
(2020) 06 J&K CK 0095

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 454 Of 2010

Oriental Insurance Company Limited

APPELLANT

Vs

Dalip Singh And Others

RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

Citation : (2020) 06 J&K CK 0095

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R.K.Jain

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The Oriental Insurance Company Limited (hereinafter ? the insurer? for short) is in appeal against the judgment and award dated 31.03.2010 passed by the Motor Accident Claims Tribunal, Jammu (?the Tribunal? for short) in file No.358/ Claim titled Dalip Singh v. Oriental Insurance Company Limited and others. The Tribunal has held respondent No.1-claimant entitled to compensation of Rs.4,36,800/- along with interest @ 7.5% per annum.

2. Before proceeding to appreciate the grounds of challenge urged in this appeal, it would be worthwhile to notice few facts.

On 21.10.2005, the claimant-respondent No.1 along with his wife was walking on the road and was going from Subash Nagar to Toph Sherkhania. The offending vehicle, a matador bearing Regd. No.JK02G-4696, which was being driven by its driver- respondent No.3 in rash and negligent manner, hit the claimant as a result of which, he sustained fracture of his right leg and bodily injuries on left shoulder and right thigh. The claimant was immediately shifted to Govt. Medical College & Hospital, Jammu where he remained admitted upto 29.10.2005. The claimant claims to have spent huge money on his treatment. Since the claimant

had sustained permanent disablement due to rash and negligent driving of respondent No.3, who at the relevant point of time was under the employment of respondent No.2, as such, the claimant filed a claim petition seeking compensation under the provisions of the Motor Vehicles Act, 1988 before the Tribunal. The insurer- appellant was arrayed as party respondent, as the vehicle on the relevant date was insured with it.

3. The claim petition was contested only by the insurer, whereas respondent Nos. 2 and 3 i.e. owner and driver of the offending vehicle chose not to contest the claim petition and were, accordingly, proceeded ex-parte. On the basis of the pleadings of the contesting parties, the Tribunal framed following issues:-

"1. Whether an accident occurred on 21.10.2005 at Toph Sherkhanian, Jammu by the rash and negligent driving of offending vehicle No.4696-JK02G in the hands of erring driver in which petitioner Dalip Singh sustained grievous injuries? OPP

2. If issue No.1 is proved in affirmative whether petitioner is entitled to the compensation; if so to what amount and from whom? OPP

3. Whether driver of the offending vehicle at the time of accident was not holding a valid and effective driving licence and drove the vehicle in contravention of terms and conditions of insurance policy; route permit, RC and fitness certificate; if so how and what is its effect? OPR-1

4. Relief.OPP"

4. The claimant, apart from himself entering the witness box, also examined Dr. Rajesh Gupta, and one Nirmal Jamwal as his witnesses. The insurer, however, did not produce any evidence in rebuttal. The Tribunal taking stock of the evidence brought on record by the claimant held the issue No.1 proved in favour of the claimant holding that the claimant had suffered injuries on account of rash and negligent driving of the offending vehicle by its driver-Bodh Raj.

5. With regard to issue No.3, the Tribunal held the issue not proved and it was concluded by the Tribunal that since onus to prove this issue was on the insurer, as such, in the absence of any evidence brought on record, the issue cannot be said to have been proved by the insurer. The Tribunal, thereafter decided issue Nos.2 and 4 in favour of the claimant and held him entitled to the payment of compensation to the extent of Rs.4,36,800/-.

6. The impugned award has been assailed by the insurer primarily on the following grounds:-

i) The Tribunal did not grant it adequate opportunity to discharge its onus to prove issue No.3.

ii) The Tribunal did not compute the compensation in light of the evidence on record and taking into account the settled parameters laid down by the Supreme Court in this regard.

7. Having heard learned counsel appearing for the appellant-insurer and perused the record, I am of the view that the award impugned does not call for any interference for the reasons given hereafter.

8. With regard to issue No.3, onus whereof was on the appellant-insurer, it is sufficient to state that the insurer did not lead any evidence to discharge the burden. Mere assertion that the driver of the offending vehicle was not holding valid and effective driving license without any supporting evidence cannot be relied upon to hold the issue proved. No explanation is coming forth as to why the insurer could not lead any evidence except a bald assertion that it was not provided adequate opportunity to do so. In the absence of any material on record, this Court is at loss to accept the plea of the insurer.

9. As per the statement of Dr. Rajesh Gupta, attending orthopedician, the claimant had suffered permanent physical disablement to the extent of 35% of the right upper and lower limb and left upper limb. It was also pointed out by the expert witness that the claimant would have difficulty in lifting heavy weight with arms. He further opined that the claimant could perform the job of dairy farming but with some difficulty.

10. I find no illegality having been committed by the Tribunal in taking the functional disability and loss of earning capacity at 35%, given the nature of injuries and permanent disablement suffered by the claimant. As per the evidence on record, the claimant was running dairy and had claimed the income of Rs.20,000/- per month but the Tribunal after taking note of the facts and circumstances of the case took the income of the claimant as Rs.6,000/- per month. The income of Rs.6,000/- per month of a person doing dairy business or involved in rearing of bovine animals cannot, by any stretch of reasoning, be said to be on the higher side. I am, thus, not inclined to interfere with the aforesaid finding of fact recorded by the Tribunal.

11. The award in the instant case was passed by the Tribunal on 31.03.2010 and there has been considerable development in law pertaining to compensation in motor vehicular accidents. The compensation payable to the claimant may be subject to variation under certain heads, but I am not inclined to do the aforesaid exercise for the reason that even by adopting new parameters, the compensation that would come will not be anything less than Rs.4,36,800/-, which has been granted by the Tribunal in the instant case.

12. For the foregoing reasons and in the given facts and circumstances of the case, the compensation of Rs.4,36,800/-, awarded by the Tribunal, is held to be fair and just compensation.

13. The appeal is, accordingly, dismissed and award of the Tribunal is upheld. The amount, if deposited with the Registry, shall be released in favour of the claimant-respondent No.1 in terms of the award of the Tribunal after proper identification and verification.