

(2002) 12 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : CIMAs No. 207 Of 1998 and 208 Of 1998

National Insurance Company

APPELLANT

Vs

R.K. Abrol and Others and Vasdev Singh and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) 1 JKJ 734

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : C.S. Gupta, D.S. Chouhan, for No. 1 and P.S. Chandel, for No. 2, for the Appellant;

Final Decision : Dismissed

Judgement

1. These two appeals arise out of a common award passed by the Motor Accidents Claims Tribunal, Jammu.

2. R.K Abrol and Vasdev Singh sought compensation in respect of injuries sustained by them in a road accident which took place on 22nd June'

95 on G.T. Road, Bhogpur; RK Abrol and Vasdev Singh were travelling alongwith one Sanjay Bakshi in a Maruti Car bearing No. JK02C 4350.

They were on their way from Jammu to Jallandar. When they reached near Bhogpur, the driver of this vehicle caused an accident. In this, the

driver of the car and Sanjay Bakshi died whereas injuries were caused to R.K Abrol and Vasdev Singh. Claim petitions were filed. These were

tried together and as indicated above, a common order was passed by the Claims Tribunal.

3. So far as issue No. 1 vis-a-vis negligence is concerned, the finding recorded is that this accident took place on account of rash and negligent

driving of the driver. Issue regarding quantum of compensation so far as RK Abrol is concerned was examined. It was found that RK Abrol

remained under treatment in the Government Medical College Hospital, Jammu for about a month and even after having been discharged he was

under treatment, Dr. Anil Gupta, who appeared in the witness box stated:

i/. That RK Abrol had fracture in the right femur distal 3rd with old fracture, dislocation of MMP joint of left big toe with old fracture ulna right;

ii/. That he had shortening of right lower limb of about 3"" and there was moderate limitation of motion of right knee and suffered instability also in right knee and mild limitation around left ankle to sublarjoint.

iii/. That there was ankylosis of left big toe and second toe.

4. It was stated RK Abrol had suffered disability to the extent of 45%.

5. The evidence vis-a-vis his income was taken note of. He was an artist and used to take part in TV serials. The income which he was generating

was found to be around Rs. 4000/- per month. The claims Tribunal accordingly allowed the compensation to the extent of Rs. 2,77,500/- under

various heads. The details of which is as under:-

i/ Pain & Suffering = Rs. 50,000

ii/ Present loss of income = Rs. 30,000

iii/ Future loss of income = Rs. 67,500

iv/ Expenses on medicines = Rs. 50,000

v/ Expenses on diet = Rs. 15,000

vi/ Expenses on attendants = Rs. 15,000

vii/ Expenses on transportation = Rs. 20,000

viii/ Loss of amenities of life = Rs. 15,000

ix/ Disfiguration = Rs. 15,000

6. It is this view expressed by the Claims Tribunal which is being challenged in CIMA No. 207/98.

7. It has come on the record that RK Abrol was a TV Artist. On account of injuries sustained by him, he was not in a position to take part in TV

serials. He was, no doubt, a retired officer but as an Artist, he was found to be earning Rs. 5000 per month. He was 61 years of age. It was on

this basis, the present and the future loss was determined. I am of the opinion

that the amount of compensation which has been awarded under different heads noticed has been rightly allowed and the argument advanced by the appellant company that the compensation has been allowed on the higher side is an argument which cannot be accepted.

Now facts in CIMA 208/98 be noticed.

8. In this appeal, the amount of compensation has been allowed to the extent of Rs. 4,01,500. So far as awarding of this amount of compensation is concerned, what is said vis-a-vis disposal of appeal in the case of R.K Abrol would be applicable to this case also.

9. The learned counsel for the Insurance Company, however, submits that as respondent Vasdev Singh was in service, he has received medical claim from his employer also, and therefore, no compensation should be allowed under the first head i.e expenses on medicines.

10. A perusal of grounds of appeal would show that in para 3(i) it is stated that as the State Government has reimbursed the amount to the extent of Rs. 1,99,000 to the claimant, therefore, he is not entitled to this much amount from the appellant company.

11. So far as appellant Company is concerned, I am of the opinion that it has to pay the amount of compensation under the aforesaid head also.

