
(2019) 08 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : MA No. 234 Of 2014, IA No. 10, 17 Of 2014

Oriental Insurance Co. Ltd

APPELLANT

Vs

Nardeep Singh And Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Citation : (2019) 08 J&K CK 0010

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Dinkar Gupta

Final Decision : Disposed Off

Judgement

Sanjeev Kumar, J

1. This appeal by the Oriental Insurance Company Limited (hereinafter referred to as " the Insurer") is directed against the award dated 31.12.2013 passed by the Motor Accident Claims Tribunal, Udhampur ("the Tribunal" for short) in file No. 82/Claim titled Nardeep Singh Jamwal V/s Parveen Kumar and ors., whereby respondent No. 1-Nardeep Singh Jamwal (hereinafter referred to as "the claimant") has been awarded a sum of Rs. 10,32,000/- as compensation along with interest @ 6% per annum for having suffered permanent disability in the Motor Vehicular accident.

2. Brief facts, which are relevant for the disposal of this appeal, may be noticed. An accident involving Bus No. JKS/ 7917 driven by its driver- deceased, Anil Kumar rashly and negligently, took place on 10.04.2004 on Duddar Bridge near Rehmbal. In the said accident, the driver of the offending vehicle died on spot whereas the claimant suffered multiple injuries and was permanently disabled. The offending vehicle at the time of accident was insured with the Insurer. The claimant, who had incurred medical expenses and had suffered loss of income due to the injuries received by him in the accident filed a claim petition claiming compensation to the tune of Rs. 12.70 lacs. On being put on notice, the Insurer

through its counsel, Mr. Anil Goel, Advocate entered appearance and contested the claim of the claimant on all available grounds. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

(1) "Whether the petitioner is entitled to claim compensation for the loss suffered by him on account of accident caused due to rash and negligent driving of the offending vehicle bearing registration No.JKS/7917 by its driver on 10.04.2004 ?
OPP

(2) If issue No. 1 is proved in affirmative, to what amount compensation petitioner is entitled to? OPP

(3) If issues No. 1 and 2 are proved, who among respondents 3 and 4 is liable to compensate the petitioner? OP Parties

(4) Relief."

3. The claimant in order to prove his case and discharge the onus, produced Dr. Naresh Chopra, PW Rashpal Singh and PW Rajinder Kumar. He also placed on record the documentary evidence in the shape of photocopies of the medical bills. The Insurer, however, did not examine any witness in rebuttal.

4. The Tribunal, after evaluating the evidence available on record both oral as well as documentary, came to the conclusion that the claimant had sufficiently proved that he has suffered injuries in the accident caused due to the rash and negligent driving of the offending vehicle being driven by its deceased-driver, Anil Kumar rashly and negligently. With regard to issue No. 3, the Tribunal on the basis of evidence led by the claimant and particularly having regard to the statement of Rashpal Singh, Deputy Chief Electoral Officer of Jammu and Kashmir, came to the conclusion that there was no evidence on record to prove that the offending vehicle at the time of accident was on election duty and therefore, driven under the control of the Election Department of the State. The issue no. 3, was thus, held proved against the Insurer and in favour of the claimant. So far as the issue No. 2, which pertains to the quantum of compensation, is concerned, the Tribunal on the basis of the evidence on record both oral as well as documentary, came to the conclusion that the claimant was entitled to the compensation of Rs. 10,32,000/- along with interest @ 6 % per annum. The Insurer is aggrieved of the award passed in favour of the claimant and against the Insurer and seeks to challenge the same, primarily on the following grounds:-

(i) That since at the time of accident the vehicle was on election duty and, therefore, was under the control of the Election Department and that being the position neither the owner can be held responsible for the accident nor the Insurer can be made vicariously liable for indemnification.

(ii) That the quantum of compensation awarded by the Tribunal is on higher side and is not in consonance with the settled legal position.

5. Having heard learned counsel for the parties and perused the record, I am of the view that the first ground of challenge urged by the Insurer is bereft of any merit and the same deserves to be rejected. Not only that there is enough oral evidence on record in the shape of statements of the claimant and his witnesses but also there is categorical statement of Sh. Rashpal Singh, Deputy Electoral Officer of Jammu and Kashmir, who in his deposition has categorically mentioned that the offending vehicle was not at all hired by the Election Department on and around the Lok Sabha Elections held in the year 2004. He also produced before the Tribunal relevant record giving details of the vehicles requisitioned for the election duty. The aforesaid witness was cross-examined by the Insurer but nothing favouring Insurer could be elicited from him. The Tribunal, therefore, rightly accepted the evidence of the claimant and held the issue proved against the Insurer. I see no justification to interfere with the findings of fact recorded by the Tribunal on issue No. 3.

