injured, the Tribunal fixed the income as Rs. 500/- per day, being a skill labour. The income was taken as Rs. 6,000/- per month for

calculation of the compensation, i.e., Rs. 72,000/- per annum. Based on the 80% disability certificate issued by the doctor and relying upon the judgment of Honâ??ble Supreme Court in case titled Raj Kumar v. Ajay Kumar & Ors., reported as 2011 ACJ 1, the Tribunal came to

hold that the nature of disability is permanent. Injured cannot perform his duty as before and, therefore, he will be given the benefit of

compensation by adopting multiplier method holding that he has lost his earning power in totality. The evidence of doctor (PW-5) was relied for

this purpose. The loss of earning capacity was determined at 80% and accordingly the annual pecuniary loss was fixed at Rs. 57,600/-. Tribunal

also relied upon the decision of Honâ??ble Supreme Court in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., reported as

2009 (3) Supreme 487, to adopt multiplier applicable to this case. The injured claimant fell within the age group of 31 to 35. Therefore, proper

multiplier would be 16. Accordingly, the total pecuniary loss of earning capacity has been calculated as 57,600 x 16 = Rs. 9,21,600/-. Tribunal

granted compensation for pain and suffering including loss of amenities at Rs. 30,000/- and for miscellaneous expenses like treatment including

attendant charges Rs. 15,000/- totalling to Rs. 9,66,000/- with interest @ 7.5% per annum till realization.

12. In appeal, the learned counsel appearing for the Insurance Company averred that the Tribunal has awarded excessive compensation

particularly based on higher income.

13. On the other hand, learned counsel for the claimant submits that even if the minimum daily wages may differ from place to place yet the

compensation is just.

14. In this case, the injured claimant hails from a remote area Poonch. The claimant, however, was 35 years of age. The disability will affect his

future prospects of earning. The Tribunal did not take into consideration the young age of the injured claimant and fix the income higher based on

future prospects.

15. This Court finds out no reason to reduce the income even marginally as future prospects have not been taken. Even otherwise, the Tribunal has

been very cautious in granting compensation on other heads. In respect of pain and suffering, including loss of amenities, the Tribunal has granted

only Rs. 30,000/- as compensation which is meager. So far as food and extra-nutrition, no amount has been granted and only meager amount has been granted, for the purpose of transport facilities in the case of claimant hailing from remote area meager amount has been granted.

16. Therefore, this Court finds no reason to reduce the amount of compensation. Hence the appeal is dismissed. There is no dispute as far as

interest component is concerned.