

(2018) 09 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.251 Of 2010, Ia No.1 Of 2017

National Insurance Co. Ltd. @APPELLANT@Hash Shanti Devi And Others.

Date of Decision : 05-09-2018

Acts Referred:

Citation : (2018) 09 J&K CK 0007

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The appellant-Insurance is aggrieved of the award dated 31.12.2009 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred

to as "the Tribunal") in File No.584/Claim titled Shanti Devi v. Madan Lal and others.

2. Briefly stated, the facts which are relevant for the disposal of this appeal are that on 04.06.2001, a Bus bearing registration No. JKU-6651 while

coming from Basohli to Jammu met with an accident at Nanak Chak (Samba), in which the respondent No.1 i.e. claimant who was travelling in the

aforesaid vehicle suffered multiple grievous injuries. It is alleged that the accident took place due to rash and negligent driving of the offending vehicle

by its driver-respondent No.3, who controlled the vehicle and caused the accident. It is alleged that as a result of the accident, right arm of the

claimant sustained comminuted fracture of lower and right humerus. It is alleged by the claimant that due to the injuries sustained by her, she cannot

use her upper limb in carrying her daily routine activities. She, thus, filed a claim petition before the Tribunal seeking Rs.7,00,000/- as compensation

for the injuries sustained by her in the accident which took place due to the sheer negligent act of the driver of the offending vehicle. The Tribunal

after appreciating the evidence that was led before it, came to the conclusion that the accident in which the claimant suffered injuries to her right arm

was on account of rash and negligent driving of respondent No.3 and held the claimant entitled to the compensation in the following manner:-

1. For loss of future incomeÂ Â Rs.1,29,600/-

2. For medical expensesÂ Â Rs. 10,000/-

3. For pain and sufferingsÂ Â Rs.90,000/-

4. For loss of amenities of lifeÂ Rs.90,000/-

5. Attendant chargesÂ Â Â Rs.20,000/-

Â TotalÂ Â Â Â Â Rs.3,39,600/-

The Tribunal also allowed interest @ 7.5% per annum on the awarded amount, except future loss of income, from the date of filing of the claim

petition till realization.Â Â Â Â

3. The appellant-Company has assailed the award only on the ground that the compensation awarded is unjust and exorbitant and not in consonance

with the settled legal position.

4. Heard learned counsel for the parties and perused the record.

5. On the basis of the evidence recorded in the claim petition and the fact that the age of the injured mentioned in the disability certificate issued in the

year 2008 is 70 years, it is evident that the claimant at the time of accident was 63 years old. It has been stated that the claimant was a tailor master

by profession. The Tribunal has taken the income of the claimant as Rs.4,000/- per month, whereas the disability suffered by the injured had been

certified and proved to be 45% of the right arm. The Tribunal has adopted the multiplier of 6 whereas multiplier of 7 is provided for the age group of

61-65 in terms of Sarla Verma and ors. V. Delhi Transport Corporation and anr. (2009) 6 SCC 121. The Tribunal has calculated the loss of future

earning at the rate of 45%.

6. Learned counsel for the appellant-Insurance Company finds fault with the award of the Tribunal on the ground that the Tribunal has arbitrarily

taken the income of the claimant as Rs.4,000/- without there being any convincing evidence on record.Â It is submitted that no documentary

evidence has been placed on record to prove the income of the injured, moreover the witness produced by the claimant deposed before the Tribunal

that the injured was earning Rs.2000/- to Rs.3000/- per month, whereas the claimant in her statement before the Tribunal has stated that she was

earning Rs.4000/- to Rs.5000/- per month by doing the job of tailoring.Â

7. On the other hand, learned counsel for respondent No.1/claimant sought enhancement in the amount of compensation awarded by the Tribunal by

filing cross objections. It is stated that the Tribunal has wrongly assessed the income of the claimant as Rs.4,000/- and has not awarded any amount

on account of pecuniary damages. Learned counsel for the claimant has argued that in view of the fact that the claimant is a tailor by profession and

due to the disability suffered by her to the extent of 45% permanently in her right arm, she would not be able to do the job of tailor in future.

Accordingly, learned counsel for the claimant submits, the loss of future earning should have been calculated by taking functional disability as 100%.

8. Considered the submissions made by the learned counsel appearing for the parties.

9. The learned counsel for the appellant besides disputing the age of the claimant, has also disputed the monthly income assessed by the Tribunal.Â

10. It has been established before the Tribunal that the claimant at the time of accident was a tailor-master. However, no convincing evidence

regarding the exact income of the claimant has been produced before the Tribunal. Even claimant's witness, namely, Beli Ram had not supported

the version of the claimant insofar as her income is concerned. The claimant had deposed that her income is between Rs.4000/- to Rs.5000/-

whereas her witnesses had stated the income of the deceased between Rs.2000/- to Rs.3000/-.Â Â In the absence of convincing and cogent

evidence on record, it would be difficult for this Court to come to any definite conclusion. Therefore, it would be just and proper if the income of the

claimant is taken as Rs.3,500/- per month for assessing the loss of future earnings.

11. True it is, that the claimant would not be able to perform the job of tailor due to the disability suffered but she would certainly perform some other

activities. Therefore, the Tribunal has rightly taken the functional disability at 45%. The amount granted by the Tribunal under the head attendant

charges is on higher side and is required to be slashed down. The amounts awarded on account of medical expenses, pain and suffering and loss of

amenities of life cannot, by any stretch of imagination, be said to be unjust and exorbitant.Â

12. Accordingly, taking the monthly income of the claimant as Rs.3500/- and functional disability to the extent of 45%, the monthly loss of future

earnings would be Rs.1575/-. The annual loss of earning comes to Rs.18,900/-. Adopting the multiplier of 7, as has been provided by the Supreme

Court in the case of Sarla Verma (supra), the total loss of future earnings would come to Rs.1,32,300/-. The claimant is held entitled to the

compensation in the following manner:-

(i) Loss of future incomeÂ Â Rs.1,32,300/-

(ii) For medical expensesÂ Â Rs.10,000/-

(iii) Pain and sufferingsÂ Â Rs.90,000/-

(iv) Loss of amenities of lifeÂ Rs.90,000/-

(v) Attendant chargesÂ Â Rs.10,000/-

Â TotalÂ Â Â Â Rs.3,32,300/-

13. The claimant is held entitled to the aforesaid amount along with interest as has been awarded by the Tribunal. Award of the Tribunal is modified

and appeal of the appellant-Insurance Company as well as the cross objections filed by the claimant shall stand disposed of.Â Â