
(2009) 02 J&K CK 0021
In the Jammu And Kashmir High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Zeba and Others		RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Ranbir Penal Code, 1989 — Section 279, 337

Citation : (2010) ACJ 1822

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—Through the medium of this appeal the appellant has challenged the award and order dated 14.9.2007 passed by

the Presiding Officer, Motor Accidents Claims Tribunal, Anant-nag in Claim Petition No. 2 of 2001 titled Zeba v. Ghulam Rasool Bhat whereby

Rs. 4,40,000 with 9 per cent interest came to be passed in favour of the claimant against the insurer appellant.

2. The brief facts of the case are that claimant Zeba filed a claim petition, being the victim of vehicular accident before the Motor Accidents Claims

Tribunal and claimed compensation. It is averred in the petition that on 15.1.2001, the claimant was crossing the road at Pujteng, Srinagar-Jammu

National Highway and was hit by a Maruti car bearing registration No. JKE 1221, which was being driven by Ghulam Rasool Bhat, rashly and

negligently, as a result of which she sustained injuries which rendered her permanently disabled. She had sustained injuries on left leg, besides her

two upper incisor (upper teeth) were also broken and her nasal spectrum also sustained fracture. She was taken to Bijbe-hara Hospital,

wherefrom she was referred to the Bone and Joint Hospital, Srinagar, where she was admitted. She is now not in a position to walk and work and

is also not able to speak properly. The claimant has claimed Rs. 19,40,000 as compensation with interest, as per break-up given in the claim petition.

3. Non-applicants viz., driver, owner and the insurer appeared and filed their written statements contesting the claim petition.

4. On the pleadings of the parties, following issues came to be framed by the Tribunal on 7.7.2002:

(1) Whether the petitioner was injured because of rash and negligent driving of the respondent driver on the material date at material place? OPP

(2) What is the nature, gravity and extent of injuries suffered by petitioner?

OPP

(3) Whether she is entitled to any compensation, if so, how much and from whom? OPP

(4) Whether respondent insurance company is not liable, if so, how? OPR3

5. The claimant Zeba has examined Mohammad Maqbool Bhat, Ghulam Qadir Ganai, Ghulam Ahmad Ganai, Dr. Tafzal Majid Surgeon Specialist

as witnesses in support of her claim and also appeared herself. Appellant insurance company has examined Peerzada Noor-ud-Din, licensing

clerk, R.T.O. office, Mushtaq Ahmad, Sales Assistant, National Insurance Co. Ltd. in its defence. The driver and owner have not examined any

witness.

Issue No. 1:

6. All the witnesses examined by the petitioner-claimant have deposed that Zeba became victim of vehicular accident on Pujteng Road at National

Highway which was caused by the driver, namely, Ghulam Rasool Bhat, while driving Maruti car bearing registration No. JKE 1221 rashly and

negligently. She sustained injuries on left leg and face, which caused disfiguration to her face. She also lost upper incisors (two teeth). She was

rushed to Bijbehara Hospital, wherefrom she was referred to the Bone and Joint Hospital and thereafter to SKIMS, Soura, Srinagar. She was

bedridden for a pretty long time. She is not in a position to walk and work, though being a villager, she was performing agriculture vocation and

would have earned Rs. 200 to Rs. 300 per day. F.I.R. No. 14/2001 came to be lodged in Police Station, Bijbehara under sections 279 and 337,

RPC and during the course of investigation the offending vehicle along with other documents was seized and the seizure memos came to be

exhibited as Exh. PW 1, Exh. PW1/1, Exh. PW2 and Exh. PW1/3. The driving licence and other documents came to be released subsequently in

favour of the owner and the driver by the court of competent jurisdiction.

7. Dr. Tafazul Majid has stated that while examining the victim, he had noticed that both bones tibia and fibula of the left leg were fractured. Nasal

bones and interior teeth were also broken. The said injuries have caused disfiguration of face of the victim which has rendered her permanently

disabled forever.

8. The witnesses examined by the insurance company have deposed that the driver Ghulam Rasool Bhat was having a driving licence to drive

heavy transport vehicle goods and he was not capable to drive light motor vehicle.

9. As discussed above, there is ample evidence on the file to show that the driver Ghulam Rasool Bhat has driven the offending vehicle rashly and

negligently at Puj-teng, Jammu-Srinagar National Highway on 15.1.2001 and has hit the victim who sustained multiple injuries. There was no

rebuttal on the part of the appellant. In the given circumstances, I am of the considered opinion that the learned Presiding Officer has rightly

decided issue No. 1 in favour of the claimant and against the non-applicants, i.e., owner, driver and the insurer.

