(2021) 02 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Mac App No. 36 Of 2020

Bajaj Allianz General Insurance Company APPELLANT

Vs

Imaad Durrani And Others RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 2(i)

Citation : (2021) 02 J&K CK 0009

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Imtiyaz Ahmad, R.A.Jan, Taha Khalil

Final Decision : Dismissed

Judgement

1. Bajaj Allianz General Insurance Company â?" appellant herein, is aggrieved of and seeks setting-aside of Award dated 16th March 2020, passed by

Motor Accident Claims Tribunal, Srinagar, (for brevity â??Tribunalâ?), on a Claim Petition, bearing File no.305/2015, titled Imaad Durrani v. Irshad

Ahmed Shah and others, saddling appellant Insurance Company with liability to indemnify insured and pay compensation of Rs.18,67,400/- along with

7.5% interest from the date of presentation of claim petition till final realization, on the grounds made mention of in Appeal on hand.

2. I have gone through the file and considered the matter.

3. A claim petition, as is discernible from perusal of file, was filed by respondent no.1 before the Tribunal on 4th December 2015 for grant of

compensation on account of grievous injuries suffered by him because of vehicular accident by rash and negligent driving of the driver of offending

vehicle (Swift bearing Registration no.JK13B/7828) on 2nd March 2015, when respondent no.1 was driving his vehicle (Maruti 800) near Rawalpora,

Srinagar. Respondent is stated to have been taken to hospital, and thereafter he underwent a number of surgeries out of J&K, on which he spent huge

amount. FIR no.43/205 in police station Budgam was also registered. The right eye of respondent no.1 is said to have badly injured. On the basis of

case set up, respondent no.1 sought compensation in the amount of Rs.95.00 Lacs.

4. Owner and driver of vehicle caused their appearance before Tribunal and insisted that vehicle in question was not involved in any accident and that

driver of offending vehicle was holding licence. Appellant Insurance Company insisted that driver of offending vehicle was not holding valid and

effective driving licence, albeit it was admitted that vehicle was insured.

5. The Tribunal, given pleadings of parties, framed following issues for adjudication:

1. Whether on 02.03.2015, the petitioner while driving his vehicle Maruti 800 was hit by the vehicle (Swift) bearing regd. No.JK13B/7828 which was

being driven by respondent â?" driver rashly and negligently as a consequence of which petitioner suffered serious injuries, including loss of eyesight

of right eye, rendering him permanently disabled? OPP

2. Whether the driver of offending vehicle was driving vehicle without valid D/L and other vehicular documents as such respondent no.1 has

committed breach of policy conditions which absolves the respondent company from its liability? OPR-3

3. Whether in case issue no.1&2 are decided in affirmative, to what amount of compensation the petitioner is entitled to and from whom? OPP

4. Relief. OPP

6. Claimant/respondent no.1 produced seven witnesses, besides claimant. Appellant insurance company did not produce any witness in support of its

stand.

7. Learned counsel for appellant Insurance Company has stated that claimant/ respondent no.1, in support of his claim petition, had produced a witness,

namely, Gurdeep Singh (Operation Officer) of Adarsh Build Estate Limited, where respondent no.1 was working from July 2014 as Sales Officer and

his salary was shown as Rs.2.50 Lacs per annum, and after accident, he was stated to have left the job and the said witness was not aware whether claimant/respondent no.1 was working or not. According to learned counsel, respondent no.1 had shown before the Tribunal that he was not working

whereas fact of matter is that respondent no.1 had willingly left the job. Thus, respondent no.1 cannot claim and is not entitled to compensation under

the head â??Loss of incomeâ?. Respondent no.1 is stated to have not lost the job due to accident. It is contended that injuries suffered by

claimant/respondent no.1 cannot stop or reduce his capability to perform his job in private company, in which he was employed prior to the date of

accident. Even, according to counsel for appellant Insurance Company, as on date, complainant/respondent no.1 is working in a private company and

earning a handsome salary. It is averred that respondent no.1 has not brought into knowledge of Tribunal the fact about his employment and marital

status. He avers that where claimant suffers a permanent disability as a result of injuries, assessment of compensation under the head of loss of future

earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The crucial factor which has to be taken into

consideration, thus, is to assess as to whether the permanent disability has any adverse effect on earning capacity of injured. He vehemently states

that in the present case earning capacity of claimant has not adversely affected and therefore, impugned Award is liable to be set-aside. In support of

his submissions, he has placed reliance on: judgement dated 2nd February 2017, passed by the Supreme Court in Civil Appeal no.1329 of 2017, titled

Sandeep Khanuja v. Atul Dande and another; judgement dated 1st April 2015, passed by Madras High Court in CMA no.698 of 2015 titled M/s

United India Insurance Co. Ltd v. M. Alagarsamy; and judgement dated 10th August 2017, passed by Madhya Pradesh High Court in Second Appeal

no.592/2011 titled Smt Shahjahan through LRs Mohd. Shafiq & others v. Hanif Ahmad and others.

8. Taking into account grounds raised in the Appeal and submissions made by learned counsel for parties, I have gone through the file and considered

the matter.

9. For last few years, law as regards computation and grant of compensation in motor accident claims has been straightened by the Supreme Court,

removing certain cobwebs created due to conflicting views on certain aspects. The principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to relevant case law on the subject by the Supreme Court in the case of

Raj Kumar v. Ajay Kumar and others, (2011) 1 SCC 343, in the following words:

â??Assessment of future loss of earnings due to permanent disability 8.Disability refers to any restriction or lack of ability to perform an activity in the

manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found

existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain

for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury,

which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent

disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to

perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any

avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a

much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995 (""the Disabilities Act"", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act

are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a

particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not

the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a

percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent

disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed

in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings

would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the

percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic

loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent

disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding

loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future

earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability

will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing

the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings

(by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of

evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately

the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of

compensation.â??

