
(2023) 12 J&K CK 0069

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 48 Of 2017 (O&M)

Shriram General Insurance Co. Ltd

APPELLANT

Vs

Rajeev Kapoor And Others

RESPONDENT

Date of Decision : 28-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0069

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Baldev Singh, Navneet Dubey, Aman Bagotra

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Both the claimant as well as the Insurance Company have impugned the award dated 18.01.2017 passed by Motor Accident Claims Tribunal, Jammu (for short ?the Tribunal?), titled, "Rajeev Kapoor vs Sudesh Kumar and others", whereby the claimant-Rajeev Kapoor has been awarded a compensation of Rs. 80,27,794/- alongwith pendente lite and future interest @ 7.5% per annum throughout till realization except on the head of loss of future income, future expenditure on medicine and expenditure for the attendants. connected matter
2. The MA No. 48/2017 has been preferred by the Insurance Company and the other appeal, to be diarised by the Registry, has been preferred by the claimant, who figures as respondent No. 1 in MA No. 48/2017.
3. In MA No. 48/2017, the appellant/Insurance Company has impugned the award on the ground that it is not only non-speaking but also the learned Tribunal has not at all dealt with the statements of witnesses and their cross-examination and the learned Tribunal has passed the impugned award without appreciating the evidence. It is stated that the learned Tribunal has committed glaring mistake by ignoring the contents of FIR enclosed by the claimant himself

alongwith his claim petition and the said document was not disputed by the claimant as he never challenged the same in the court of law. It is also urged that the learned Tribunal has wrongly denied the appellant an opportunity to prove the final police report submitted by the Police after investigation of the FIR. Besides, the appellant has also disputed the quantum of compensation awarded to respondent No. 1.

4. On the other hand, the claimant has filed the present appeal for enhancement of the compensation on the ground that the learned Tribunal while passing the award has not taken into consideration the supplementary affidavit filed by the father of the claimant, whereby he had placed on record the bills amounting to Rs. 5,16,779.94/-.

5. Mr. Baldev Singh, learned counsel for the appellant has vehemently argued that the learned Tribunal did not permit the appellant to lead the evidence for the purpose of proving the charge sheet. Further that the learned Tribunal has granted the unjustified compensation to the respondent No. 1/claimant. connected matter

6. Per contra, Mr. Navneet Dubey, learned counsel for respondent No. 1 has vehemently argued that the respondent No.1 has suffered 100% disability being patient of quadric plegia as his both lower and upper limbs are not working, he is paralysed from neck to toe of the feet. He also urged that the learned Tribunal has not considered the supplementary affidavit filed by the father of the respondent No.1 placing on record the bills of Medanta Medicity, transport charges, medicines, amount spent in Indraprastha Hospitals.

7. Heard and perused the record.

8. The respondent No. 1 filed a claim petition for grant of compensation on account of grievous injuries suffered by him in a vehicular accident on 07.08.2012 at Treth Morth Bari Brahman NHW Jammu. It was pleaded by respondent No. 1 that when after purchasing the essential items from the shop at Treth Morh, he started his Motorcycle bearing registration No. JK02AW-6703 to come towards Jammu from Bari Brahman alongwith pillion rider Mohit Gupta and Mohit Gupta was about to sit on the back seat of the motorcycle, the motorcycle was hit by offending vehicle (Matador) bearing registration No. JK02H-9123 from behind. The respondent No. 1 and his pillion rider-Mohit Gupta fell on the road due to which the respondent No. 1 and his companion suffered injuries. The respondent No. 1 suffered grievous injuries to his neck and back resulting into 100% disability. The respondent Nos. 2 and 3 were put to notice but they did not appear and were set ex parte. The appellant/Insurance Company, however, objected the claim petition and on the basis of pleadings of the parties, following issues were framed:

1. "Whether an accident took place on 07.08.2012 at about 1445 hours at Treth Morh, Bari Brahmana, NHW Jammu under the jurisdiction of Police Station Bari Brahmana by rash and negligent driving of the vehicle bearing registration No.

