(2020) 08 J&K CK 0076

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 64 Of 2020, Mac App 40 Of 2019

Nittu Sharma APPELLANT

Vs

Oriental Insurance Company Ltd And Others RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Citation : (2020) 08 J&K CK 0076

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Raghu Mehta, Jugal Kishore Gupta

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. This appeal for enhancement of compensation filed by the injured Nittu Sharma (hereinafter referred to as the 'claimant') is directed against the award dated 23.01.2019 passed by the Motor Accident Claims Tribunal, Rajouri (hereinafter referred to as the 'Tribunal') in file No. 23/claim/2017 titled 'Nittu Sharma vs Trilok Singh and others' whereby the Tribunal has awarded a compensation of Rs.2,36,680- along with pendent lite and future interest @ 7.5% per annum.

2. The impugned award has been assailed and the enhancement of compensation is sought, inter alia, on the following grounds:

(i) That the Tribunal has not correctly appreciated the evidence of the claimant with regard to her monthly income and has erroneously taken the monthly income of the claimant as Rs. 4500/- per month.

(ii)That the Tribunal while computing the loss of income has omitted to add 25% of the income by way of future prospects and has, thus, acted contrary to the Judgment rendered by the Hon'ble Supreme Court in the case of National Insurance Company Ltd vs. Pranay Sethi and ors, AIR 2017 SC 5157y Sethi.

(iii) That the Tribunal has arbitrarily and without any basis taken the loss of earning capacity of the claimant as 28% despite the fact that as per the medical certificate placed on record, the claimant had suffered 38% permanent disability.

(iv) That the sums awarded on account of medical treatment, pain and suffering and loss of amenities of life are also on the lower side.

3. The appeal is opposed by Mr. Jugal Kishore Gupta, learned counsel appearing for respondent No.1, the insurer of the offending vehicle. It is submitted that, in the absence of any proof of income of the claimant brought on record, the Tribunal was justified in taking the notional income of the claimant as Rs. 4500 per month being the wages equivalent to what was payable to a daily wager, at the relevant point of time. He further justifies 28% loss of earning capacity taken by the Tribunal for the purpose of assessment of loss of income.

4. Having heard learned counsel for the parties and perused the record, I am of the view that the impugned award deserves to be modified so as to bring it in conformity with the established principles of assessment of compensation in motor accident cases as laid down by the Hon'ble Supreme Court from time to time.

5. It is true that, though the claimant had claimed her income to be Rs. 12000/- per month, but other than her oral testimony, no material was brought on record to substantiate the aforesaid claim. The claimant being a house wife rendering services of home maker was rightly held by the Tribunal to earn Rs.4500/- per month. No exception can be found with the view so taken by the Tribunal.

6. I am, however, in agreement with the learned counsel for the claimant that as laid down in the case of Pranay Sethi (supra), the Tribunal ought to have added 25% of the income by way of future prospects and, accordingly, calculated the loss of income. This apparently has not been done by the Tribunal. Apart from the aforesaid modification in the award, I am also of the considered view that the Tribunal has been miser in awarding compensation on account of pain and suffering and loss of amenities of life.

7. It is not in dispute that the claimant in the accident has suffered multiple injuries and has been rendered permanently disabled to the extent of 38%/. It may be true and as is held by the Tribunal that she may have suffered loss of earning capacity to the extent of only 28%, but it cannot be forgotten that a person with so many injuries and a substantial disability could be compensated by paying Rs.5,000/-each on account of pain and suffering and loss of amenities of life. Even an award of Rs.5000/- on account of medical expenses appears to be thoroughly low.

8. Apart from the aforesaid, this Court could not find any further scope in enhancing the compensation payable to the claimant. In the light of the foregoing discussion, the award is recast as under:

Future loss of income: Rs.2,64,600/-(Rs.1575x12x14)

Expenses on attendants: Rs.5000/-

Expenses on medical treatment: Rs. 15000/-

Expenses on special diet: Rs.5000/-

Compensation on account of pain & suffering Rs.50,000/-

Compensation on account of loss of amenities of life Rs.50,000/-

Total Rs.3,89,600/-

9. Accordingly, the appeal is allowed and the award is enhanced to the aforesaid extent. The awarded amount shall carry pendent lite and future interest at the rate of 7.5% per annum as directed by the Tribunal.

Let the amount which is payable under this order be deposited in the Registry of this Court within six weeks. On deposit, the same shall be released in favour of the claimant in terms of the impugned award. The amount of compensation, if already received under 'no fault liability' shall be adjusted accordingly.