

(2020) 01 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : MA No. 06 Of 2018, CCROS No. 09 Of 2018

HDFC ERGO General Insurance Co. Ltd

APPELLANT

Vs

Parveen Kumar And Others

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Citation : (2020) 01 J&K CK 0009

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Baldev Singh, V. Bhushan Gupta

Final Decision : Disposed Of

Judgement

1. This is an appeal by HDFC ERGO General Insurance Company Limited (hereinafter for short "the Insurer") against the award dated 13.11.2017 passed by the Motor Accidents Claims Tribunal, Kathua (hereinafter "the Tribunal" for short) passed in the Claim Petition No. 85/2015 titled Parveen Kumar vs. Hardev Singh and others, whereby the Tribunal has awarded a sum of ₹ 8,15,000/- by way of compensation to the respondent No.1 (hereinafter "the claimant" for short) along with interest at the rate of 8% per annum.
2. The impugned award has been assailed primarily on the ground that the same is non-speaking and awards compensation which is totally unreasonable and exorbitant.
3. Before proceeding to consider the grounds of challenge urged in this appeal, it would be necessary to briefly notice few facts.
4. An accident involving a vehicle, a pickup Van, bearing registration no. JK02AN-9848, the offending vehicle, took place near Hatli Morh on 09.10.2015 when it was being driven by Respondent No.2 rashly and negligently. In the accident the claimant suffered serious injuries resulting in his permanent disablement. A claim petition was filed by the claimant, claiming a compensation

of ₹ 23,50,000/- from the owner of the offending vehicle and the appellant-Insurance company. The claim petition was contested by the Insurer and on the basis of pleadings of the contesting parties, the Tribunal framed the following issues:-

"1. Whether the petitioner got injured in the road traffic accident caused on account of rash and negligent driving of the offending vehicle bearing registration No. JK02AN-8948 being driven by respondent No.1 on 09.10.2015, at 7.30 PM at NHW near J&K Bank Pulli, Hatli Morh Kathua ? OPP

2. In case issue No.1 is proved in affirmative, to what amount of compensation the petitioner is entitled to ? OPP

3. Whether the delinquent driver was not holding the valid driving licence as on the date of the accident and the documents of the vehicle were not valid and so the Insurance Company is not liable to indemnify the owner ? OPR-3"

5. To discharge the burden of proof, the claimant examined himself and Kuldeep Kumar, Pushap Raj, Tilak Raj and Dr. Ghanshyam Arora as his witnesses. The Insurer also led its evidence and examined Salinder Chib and Taushar Walia as its witnesses. On the basis of the evidence on record, the Tribunal held the issue No.1 proved in favour of the claimant and returned a finding that the claimant had suffered injuries in the motor vehicle accident involving the offending vehicle that took place on 09.10.2015 near Hatli Morh Kathua, due to rash and negligent driving by the driver. The reliance was also placed by the Tribunal on the copy of FIR No. 320/2015 registered with regard to the accident in Police Station, Kathua.

6. On issue No.3, the Tribunal, relying upon the judgment of the Hon'ble Supreme Court in the case of Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668, held that the driver was holding a valid driving licence to drive the offending vehicle and, therefore, negated the contention of the Insurer. The Tribunal, upon deciding issue Nos. 1 and 2, proceeded to decide issue No.3 and awarded a sum of ₹ 8,15,000/- as compensation to the claimant. The Tribunal, on the basis of evidence on record, assessed the income of the claimant as ₹ 15,000/- per month and took the over all disability as 25%, though as per the opinion of the medical expert the claimant had suffered permanent disability to the extent of 40% due to femur left fracture.

7. The claimant is also not satisfied with the amount of compensation awarded by the Tribunal and seeks its enhancement on various grounds enumerated in the memo of cross objections. He disputes the findings of the Tribunal to the extent it holds that the total permanent disability of the whole body of the claimant is 25% as against 40% as certified by the Doctors.

8. Having considered the rival contentions in the light of evidence on record, I am of the view that the amount of compensation awarded is on the higher side and not in consonance with the law laid down by the Hon'ble Supreme Court.

9. The Tribunal, after having held that the claimant had failed to place on record

any evidence, could not have accepted the income of the claimant as ₹ 15,000/-. The claimant, in his claim petition, has claimed that he was employed as a tailor in Modern Hosiery SICOP Hatli Morh, Kathua but has neither produced any salary certificate nor has produced any responsible officer of the Unit to substantiate his plea. From the evidence it is not even certified as to whether the claimant is a trained tailor or not. Mere oral assertion, without being supported by any record, cannot be a substitute of proof. In the absence of any material or evidence to prove the income the Tribunal should be very circumspect in arriving at the income of such a person. Although this Court is also in predicament as to what should be the income of the claimant that could be taken into account for working out the compensation in the instant case, yet instead of remanding the case to the Tribunal and prolonging the agony of the claimant, I am of the view that the ends of justice would be met if the income of the claimant on the date of accident is taken at ₹ 10,000/- per month. I do not find any fault with the view of the Tribunal that the whole body disability of the claimant would not be more than 25%. The disability certificate by the doctor is only disability of femur left fracture and not that of the whole body. The applicability of the multiplier of the Tribunal, however, is not disputed by the parties before me.

10. Taking the income of the claimant as ₹ 10,000/- per month, his annual income would come to ₹ 1,20,000/- per annum. The Tribunal, however, has not added the component of future prospects, and given the age of the claimant as 35 years, there would be an increase at the rate of 30% in the income of the claimant on account of future prospects, which comes to ₹ $1,20,000 \times 30\% / 100 = 36,000$. The total annual income of the claimant would thus come to ₹ $1,20,000 + 36,000 = ₹ 1,56,000/-$. Considering 25% disability of the claimant the annual loss would thus come to ₹ 39,000/- per annum. Applying the multiplier of 16, which has not been disputed by either of the parties, the total loss of income of the claimant would, therefore, come to ₹ $39,000 \times 16 = ₹ 6,24,000/-$. The compensation granted on other heads shall, however, remain unaltered.

11. The appeal of the Insurance Company is, accordingly, allowed to the aforesaid extent and award shall stand modified to the above extent. The cross objections are also disposed of.