JK02H-9123 by its driver as a result of which petitioner Rajiv Kapoor received grievous injuries and has been disabled? OPP

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

3. Whether the offending vehicle was being driven in contravention of terms and conditions of policy of insurance, if so to what effect? OPR-3

4. Relief? O. P. Parties"

9. The respondent No. 1 besides examining himself, also examined his father Suresh Chander Kapoor, Mohit Gupta, Dr. Rakesh Sharma and Sr. Pharmacist & Record Keeper (CMO) Office Jammu, Bahadur Singh, whereas the appellant-Insurance Company has examined Legal Officer, Amandeep Sharma.

10. The learned Tribunal after taking note of the evidence but without discussing it in detail, determined the monthly income of respondent No. 1 as Rs. 10,500/- per month on the basis of certificate issued by M/s Skyline Engineers (Mark-MG) and by enhancing the income of respondent No. 1 by 50%, determined the future loss of earning to be Rs. 32,13,000/-, as the deceased had suffered 100% disability. The learned Tribunal has granted an amount of Rs. 80,27,794/- to respondent No. 1 under the following heads:

- i) For medical expenses till date: 11,00,794/-
- ii) For future medical expenses: 1,00,000/-
- iii) Transport charges: 1,00,000/-
- iv) Expenses for Fowler and Alfa Bed till date: 30,000
- v) Future expenses for Fowler and Alfa Bed: 30,000/-
- vi) Expenses on special diet 50,000
- vii) For present power wheel chair 1,25,000/-
- viii) For future power wheel chair 1,25,000/-
- ix) For pain and suffering: 2,00,000/-
- x) For loss of amenities of life 2,00,000/-
- xi) Expenses on two attendants: 27,54,000/-
- xii) Future loss of earning: 32,13,000/-
- xiii) Total 80,27,794/-

11. The record depicts that during the pendency of the claim petition, the appellant/Insurance Company filed an application for directing the SHO Police Station, Bari Brahamana, Jammu to produce the final investigation report in FIR No. 76/2012 dated 07.05.2012.

12. The said application was opposed by the respondent No. 1 and the same was dismissed by the learned Tribunal vide order dated 01.12.2016. A perusal of the FIR reveals that it was respondent No. 1, who was driving the motorcycle in a rash and negligent manner. The learned Tribunal after taking note of the judgments of the Apex Court in *Oriental Insurance Co. Ltd. v Premlata Shukla and others*, 2007(5) Supreme 370 and *National Insurance Company Limited v Rattani and others*, (2009) 2 SCC 75, observed that the cases relied upon by the appellant are not applicable in the instant case. In the claim petition, it has been specifically pleaded by respondent No. 1 that the accident took place because of rash and negligent driving of the driver of the offending Matador. The respondent No. 1 has proved the said fact by way of his evidence in the form of affidavit. He was cross-examined by the learned connected matter counsel for the appellant/insurance company and he denied the suggestion during his cross-examination that he was driving the motorcycle at high speed and hit the matador from behind. He also denied that the accident took place because of his negligence. The respondent No. 1 also proved the factum of accident as pleaded by him in his claim petition by examining Mohit Gupta who was accompanying him. The said witness had himself suffered injuries. He also proved that the accident took place because of rash and negligent driving of the driver of the Matador. He denied the suggestion made by learned counsel for the appellant during his cross-examination that it was the motorcycle which hit the matador as a result of which, the respondent No. 1 and he suffered injuries. He also denied the suggestion that the matador was stationary and the respondent No. 1 hit the matador from behind.

13. The appellant Insurance Company examined witness Amandeep Sharma, Legal Officer. He deposed that the driver of the Matador was not at all responsible as in FIR, the respondent No. 1 was held responsible for the accident. During cross-examination, he stated that he had not conducted any investigation.

