**(2024) 02 J&K CK 0038**

**In the Jammu And Kashmir High Court**

**Case No :** Miscellaneous Application No. 22 Of 2020, Civil Miscellaneous Case No. 351 Of 2020

Raj Kumar Alias Raju — APPELLANT

Vs

National Insurance Company And Others — RESPONDENT

**Date of Decision :** 28-02-2024

**Acts Referred:**

**Citation :** (2024) 02 J&K CK 0038

**Hon'ble Judges :** Puneet Gupta, J

**Bench :** Single Bench

**Advocate :** Vishnu Gupta, Rajesh Kumar

**Final Decision :** Allowed

# Judgement

Puneet Gupta, J

1. The Motor Accident Claims Tribunal, Jammu, has awarded compensation to the tune of Rs.4,74,000/- along with interest at the rate of 7.5% per annum in favour of the appellant from the date of filing of the petition till the amount is realized of the award amount except awarded under the Head 'Loss of future earnings'. The appellant has suffered permanent disability in the accident which took place on 03.06.2014. It is suffice to mention herein that the liability has been fastened upon the Insurance Company-respondent No.1 herein. As the appellant has sought enhancement of compensation awarded in his favour by the Tribunal and the Insurance Company has been held liable to pay the compensation awarded by the Tribunal, therefore, the respondent Nos.2 & 3 are not required to be heard in the matter.

2. The Tribunal has held respondent No.1-Insurance Company liable to pay the compensation to the appellant. The respondent-Insurance Company has not preferred any appeal against the award passed by the Tribunal. In the light of the aforesaid fact the findings of the Tribunal with regard to the issue regarding the accident having taken place due to rash and negligent driving of respondent

 

No.2, driver of vehicle bearing No.JK02G-9185, need not be gone into by the Court in the appeal.

3. The only question with which this court is concerned is as to whether the Tribunal has awarded the just compensation in favour of the appellant.

4. The appellant has claimed his occupation as Barbar at the time of accident. The learned Tribunal did not agree with this submission of the appellant as it has held that there was no record pertaining to registration of Barbar shop of the appellant/petitioner and, therefore, treated the petitioner as labourer.

5. Learned counsel appearing for the appellant has submitted that the Tribunal has erred in not holding the petitioner being a barbar at the time of accident in spite of the fact that the evidence was produced by the appellant that his occupation was Barbar at the time of accident. Learned counsel appearing for the Insurance Company has, however, argued that there is no flaw in the conclusion drawn by the Tribunal in this regard.

6. The Court is of the view that the Tribunal has taken hyper technical view of the matter. The evidence produced by the appellant does make out that the appellant was working as Barbar when the accident took place. The Tribunal ought not to have taken a view that the appellant cannot be held to be in such occupation only for the reason that the certificate under Shops Establishment Act has not been placed on record by the appellant. The Tribunal is required to take a very just view of what comes on record in the shape of evidence. This Court holds that the appellant has fairly proved that his occupation was Barbar at the time of accident. The income of the appellant is taken by the Tribunal as Rs.6000/- per month. The Court is of the view that keeping in view the occupation of the appellant in the year 2014 as Barbar, the monthly income of the appellant can be fairly taken as Rs.8000/- per month and not Rs.6000/- per month as awarded by the Tribunal. The court is also required to take into consideration the future prospects of the income of the appellant. The same is enhanced by 40% keeping in view the age of the appellant and the fact that he cannot be said to have any fixed income at the time of accident.

7. The Tribunal has slashed down the permanent disability recorded by the Medical Board from 35% to 25%.

8. The appellant being Barbar, the disability suffered by him can bring some disadvantage to him in the future course of his occupation cannot be ruled out. As per the medical record EXPW-VKS and statement of Doctor V. K. Sharma, Orthopedic Surgeon, the injury suffered by the appellant is on the left leg and implant is in place which is grossly painful and the patient has difficulty in standing for longer duration. He has further stated that the injury is of permanent nature and 35% injury is in respect of left lower limb only and would definitely diminish when considered in relation to the whole body. Keeping in view the injury received by the appellant and that the same is to persist in future also for all times to come, the Court is of the view that the permanent disability

 

suffered by the appellant should be considered at 35% and not 25% as considered by the Tribunal. The multiplier of 18 applied by the Tribunal does not require any interference keeping in view the age of the victim at the time of accident.

9. The argument of learned counsel for the appellant is that the court should enhance amount on account of other heads in which he has been granted compensation by the Tribunal. The court is in agreement with the argument of counsel for the appellant. The Tribunal has not adequately compensated the appellant under different heads as mentioned in the award keeping in view the age of the appellant and the nature of injuries received by him. The appellant is held entitled to Rs.1,20,000/- on account of pain and suffering and loss of amenities. The appellant is also held entitled to Rs.2,00,000/- on account of medical expenses including medical bills, transport charges, attendant charges and other allied expenses.

10. The appellant is, thus, held entitled to the amount of Rs.11,66,720/- under the following heads :-

1. Loss of future earning (11200 x 12x 18 x 35%) :Rs.8,46,720/-

2. For pain and suffering and loss of amenities :Rs.1,20,000/-

3. Medical expenses including transport, attendant expenses and allied expenses : Rs.2,00,000/-

Total Compensation Awarded :Rs.11,66,720/-

11. Thus, the appellant is held entitled to compensation of Rs.11,66,720/- along with the interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount to be paid by the respondent-Insurance Company. The amount, if any, received by the appellant shall stand adjusted and so will be the interest calculated accordingly.

12. In view of the discussion made above, the appeal is allowed and award is modified on aforesaid terms.

 