

(2019) 03 J&K CK 0134

In the Jammu And Kashmir High Court

Case No : Civil Ist Misc Appeals (MA) No. 194 Of 2015, IA No. 01 Of 2015

New India Assurance Company Ltd

APPELLANT

Vs

Jatinder Singh Choudhary & Ors

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173

Citation : (2019) 03 J&K CK 0134

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Rupinder Singh, Suneel Malhotra

Final Decision : Disposed Off

Judgement

1. This appeal by the New India Assurance Company Limited, appellant herein, against the judgment and award dated 29.04.2015 passed by the Motor Accident Claims Tribunal, Jammu in File No.66/2012 titled ?Jatinder Singh Choudhary v. Dhian Singh & ors.? awarding Rs.24,69,400/- as compensation with pendentelite and future interest @ 7.5% per annum except on the amount of loss of future income. The amount awarded has been challenged by the appellant on the ground that there is no evidence about the negligence of the driver of the offending vehicle and huge amount has been awarded in the absence of any evidence. The award has also been challenged on the ground that the loss of income has been assumed on disability of the limb and not the functional disability because 95% of disability is on account of loss of limb which has been erroneously taken up as functional disability also.

2. The accident is said to have been taken place when the petitioner/injured was driving a motorcycle while coming to Jammu from Vijaypur. The motorcycle was hit by the offending vehicle bearing Registration No. JK21-0210 as a result of which petitioner/claimant sustained multiple injuries, such as, fracture of right shoulder, fracture of right arm and fracture of right leg.

3. After the accident, the petitioner was admitted in the Military Hospital, Satwari on 03.11.2011 and thereafter treated at Amandeep Hospital, Amritsar on 04.11.2011 to 07.12.2011. During this period his right leg was amputated due to which he suffered permanent disablement. The claimant claims to have spent Rs. 7 lacs on his treatment, which is likely to increase to Rs. 20 lacs. Thus, the claimant claims a total of Rs.42 lacs as compensation under different heads.

4. Respondent Nos. 1 & 2 being driver and owner have filed their objections and have denied the accident. However, in para (6) of the objections, while denying the negligence on the part of the offending vehicle, it is stated that it was the petitioner, who was negligent in driving the motorcycle, which means that the accident had taken place because of the negligence of the claimant.

5. Appellant also filed the objections alleging negligence on the part of the petitioner/claimant while driving the motorcycle. It is, however, admitted that the owner of the offending vehicle was insured with the Company on the date of the accident.

6. The documentary evidence placed on record is a copy of the report under Section 173 of the Code of Criminal Procedure of Police Station, Vijaypur and the disability certified by the Medical Board is issued by the District Hospital, Samba and photocopies of the admission of the petitioner/claimant in Amandeep Hospital along with qualification certificate is produced. The oral evidence comprised statement of Rashpal Singh Choudhary, father of the claimant, Jatinder Singh, a claimant and Dr. V.K.Sharma, Orthopedic Surgeon, District Hospital, Samba, who is one of the members of the Medical Board which assessed the disability of the petitioner.

7. The main grievance of the appellant is that even though the petitioner was unemployed at the time of the accident and being a student the assessment of Rs.10,000/- per month as his income were not justified.

8. Statement of the petitioner regarding negligence of the driver of the offending vehicle has not been challenged. Since the petitioner was coming from opposite direction while the offending vehicle was being driven from Jammu to Samba so both were travelling in the opposite direction. This fact could have been explained by respondent No.1, the driver of the offending vehicle, but he has chosen not to appear in the witness box and according to the copy of the report of the police, the accident took place because of the negligence of the driver of the offending vehicle. So the conclusion of the Tribunal on issue No.1 cannot be questioned.

9. With regard to the amount of compensation, the trial court has relied on the judgment in Raj Kumar v. Ajay Kumar & anr., reported as 2011 (1) SCC 343. The disability according to Dr. V.K.Sharma, Orthopedic Surgeon is 90% pertaining to the right upper and lower limb. This disability was assessed by the Medical Board which is exhibit as PKS but the statement of the Doctor in the cross-examination is relevant because he says that disability of 90% is of particular limb and not

body. Regarding disability of the body, it will be reduced to 50% when compared to the whole body.

Disability according to the Hon?ble Apex

Court in case of Raj Kumar (supra) has observed is that "when the disability states that injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body...."

10. It was observed that the Tribunal should not economically applied the permanent disability as the percentage of economic loss or loss of earning capacity.

11. In most of the cases, the percentage of economic loss i.e. percentage of loss of earning capacity arising from the permanent disability. Final how the assessment is to be made in para (9) of the judgment which is reproduced hereunder:

"Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

12. In any case Dr. V.K.Sharma had made a categoric statement that disability of body in this case was only 50% but the Tribunal in this case has awarded loss of income by taking disability at 95% which is erroneous. So assuming the income of the petitioner to be Rs.10,000/-per month it has to be reduced by 40% so the loss of earning due but functional disability would be 50% of Rs.10,000/- per month, the loss of earning due to functional disability would be Rs.5000/- per month and 60,000/- per annum. As the age of the claimant at the time of the accident was 22, the multiplier of 18 would be applicable thus, total loss of income would be Rs.10,80,000/-.

13. The petitioner is also entitled to Rs.2 lacs under the head pain and suffering and Rs.5 lacs as loss of marriage prospects Petitioner/claimant was hospitalized

that was over a month though the medical expenses had not been certified or approved but the medical expenses awarded due to commensurate with the expenses incurred i.e. One lac Thirty One thousand and four hundred rupees.

14. Thus, in view of the above, the respondent No.1 is entitled to compensation for an amount of Rs.19, 11,400/- along with 6% interest per annum. This amount is payable to the petitioner with 6% interest from the date of the filing of the claim petition.

15. Appeal is, accordingly, disposed of.