14. In *Premlata Shukla's case* (supra), it was held by the Apex Court that the factum of accident could also be proved from the First Information Report and once a part of contents of the document is admitted in evidence, the parties bringing the same on record cannot be permitted to turn around and contend that the rest of the contents have not been proved. In the said case, the FIR was exhibited as both the parties intended to rely on it. In the case at hand, the respondent No. 1 has specifically pleaded in the claim petition that on account of misinformation furnished by the driver to the Police Station, a true account of the manner in which the accident took place was never reflected in the FIR. The respondent No. 1 has placed on record the certified copy of FIR bearing No. 76/2012 but the respondent No. 1 never intended to rely upon the said FIR for the purpose of proving the factum of accident. The respondent No. 1 always intended to prove the factum of accident by leading evidence independent of the FIR annexed with the claim petition. The respondent No. 1 in all fairness placed on record the certified copy of the FIR No. 76/2012 and had he not placed on

record the same before the learned Tribunal, he would have been accused of concealing the fact from the Tribunal. Respondent No. 1 has, in fact succeeded in proving the factum of accident on the part of the driver of the offending vehicle and the appellant/Insurance Company has not been able to discredit the version of the respondent No. 1 as well as the witness Mohit Gupta examined by respondent No. 1. In this context, it is apt to take note of the observations made by the Hon?ble Supreme Court of India in "Mathew Alexander v. Mohammed Shafi &Anr. 2023INSC 621, which are as under:

10. In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law."

(emphasis added)

15. The appellant/Insurance Company did not lead any evidence by examining any eyewitness to the occurrence to discredit the evidence of respondent No. 1 and Mohit Gupta and to prove that it was respondent No. 1 who caused the accident by hitting a stationary matador from behind.

16. In view of the above, this Court is of the opinion that there is nothing wrong in the finding returned by the Tribunal that respondent No. 1 had proved that the accident took place because of rash and negligent driving of the driver of the offending vehicle.

17. The other issue is in respect of the quantum of compensation payable to the respondent No. 1, because the appellant/insurance company has raised the issue of unjust compensation awarded to the claimant, whereas the claimant has sought enhancement of compensation on the ground that the learned Tribunal omitted to consider the supplementary affidavit filed by the father of the claimant/respondent No. 1.

18. A perusal of the evidence reveals that PW Mohit Gupta, who happens to be the employer of respondent No. 1, reveals that he has stated that the respondent No. 1 was working as Technical Manager with Skyline Engineers Gole Pully Talab Tillo, Jammu and he was earning Rs. 15,000/- per month inclusive of perks and allowances. PW Mohit Gupta has stated that the salary certificate was issued by him and respondent No. 1 was working as Technical Manager in his Service Centre run under the name and style of M/S Skyline Engineers", Gole Pully, Talab Tillo, Jammu. During cross-examination, he stated Skyline Engineer was not owned by him but by his brother and the appellant was 12th pass. Though

respondent No. 1 claimed to be earning Rs. 15,000/- per month but the learned Tribunal has considered the monthly income of respondent No. 1 to be Rs. 10,500/- per month as per the salary certificate issued (marked as MG). The appellant/Insurance Company has not been able to prove that no such firm under the name and style of M/S Skyline Engineers existed or the respondent No. 1 was not working with M/S Skyline Engineers. The monthly income of Rs. 10,500/- determined by the Tribunal cannot in any manner be termed as ? excessive or exorbitant?. A perusal of the record reveals that the income of respondent No. 1 has been enhanced by 50% which in fact was required to be enhanced 40%, as the respondent No.1 was not permanent Government Employee. By enhancing the income of respondent No. 1 by 40% in view of future prospects of the earning of respondent No. 1 (see National Insurance Co. Ltd. and others v Pranay Sethi and others, 2017 ACJ 2700), the loss of future earnings of the respondent No. 1 would be Rs. 29,98,800/-. It needs to be noted that as per the statement of Dr. Rakesh Sharma, the permanent physical disability of respondent No. 1 is 100% and he has further stated that the respondent No. 1 would not be able to do any work throughout his life and rehabilitation equipments like wheel chair has to be utilized by respondent No. 1 throughout his life. The loss of income in the case of respondent No. 1 is 100%.

19. The learned Tribunal has awarded an amount of Rs. 27,54,000/- on account of expenses for two attendants. In view of evidence of Dr. Rakesh Sharma, respondent No. 1 would require attendant throughout his life. It is proved that respondent No. 1 would require attendants for rest of his life. The father of respondent No. 1 besides mentioning in detail about the expenses incurred by respondent No. 1, has stated that his son was in a pitiable vegetative condition and he requires attendants throughout his life.