6. Learned counsel for the Insurer despite his vehement effort could not point out any material on record, which would persuade this Court to take a view contrary to the one taken by the Tribunal.

7. This brings me to the question of quantum of compensation. The learned counsel for the appellant vehemently urges that the Tribunal has gone absolutely wrong in fixing the compensation payable to the claimant, in that, the Tribunal has not taken into consideration the fact that despite the injuries and disablement suffered, the claimant continued in the employment of the company Hindustan Lever Limited and there was no loss of earning on account of the injuries, which he received in the accident. He also points out that the Tribunal went wrong in selecting the multiplier of 17 for calculating the loss of future income. He disputes the award of compensation on account of medical expenses and transportation charges without there being any documentary proof on record. It is the submission of the learned counsel for the appellant that the photocopies of the medical bills submitted by the claimant could not have been relied upon. He also urges that the claimant being employee of Hindustan Lever Limited was entitled to medical reimbursement, which he did get after submitting the original bills with the company.

8. Having given my thoughtful consideration to the submissions made by the learned counsel for the appellant and also the submissions made by learned counsel for claimant in rebuttal, I am of the view that the compensation awarded by the Tribunal would require some modification. The Tribunal has conservatively taken the income of the injured as Rs. 10,000/- per month though, it had come in the evidence that in addition to the monthly income of Rs. 10,000/- per month, the claimant was getting perks of Rs. 15,000/-. The Tribunal has also taken note of the fact that the claimant was an income Tax payee. Taking into consideration all these factors together, I am of the view that the Tribunal has committed no wrong in accepting the monthly income of the injured as Rs. 10,000/-. The medical expert has certified the disability of the claimant as 30 %

of the whole body. The claimant has suffered fractures in right elbow and pelvic region, as a result whereof, he has restricted left elbow movement and because of involvement of pelvic region the claimant has difficulty in proper movement of body. It is true that the Tribunal did not consider as to whether the claimant had actually suffered loss of earning because of the disablement and perhaps this was not done by the Tribunal as I find no evidence to the contrary brought on record by the insurer

9. Be that as it may, I am not in complete disagreement with the learned counsel for the Insurer that the loss of income, if any, suffered by the claimant, was to be proved by the claimant himself and not by the Insurer. Although, no sufficient material in this regard is available in the file, yet keeping in view the nature of injuries, which the claimant has suffered and the avocation he pursues, I am of the view that the claimant has suffered loss in terms of his future prospects. It may be true that even after the disablement, he may have been re-employed in the company or may get job in some other company but his disablement would definitely come in his way to get the best remuneration. As is come in the evidence, the claimant at the time of accident was Marketing Executive, which inter alia involves mobile duties and the disablement suffered by the petitioner would definitely be a question mark on his performance.

10. Taking all these factors into consideration, I am of the view that though the claimant has suffered the disablement of whole body to the extent of 30 %, his loss of future income should be taken as 30% . The learned counsel for the parties, however, do not dispute that given the age of the claimant as 32 years, the multiplier of 16 was applicable. The Tribunal has awarded Rs.2.00 lacs lump sum on account of medical expenses and transportation without there being any specific proof except the photocopies of the medical bills. Mere fact that claimant remained hospitalized in a private hospital in Amritsar for more than 15 days itself is a proof good enough to pay to him at least a sum of Rs. 1.50 lacs on account of medical expenses and transportation. The amount awarded on rest of the heads, however, do not call for any interference as the same are found to be correct.

11. Accordingly, the award passed by the Tribunal is modified to the following extent.

Loss of future income $10000 \times 30/100 \times 12 \times 16$

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=

Rs. 5,76,000/-

Medical expenses and transportation

=

= Rs.1.50 Lacs

Pain and suffering

=

Rs. 1 Lac

Loss of income during confinement, hospitalization

=

= Rs. 50,000/-

Attendant charges

=

Rs. 20,000/-

Loss of Future exception of life loss of amenities enjoyment and longevity of life

=

Rs. 50,000/-

Total

=

Rs. 9,46,000/-

12. The aforesaid compensation shall be payable to the claimant along with interest @ 6 % per annum from the date of presentation of the claim petition till its realization.

13. The appeal of the Insurer is, accordingly, disposed of in the aforesaid manner.