

(2014) 02 AHC CK 0238

In the Allahabad High Court

Case No : First Appeal From Order No. 286 of 2011

Neelam Rastogi

APPELLANT

Vs

National Insurance Company Ltd.

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 3 ACC 413 : (2014) 3 ADJ 344 : (2014) 4 ALJ 120 : (2014) 103 ALR 417

Hon'ble Judges : Devi Prasad Singh, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Pawan Kumar Mishra, Advocate for the Appellant; O.P. Srivastava, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

1. Heard learned counsel for the appellant and the learned counsel for the respondent as well as perused record. Present appeal u/s 173 of Motor Vehicles Act has been preferred against the impugned award dated 31.1.2011, passed by Motor Accident Claims Tribunal, Bahraich.

2. An accident took place on 30.5.2003 with a Jeep bearing No. U.P.40-A3800. The vehicle was driven rashly and negligently. In consequence, it fell down and over turned in a pit adjoining to the road. The injured claimant Neelam Rastogi in the said accident, suffered with certain grievous injuries, fracture in hand, leg and in body. She was admitted in King George Medical University and had undergone treatment, and in consequence thereof, she approached Tribunal for payment of compensation.

3. The finding has been recorded by the Tribunal that the claimant has not suffered any permanent disability. Though she suffered from fracture on account of the accident in question but in absence of any permanent disability, the Tribunal appreciated the document produced by the claimant and assessed the

compensation to the tune of Rs. 60,000/- (Rs. 40000/- towards operation and other expenses and Rs. 20000/- towards expenses incurred over bills of medicines etc.).

4. It appears that the claimant was referred to King George Medical University, Lucknow but from the record it is borne out that she had undergone treatment in private hospital namely, Mayo Medical Centre. On account of her ill-treatment at the Medical Centre, she was again admitted in Satya Hospital and later on, in Shafi Ortho Medical Centre. Since from the certificate furnished by the claimant it cannot be proved that she suffered from permanent disability, the Tribunal declined to accept the contention that the claimant suffered with permanent disability. Another certificate produced by the claimant was of district Shravasti though she had undergone medical treatment at Lucknow and Bahraich. The husband of the claimant is possessing a medical store in district Shravasti. Accordingly, the Tribunal has drawn an inference that the certificate produced by the claimant of district Shravasti is fake one. The claimant should have produced required certificate of disability and treatment from district Bahraich and Lucknow from the hospitals where she had undergone the treatment. The Tribunal considered other material facts with regard to loss of income and recorded a finding that the claimant does not possess any medical shop as pleaded. Hence contention with regard to loss of income also seems to be not sustainable.

5. While assailing the impugned award it has been submitted by the claimant appellant's counsel that Tribunal has not considered the certificates produced with regard to permanent disability and loss of income. The argument advanced by the appellant's counsel seems to be misconceived. The certificate produced from Shravasti Hospital has rightly been disbelieved by the Tribunal since neither whole nor part of the cause of action co-relate with the district Shravasti. Entire treatment provided to the claimant was in Bahraich and Lucknow. Hence it was held by the Tribunal from the material document and the cogent documentary evidence as well as oral evidence that the treatment of the claimant generated from the district Bahraich and Lucknow.

6. However, a perusal of the impugned award reveals that the Tribunal has not awarded any compensation or damage on account of pain, suffering and trauma in consequence of the injuries. In a case in *Raj Kumar Vs. Ajay Kumar and Another*, , their lordships of Hon''ble Supreme Court had considered earlier cases and held that Courts may grant compensation with regard to non-pecuniary damages. The relevant para 4 and 5 from the aforesaid judgment of *Raj Kumar* (supra) are reproduced as under:

4. The provision of the Motor Vehicles Act, 1988 ("Act" for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and

equitable manner. The Court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, ; R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, and Baker v. Willoughby, 1970 AC 467 .

5. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

7. In the present case, the Tribunal has considered the material evidence led for the purpose of payment of compensation with regard to treatment, hospitalisation etc., coupled with loss of earning. However, in absence of pleading, no finding has been recorded with regard to future medical expenses. However, Tribunal should have considered the damages for pain, suffering and trauma as a consequence of injuries. Admittedly, the claimant appellant has suffered serious injuries in the aforesaid accident. She was hospitalised and undergone treatment in different hospitals for several months.

8. In view of the above, we are of the view that the amount under award, may be modified in lieu of non-pecuniary damages with regard to pain, suffering and trauma as a consequence of injuries suffered by the appellant claimant. Accordingly, we assess the damage in lieu of pain, suffering and trauma suffered by the claimant appellant on account of the aforesaid accident, to the tune of Rs. 15000/-.

9. The impugned award is modified by adding Rs. 15000/- on account of mental pain, agony and related suffering making total entitlement to the tune of Rs. 75000/-. The appeal is accordingly allowed in part. The impugned award dated 31.1.2011 is modified to the extent that the appellant shall be entitled for compensation to the tune of Rs. 75000/-. Let entire compensation in terms of the modified award in pursuance of the present judgment be deposited by the respondent National Insurance Company Limited, Bahraich within two months from the date of the judgment. The Tribunal shall release the same within a month from the date of receipt of a certified copy of the judgment.