20. Taking in to consideration the disability suffered by the respondent No.1, he would require two attendants throughout his life. The learned Tribunal has considered the monthly expenses of one attendant as Rs. 4,500/, which is also reasonable. But the learned tribunal has erred by enhancing the monthly expenses of attendant by 50% which in fact were required to be enhanced by 40%. Thus the monthly expenses for one attendant would be Rs. 6,300/. Thus the total compensation payable for two attendants would be Rs. 25,70,400/ (12600x12x17). Accordingly, the compensation payable under the head of "expenses on two attendants" is reduced to Rs. 25,70,400/-.

21. It is urged by respondent No. 1/claimant that his father has filed supplementary affidavit thereby placing on record bills amounting to Rs. 5,16,779.94 on account of medical expenses and transport charges but the same has been overlooked due to mistake by the learned Tribunal. A perusal of the record reveals that the appellant has claimed a sum of Rs. 11,00,793.87 on account of medical expenses and the learned Tribunal has awarded Rs. 11,00,794/-. This Court after examining the record of the Tribunal finds that the father of respondent No. 1 had filed supplementary affidavit along with the bills

i.e the bills/receipts issued by Medanta Medicity Hospital amounting to Rs. 4,33,987.94/-, bills in respect of Transport Charges of critical care ambulance for an amount of Rs. 35,000/-, bills in respect of medicines purchased for an amount of Rs. 9792/-, bills in respect of amount spent in the Indraprastha Apollo Hospital amounting to Rs. 2,60,000/ and bill in respect of transport charges of Ambulance service from Delhi to Jammu for an amount of Rs. 38,000/.

22. The record of the Tribunal depicts that the claimant had already placed on record the bills in respect of expenses incurred in Indraprastha Apollo Hospital and along with supplementary affidavit, only receipts of the payment made by the claimant have been placed on record. Thus the claimant is not entitled to payment of Rs. 2,60,000/. So far as the expenses incurred in Medanta Medicity, expenses incurred for transportation, purchase of medicines are concerned, the claimant was entitled to the same and it appears that the said affidavit along with the bills escaped the attention of the Tribunal while determining the compensation payable to the claimant. The claimant had placed on record the bills issued by the Medanta Medicity in respect of the expenses incurred during period of his admission w.e.f. 15.01.2015 to 26.01.2015. It is mentionable here that the claimant had placed on record the bills of Medanta Medicity in respect of expenses for the year 2012 and the compensation in respect of those bills has been awarded by the learned Tribunal but the amount in lieu of bills with effect from 15.01.2015 to 26.01.2015 has not been awarded. Thus, the claimant is held entitled to additional compensation for an amount of Rs. 5,16,779/- on account of medical expenses.

23. So far as compensation awarded under other heads is concerned, this court does not find any reason to interfere with the same.

24. For all what has been said and discussed above, the impugned award is modified as under:

- i) For medical expenses till date: Rs. 16,17,573/-
- ii) For future medical expenses: Rs.1,00,000/-
- iii) Transport charges: Rs. 1,00,000/-
- iv) Expenses for Fowler and Alfa Bed till date: Rs. 30,000
- v) Future expenses for Fowler and Alfa Bed: Rs. 30,000/-
- vi) Expenses on special diet Rs. 50,000
- vii) For present power wheel chair Rs. 1,25,000/-
- viii) For future power wheel chair Rs. 1,25,000/-
- ix) For pain and suffering: Rs. 2,00,000/-
- x) For loss of amenities of life Rs.2,00,000/-

xi) Expenses on two attendants: Rs. 25,70,400/-

xii) Future loss of earning: Rs. 29,98,800/-

xiii) Total Rs. 81,46,773/.

25. The interest component shall remain same. The enhanced amount be deposited within a period of 30 days and after deposit, the same be released in favour of the claimant. The interest on amount of Rs. 5,16,779/- shall be payable with effect from 31.01.2015. The amount deposited before this Court be released in favour of the claimant in terms of the award as modified above.

26. Both the appeals are, accordingly, disposed of.