

(2022) 09 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 335 Of 2017

Oriental Insurance Company Ltd

APPELLANT

Vs

Sat Pal And Others

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Citation : (2022) 09 J&K CK 0002

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : D.S.Chauhan, Ashish Sharma

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The appellant is aggrieved of the award dated 12.08.2017, passed by the learned Presiding Officer, Motor Accidents Claims Tribunal, Rajouri, whereby the appellant has been held liable to pay compensation to the respondent No.1-claimant to the tune of Rs.10,44,064/- along with pendentelite and future interest @ 7.5% per annum till realization except on the head of loss of future income. The challenge to the award is on the ground that the Tribunal has wrongly assessed the permanent disability of the claimant as 70%; that the Tribunal has wrongly fastened the liability upon the appellant though the driver of the vehicle was not holding valid license at the time of accident. In short, it is submitted that the Tribunal has not granted just compensation in favour of the claimant but has awarded the excess amount of compensation to the claimant.

2. The respondent-claimant has appeared through Mr. Ashish Sharma, Advocate. Respondent Nos. 2 & 3 have been set ex-parte. The photo copy of the record of the Tribunal is before the court for perusal.

3. The submission of the appellant is that the assessment made by the doctors with regard to the injury received by the victim is not of the whole body but of

the particular limb and, therefore, the compensation cannot be assessed as per the percentage of disability as per the medical evidence that has come on record. The Tribunal has wrongly assessed the percentage of permanent disability to the extent of 70% is the submission of the learned counsel for the appellant.

4. Mr. Ashish Sharma, learned counsel appearing for the respondent-claimant has argued that the Tribunal has awarded just compensation in favour of the claimant. The permanent disability suffered by the claimant is not in any way less than 70% as held by the Tribunal keeping in view the injury suffered by the claimant in the accident. Infact the claimant is entitled to much more compensation than the one awarded by the Tribunal.

5. The accident which took place on 15.02.2015 near workshop Rajal within the jurisdiction of Police Station, Nowshera and involving vehicle No. JK11-3756 (Tipper) driven rashly and negligently by the driver of the vehicle resulted into receiving of serious injuries to the claimant. The injuries resulted into permanent disability of the claimant.

6. The accident which resulted into permanent disability of the claimant-respondent is not in dispute. The main issue which requires consideration is the extent of permanent disability suffered by the victim in consequence to the accident.

7. The medical certificate issued by the Medical Board read with the statement of Dr. Abdul Salam recorded in the court brings out that Sat Pal had deformity of both foot and the right hand and secondary OA of both joints with ulcer over right hand (non-healing ulcer). As per the certificate the claimant is permanently disabled to the extent of 70% and can walk with escort only. Dr. Abdul Salam, who is one of the members of the Board, which issued the certificate and has recorded the statement before the Tribunal has during cross-examination stated that it is correct that the disablement pertains to the particular parts of the body and not of the whole body and in case the disablement is to be measured in terms of the whole body than the percentage of the disablement may come down proportionately.

8. It is well settled that the extent of permanent disability suffered by the victim has to be assessed of the whole body and not the particular limb which may have suffered injury. It is not necessary that the percentage of injury suffered on a particular part of the body will reflect the same percentage of permanent disability for whole body. For instance, if a person receives injury on a particular part of the body, say injury on the index finger of his left hand to the extent that it has to be amputated. The injury to the said finger may amount to 100% disability of that finger only and cannot be said that the body as a whole has suffered injury to that extent also. The nature of injury will determine the extent to which it incapacitated the body as a whole of the victim. The injury suffered by the victim has also relation with the loss of earning capacity of the victim so far as the question of compensation to be granted to the claimant-victim is

concerned. The case in hand speaks of the injury suffered by the claimant to the extent of 70% for the reason that his lower part of the body and particularly both the foot of the victim had injuries which incapacitates the victim from walking on its own and the victim has to take the help for walking purposes. In other words, the victim cannot lead a normal life after the accident and has become dependent upon others to a certain extent. The injuries suffered by the victim can be held to the extent of 70% also of the whole body in the case in hand and thereby permanently making him disabled to that extent. The very fact that the lower part of the victim stands affected prompts the court to hold so. As far as grant of compensation on account of disability is concerned, it is to be noted that the claimant was having motorcycle workshop and of course having some earning from the same. The Tribunal has rightly assessed the monthly income of the victim as Rs.6000/- per month taking into consideration that he was a skilled labourer though rightly dismissing the claim of the respondent that he was earning Rs.50,000/- per month. The multiplier of 9 adopted by the Tribunal is as per the judgment of Sarla Verma's case reported in 2009 (3) Supreme 487 and, therefore, requires no interference keeping in view the age of the injured victim. The compensation assessed by the Tribunal on account of loss of income to the tune of Rs.4,53,600/- does not, therefore, require any modification. The Tribunal has also awarded compensation of Rs.5,14,464/- on account of medical bills that are brought on record and again the court finds no reason to disturb the findings on the same. The compensation awarded on account of other heads cannot said to be exorbitant which may require any correction from this court in appeal. It may be noted herein that the Tribunal has awarded compensation to the tune of Rs.20,000/- each under the heading of pain and sufferings and loss of amenities of life. The compensation cannot be granted under the aforesaid separate heads of loss of pain and sufferings and loss of amenities of life. However, the court is of the view that even if the compensation is to be granted in a composite manner for the aforesaid headings, the compensation of Rs.40,000/- for the aforesaid headings is just one and cannot be said by any stretch of imagination to be excessive one.

9. The findings of the Tribunal whereby it has been held that the appellant-Insurance Company has not been able to prove Issue Nos. 3 & 4 pertaining to the vehicle being driven in violation of Insurance Policy and the vehicle having not valid documents at the time of accident also do not require any interference by this Court as the Tribunal has held that the evidence produced by the Insurance Company failed to prove that the insured willfully violated the terms and conditions of the Insurance Policy and further that the evidence produced by the Company has no probative value. The compensation awarded by the Tribunal is just compensation. The award passed by the Tribunal is upheld.

10. The Court, in the facts and circumstances of the case, finds no merit in the appeal, which is, accordingly, dismissed.