10. From the above, it emerges that disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a

human being and permanent disability refers to residuary incapacity or loss of use of some part of the body, found existing at the end of the period of

treatment and recuperation, after achieving maximum bodily improvement or recovery, which is likely to remain for remainder life of injured.

Temporary disability refers to incapacity or loss of use of some part of body on account of the injury that ceases to exist at the end of period of

treatment and recuperation whereas permanent disability can be either partial or total. Partial permanent disability refers to a personâ??s inability to

perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to

engage in some gainful activity whereas total permanent disability refers to a personâ??s inability to perform any vocation or employment related

activities as a result of accident. Permanent disabilities, arisen from motor accident injuries, are of a much wider range when compared to physical

disabilities which are mentioned in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However,

if any of disabilities mentioned in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent

disabilities for claiming compensation.

11. Where claimant suffers a permanent disability because of injuries, computation of compensation under the head of loss of future earnings would

depend upon the effect and impact of such permanent disability on his earning capacity. In most of the cases, percentage of economic loss, that is,

percentage of loss of earning capacity, arising from a permanent disability will be different from percentage of permanent disability. What requires to

be assessed by Tribunal is the effect of permanent disability on earning capacity of injured and after assessing loss of earning capacity in terms of a

percentage of the income, it has to be quantified in terms of money, to arrive at future loss of earnings, by applying standard multiplier method used to

determine loss of dependency.

12. The vital aspect that has to be taken into consideration, thus, is to assess as to whether permanent disability has any adverse effect on earning

capacity of injured. The ratio of above settled position of law is that if a victim of an accident suffers permanent or temporary disability, then efforts

should always be made to award adequate compensation, not only for physical injury and treatment, but also for pain, suffering and trauma caused due

to accident, loss of earnings and victimâ??s inability to lead a normal life and enjoy amenities, which he would have enjoyed but for disability caused due to accident. In this view of matter, the Tribunal, in the present case, has approached the issue in right direction by taking into consideration the

aforesaid test. The Tribunal after referring to judgement in Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd., 2011

(2) SCALE 658, quoted paragraph 13 of judgement passed by the Supreme Court in the case of Raj Kumar v. Ajay Kumar and another, 2011 (1)

SCC 343, in which the Supreme Court has said that loss of earning capacity is not the same as percentage of permanent disability, except in few

cases where Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent

disability and loss of earning capacity is something that will have to be assessed by Tribunal with reference to evidence in entirety. The Tribunal also

referred to and reproduced paragraph 09 of the judgement rendered in the case of R.D.Hattangadi v. Prest Control (India) Private Limited and others,

AIR 1995 SC 755. The Supreme Court has said that while fixing an amount of compensation payable to a victim of an accident, damages have to be

assessed separately as pecuniary damages and special damages as pecuniary damages are those damages which the victim has actually incurred and

which is capable of being calculated in terms of money and non-pecuniary damages are those which are incapable of being assessed by arithmetical

calculations. According to the Supreme Court, pecuniary damages may include expenses incurred by claimant, viz. medical attendance, loss of earning

profit up to the date of trial, other material loss, and insofar as non-pecuniary are concerned, those include, damages for mental and physical shock,

pain suffering, already suffered or likely to be suffered in future, damages to compensate for loss of amenities of life including a variety of matters,

i.e., on account of injury claimant may not be able to walk, run or sit, damages for loss of expectation of life, i.e., on account of injury normal longevity

of person concerned is shortened, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

13. If present case is analysed on the basis of above milieu, Tribunal has given a lucid and luculent judgement. Claimant/respondent no.1 has lost

eyesight. He cannot now ply a vehicle. He cannot move around in the same manner that he had been prior to accident. Witnesses (doctors) produced

and examined before the Tribunal have given statements, which would unequivocally show that claimant is not now a normal person, who could venture and dare to indulge in a normal life. Claimant has a stigma for whole of his life. He has lost one eye and he is now to take care of another eye

as well. Claimant is not now a fit person to become a pilot or have a police job or any sophisticated job, but he can do office job. Now, he needs

prosthesis/artificial eye. He is handicapped for binocular vision, three-dimensional picture and sterioposis. Claimant will not be able to accurately track

moving objects, to judge distance or perceive depth. The Tribunal has broadly discussed all facets of the matter and has rightly given a just

compensation.

14. Submissions made by learned counsel for appellant Insurance Company, when glimpsed in meticulous examination of impugned Award, have been

broadly answered by the Tribunal while adjudicating upon and deciding Issue no.3. The Tribunal has, while deciding Issue no.3, mentioned that if

claimant, at his own choice, left the job that does not amount to loss of 100% income due to injury suffered in accident inasmuch as loss of income is

to be assessed on the basis of his disability. The Tribunal has not made computations and calculations on guesswork, but has applied rightly and

accurately the multiplier and multiplicand and has rightly calculated loss of income of claimant and thereafter the Tribunal has in a proper way and

manner made deductions wherever those were found appropriate and required to be effected. Compensation on other heads/accounts have also been

rightly and appropriately given by the Tribunal. Having said that, impugned Award need not be interfered with and as a corollary thereof, instant

appeal is liable to be dismissed.

15. For the foregoing reasons, the Appeal on hand is dismissed. Interim direction, if any, shall stand vacated.

16. Record of the Tribunal, if summoned/received, be sent down along with copy of this judgement.