Issue No. 2:

10. Doctor expert has deposed that Zeba has suffered injuries of grievous nature which have caused disfiguration to her face. She is not in a

position to walk and is also not in a position to perform the agriculture vocation, thereby she has lost income of Rs. 200 to Rs. 300 per day, which

she would have earned while performing agricultural vocation. It is also proved by the petitioner that the injuries sustained by her have disfigured

her face and has rendered her ugly and she is undergoing and has to undergo such pain till she is alive. Her two teeth were also broken which is

otherwise a permanent disablement as per description given in Section 142 of Motor Vehicles Act, which reads:

142. Permanent disablement.-For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an

accident of the nature referred to in Sub-section (i) of Section 140 if such person has suffered by reason of the accident any injury or injuries

involving:

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction of permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

11. The petition has proved issue No. 2 also. Thus the findings returned by the Tribunal needs no interference vis-a-vis issue No. 2.

Issue No. 3:

12. The petitioner has proved that her age was 45 years at the time of accident and was earning Rs. 200 to Rs. 300 per day and is not in a

position to earn the same, because she stands rendered permanently disabled due to said vehicular accident. By guesswork, it can safely be held

that she was performing work at home by preparing meals and doing other day-to-day works for her family and was also supposed to maintain

house and household goods. The injuries have rendered her permanently disabled and is not in a position to work and walk. There is also evidence

on file to show that she was performing agricultural vocation and now is not in a position to do any such work now. Thus it can be safely held that

she was at least earning Rs. 3,000 per month. The Tribunal has deducted 1/3rd which is not warranted under law. I wonder how 1/3rd came to be

deducted. However, it is unfortunate that the claimant has not challenged award either by way of appeal or by cross-objection. Thus in the given

circumstances the compensation awarded under the said head is maintained.

13. As discussed above, there is ample evidence on the file that age of the claimant was 45 years at the time of accident. Thus, it will be proper to

apply reasonable multiplier in order to assess the compensation. As per multiplier contained in the Schedule attached to the Motor Vehicles Act,

multiplier 13 was applicable, but the Tribunal has applied only multiplier 10. The claimant has not questioned this nor has she filed the cross-

objection. In the given circumstances, I deem it proper to apply only the multiplier of 10.

14. Admittedly, claimant was admitted in different hospitals and has undergone treatment for a pretty long time. The medical vouchers are also on

the file. The Tribunal has rightly granted Rs. 70,000 on account of medical expenditure and Rs. 10,000 on account of future expenses.

15. Admittedly, the doctor has stated that injuries sustained by the claimant have rendered her permanently disabled and has caused face

disfiguration for which she will undergo mental pain and agony till she is alive, on account of this disfigurement. The Claims Tribunal has rightly

granted Rs. 1,50,000 under the head disfigurement.

16. It is also proved that claimant has lost two upper incisors (two teeth) due to the said vehicular accident and Rs. 30,000 has rightly been

awarded by the Tribunal for loss of teeth.

17. In the given circumstances, it is held that the Tribunal has rightly awarded Rs. 4,40,000 as compensation in favour of the claimant and the same

is upheld.

18. Now the second question which calls for determination is as to who is to be saddled with the liability.

19. Admittedly the offending vehicle was insured at the time of accident and the driver was having a licence to drive the heavy goods vehicle. It is

nowhere pleaded or brought before the Tribunal that the driver was not having valid licence. When the driver is having a licence to drive heavy

goods vehicle, how can it be said that he is not capable to drive a light motor vehicle? It is also relevant to mention here that the insurer has failed

to prove that the owner-insured has committed any wilful breach. Though the owner has also contested the claim petition all along and has

specifically pleaded that the driver was having a valid licence. In the given circumstances the Tribunal has rightly saddled the insurer appellant with

the liability.

20. The Tribunal has awarded 9 per cent interest from the date of institution of the claim petition on the amount of compensation which is not

proper and as per recent Apex Court judgment 6 per cent interest is to be awarded. Accordingly, the claimant is also held entitled to the interest at

the rate of 6 per cent from the date of claim petition till its final realization.

21. Accordingly it is held that claimant is entitled to Rs. 4,40,000 plus 6 per cent interest from the date of claim petition till its final realization. The

impugned award is accordingly modified.