

(2018) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.229 Of 2016

Jksrtc @APPELLANT@Hash Priya Tiwari And Anr

Date of Decision : 02-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 07 J&K CK 0001

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The J&K State Road Transport Corporation (hereinafter referred to as SRTC) is in appeal against the award dated 23.08.2016 passed by

Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the Tribunal), whereby the respondent No. 1-minor girl has been held

entitled to a sum of Rs. 23,08,975/- on account of loss of upper limb, i.e, right arm due to motor vehicular accident.

2. The facts leading to the filing of this appeal are that due to rash and negligent driving of bus bearing No. JK02Y-0242 by respondent No. 2, an

accident took place on 12.09.2013 at about 1:30 p.m as a result whereof the offending vehicle turned turtle causing serious injuries to the passengers

sitting in the bus. Respondent No. 1, who was also travelling in the same bus, also sustained grievous injuries resulting into amputation of her right arm.

The doctors attending her certified the disability as permanent disability to the extent of 65%. Since it was alleged that accident had taken place due to

sheer rash and negligent driving by the respondent No. 2, as such, respondent No. 1 through her father Sh. Manoj Kumar filed a claim petition under

Section 166 of the Motor Vehicles Act before the tribunal. The claim petition was contested by the appellant being owner of the offending vehicle. On

the basis of the pleadings of the appearing parties, the tribunal framed the following issues:-

1. Whether an accident took place on 12.09.2013 at about 1.30 p.m near Rangura Environmental Park, Bye Pass, Sidhara, Jammu by rash and

negligent driving of the vehicle bearing registration No. JK02Y-0242 by its driver as a result of which petitioner received grievous injuries and has been disabled? OPP.

2. If issue No. 1 is proved in affirmative, whether petitioner is entitled to compensation; if so, to what amount and from whom? OPP

3. Whether the offending vehicle was being driven at the time of accident in violation of terms and conditions of policy of insurance and respondent insurance company is not liable? OPR-

4. The tribunal upon appreciation of the evidence led by the parties held the issue No. 1 proved in favour of the claimant and against the appellant. It was established that the accident had taken place due to rash and negligent driving of the respondent No. 2 and the appellant being owner of the vehicle was vicariously liable for the aforesaid act of its driver.Â

5. So far as the issue No. 2 is concerned, the tribunal on the basis of evidence led before it, awarded the compensation in the following manner:-

1. Loss of future incomeÂ Â Â =Â Rs. 3,51,000/-

2. Expenses on medicineÂ Â Â =Â Rs. 25,495/-

3. Fare of vehicleÂ Â Â Â =Â Rs. 5,000/-

4.Expenditure of attendantsÂ Â =Â Rs. 30,000/-

5.Pain and sufferingsÂ Â Â =Â Rs. 1,18,000/-

6.Loss of amenities and pleasure = Rs. 2,36,000/-

7.Artificial LimbÂ Â Â = Rs. 15,33,480/-

Â 8.Special dietÂ Â Â Â =Â Rs. 10,000/-

Â Â TotalÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â =Â Rs. 23,08,975/-

6.The appellant is aggrieved of the quantum of compensation awarded to the respondent No. 1 and has assailed the impugned award primarily on the

ground that the compensation awarded by the tribunal on account of cost of artificial limb, i.e, sum of Rs. 15,33,480/- is highly exorbitant, more so,

when the claimant herself had claimed only an amount ofÂ Â Â Â Â Â Â Rs. 09

lacs in her claim petition. It is also stated that in the absence of any cogent evidence on record, the tribunal was not justified in awarding sum of Rs. 15,33,480/-. The impugned award has also been called in question on the ground that even the disability certificate produced by the claimant had not been proved as the statement of the doctor who had examined and issue the disability certificate in favour of the claimant, was not recorded before the tribunal.Â

7. Heard learned counsel for the appellant as well as respondent No. 1.

8. I have carefully examined the record. It is not disputed that the accident in question occurred due to rash and negligent driving of the vehicle by the respondent No. 2. The appellant being owner of the vehicle and employer of respondent No. 2 is vicariously liable for the rash and negligent act of

respondent No. 2. It is also correct that in her claim petition, the respondent No. 1 inter-alia claimed a sum of Rs. 09 lacs on account of artificial limb

but the fact remains and as correctly noted by the tribunal that an artificial limb has a life of 5 to 6 years and the same is required to be changed

periodically. The amount claimed by respondent No. 1 in her claim petition was with regard to one time cost of the artificial limb but it is equally true

that there is nothing brought on record on behalf of respondent No. 1 that she had actually incurred Rs. 9 lacs towards the cost of artificial limb.Â

9. In these circumstances, it remains to be seen as to how the amount of Rs. 15, 33, 480/- has been worked out by the tribunal towards the cost of

artificial limb even keeping in view the necessity of changing the artificial limb periodically. Even if we take the cue from the judgment of this Court

passed in the case of Oriental Insurance Company Ltd. Vs. Mukhteshwar Chib and ors; 2008(ii) SLJ 709, the impugned award passed by the tribunal

cannot be wholly justified. This is so because the respondent No. 1-claimant has not brought on record any evidence in this regard. The other plea of

the appellant that the disability certificate was not proved by recording the statement of the doctor is devoid of any substance in view of the

abundance of the evidence on record to show that right arm of the respondent No. 1 was amputated due to the grievous injury suffered by her in the

vehicular accident caused by the offending vehicle driven by the respondent No. 2. The certificate of disability placed on record on behalf of

respondent No. 1 too has not been disputed by any party.Â

10. Besides the aforesaid grounds, no other ground was urged on behalf of the appellant.Â

11. Having considered the rival contentions and perused the record, I find that the impugned order only calls for slight variation, insofar, as it pertains

to the amount paid on account of artificial limb. In the absence of any definite evidence on record and taking cue from the judicial precedents, the

amount awarded on account of artificial limb, i.e,Â Â Â Â Â Â Â Â Â Â Rs. 15,33,480/-Â is reduced to Rs. 12 lacs which in the facts and

circumstances of case would fair and just compensation.Â

12. Except for the aforesaid modification, the rest of the award is upheld.Â Â

13. Appeal is, accordingly, disposed of.Â