Simply because this amount is also reimburseable cannot be made a ground for not burdening the company with the liability under Head 1. In

Madhya Pradesh State Road Trans. Corpn. and Another Vs. Priyank, , the plea raised by the M.P. Road Transport Corporation was that the

corporation should not be burdened with the amount of medical treatment claim which liability has been met by the Insurance Company under a

medi-claim insurance policy. In the above case a sum of Rs. 65,000 was received by the claimant from the Insurance Company for medical

treatment and disability. It was pleaded that this much amount should be adjusted. This argument was repelled and the Corporation referred to

above was held liable to pay the aforesaid amount to the claimant though payment regarding this head was made by the Insurance Company also.

The position in this case is no different Here the Insurance company wants adjustment vis-a-vis amount which the State Government is supposed

to meet or may have met. In this regard it would be apt to mention that what an employee gets by way of compensation from the employer is under

the contract of service whereas the amount which the Insurance Company is to pay is to be paid under a different contract i.e contract of

insurance. The liability under the two heads is distinct and different and has to be discharged independently by the contracting parties.

12. Their Lordships of the Privy Council in the case of Grand Trunk Railway Company of Canada v. Jennings (1988) 13 A.C 800, while

considering the provision of Lord Campbell's Act (Fatal Accidents Act, 1846) made the following observations:-

Where the widow of deceased is the plaintiff, and her husband had made provision for her by a policy on his own life in her favour, the amount of

such policy is not to be deducted from the amount of damages previously assessed irrespective of such consideration. She is benefitted only by the

accelerated receipt of the amount of the policy.

13. From the above, it can be concluded that an amount which becomes payable under a different contract is not supposed to be deducted.

14. In another decision reported as Sushila Devi v. Ibrahim 1974 ACJ 150, the view expressed was that sums payable on death under any

contract of social assurance or insurance are not to be taken into consideration when compensation is awarded under the Motor Vehicles Act. The

above two cases deal with a situation where the death took place. So far as the case of personal injury is concerned, the decision given in the case

of Perry v. Cleaver 1969 ACT 363 can be cited with advantage. The claimant in the above case had sustained injuries in a motor accident as a

result of which he was discharged from service. He was awarded disablement pension. The question arose whether the pension received by him

should be deducted while assessing the liabilities. The claimant in the above case urged that pension like life insurance was the product of the

employee's past services or thrift and it was neither equitable nor just that the tortfeasor should take over the benefit of the same. This argument

was accepted. The observations which are relevant are being quoted below:-

As regard moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the

plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit

from it should enure to the benefit of the tortfeasor. Here again I think that the

explanation that this is too remote is artificial and unreal. Why should the plaintiff be left worse off than if he had never insured? In that case he would have got the benefit of the premium money; if he had not spent it he would have had it in his possession at the time of the accident grossed up at compound interest. I need not quote from the well known case of *Bradburn v. Great Western Ry. Co* (1874) All E.R Rep 195 but I may refer to an old Scottish case *Forgie v. Henderson* (1818) 1 Murr 413

where the pursuer was assaulted by the defender. During part of his resulting illness he received an allowance from a friendly society, and Lord

Chief Commissioner Adam in charging the jury.

I do not think you can deduct the allowance from the society, as that is of the nature of an insurance, and is a return of money paid.

15. In a case reported as *The National Insurance Co. Ltd. Vs. Smt. Sarojini*, an additional cover was provided in the Insurance policy. Two

claims were to be paid under different clauses. It was observed that the Insurance Company is supposed to meet its liability under both the clauses.

The argument that the law prohibits duplication of compensation was held to be not applicable as the contract to insurance made a provision for

covering two eventualities. It was accordingly held that the concept of duplication of compensation would not be attracted. In view of the above,

the argument put across by the Company that it is not liable to pay the amount quantified under head No. 1 because the liability has been met by

the State Government is an argument which cannot be accepted. The amount which an employee gets from his employer is an amount which he

gets on account of terms and conditions of service or to use the term in terms of a contract of service." This has nothing do with the amount which

the claimant gets as compensation as this amount he gets on account of enforcement of term "Policy of Insurance". Thus, the appellant, as indicated

above cannot escape the liability under head No. 1 as allowed by the claims Tribunal.

16. In view of the observations made above, these appeals are found to be without merit and are dismissed.