
(2011) 12 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : CIMA No. 147 of 2010 and CMP No. 454 of 2011

State and Others

APPELLANT

Vs

Khurshid Alam

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2011) 4 JKJ 420

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, Judge

1. Shri Khurshid Alam S/o Reshman Din R/o Village Chowadi, Tehsil Samba, District Jammu-respondent herein, on 4th February, 1997 sustained

injuries when Vehicle No. JK02F 5321, in which the respondent was traveling, met with an accident on National Highway, Dadal Batote, due to

the rash and negligent driving of its driver. The respondent was shifted to Government Medical College, Jammu and because of grievous injuries,

referred to Christian Medical College, Ludhiana. The respondent's left leg was amputated below knee level. He also suffered multiple injuries on

different part of body.

2. Soon after, the respondent was discharged from the hospital, he filed a claim petition before the Motor Accident Claims Tribunal, Jammu,

claiming an amount of Rs. 28.60 lacs on account of compensation from the respondents-appellants herein, as owners of the offending vehicle. The

appellants resisted the claim petition on the grounds that the accident was not attributable to the negligence of the driver of the offending vehicle

and that the compensation claimed was exaggerated having no nexus with the

loss of income suffered by the respondent.

3. Learned Tribunal on perusal of the pleadings, settled following issues;

I. Whether an accident took place on 04.02.1997 at Dadal Jammu Kishtwar NHW due to rash and negligent driving of offending vehicle No.

JK02F -- 5321 in the hands of erring driver in which petitioner Khurshid Alam received grievous injuries? OPP.

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

III. Relief O.P. Parties.

4. The respondent stepped in the witness box. He examined Dr. S.S. Padha, who administered medical treatment after the respondent met with

the accident as also Sh. Mohammad Rafiq to substantiate his case. The appellants chose not to adduce any evidence in rebuttal. The Tribunal, on

going through the pleadings and the evidence brought on the file, held the respondent entitled to compensation of Rs. 18.29/- lacs on different

counts and passed award accordingly. The appellants were also held liable to pay interest on the awarded amount @ 7.5% from the date of filing

of claim petition till its realization.

5. The award dated 29th May, 2009, is questioned in this Civil 1st Miscellaneous Appeal on the grounds that assessment of compensation is

arbitrary, irrational and highly excessive. It is pointed out that the respondent, even after the accident, is getting the same pay as he was getting

before the accident and, thus, has, in effect, not suffered any loss of income. The appellants are, in particular, sour about the amount of Rs. 10.00

lacs awarded on account of implantation of artificial limb. It is pleaded that there was no evidence before the Tribunal to arrive at the conclusion

that the respondent would need an amount of Rs. 10.00 lacs to have artificial limb implanted.

6. Heard, perused and considered.

7. The appellants challenge the award impugned in the appeal mainly on following grounds;

I. That the Tribunal ought not to have awarded Rs. 5,04,000/- on account of loss of future income as the respondent after the accident continues

to serve the Police Department and is drawing salary that he was paid before the accident.

II. That the Tribunal ought not to have awarded Rs. 10.00 lacs on account of implantation of artificial limb in absence of any evidence on the file.

8. The Tribunal appears to have been itself convinced that the respondent was to get same income in the shape of salary with periodical rise, as the

respondent was drawing before the accident and that the respondent would draw the same pension, once he superannuates on retirement as he

would get, in case, he was not disabled by the accident and, therefore, not to be visited into total loss. It is for the said reason, that the Tribunal

instead of taking into account proven income of respondent i.e. Rs. 6,329/- per month has taken into account only 60% of such income to

compute the loss that the respondent in the opinion of the Tribunal, suffered because of the accident and then applied a multiplier of 12 as against

18 applicable in terms of 2nd Schedule to the Motor Vehicles Act, 1988. There may appear to be some substance in the ground urged in the

appeal that the respondent has not suffered any loss of income as he would continue to get same salary as he was drawing before the accident.

However, the stand is taken unmindful of the fact that the respondent belongs to Belt Force and loss of a limb for him as Police Officer does not

have same consequences as would such loss have for an employee having a desk job or belonging to clerical cadre. A Police Officer/official who

has lost his limb cannot participate in the day to day activities of the Police Force, in the same manner, as his colleague in the Force, free from such

disability would participate. To illustrate, the respondent may not, even, if he is keen to participate anti militancy operations or operations against

organized"" Crime be associated with such operations and may be resultantly deprived of promotions that would come his way for playing a role in

such operations. The respondent may not be able to participate in the state level and national level sports events, or meant for Police Officers and,

thus, may be deprived of an opportunity to get laurels, medals, promotions, advance increments that are earned by the Police Officers/Officials

showing talent in such sports events. So viewed, it would not be safe to say that the respondent, would not suffer any loss at all because of the

vehicular accident in question merely because he is paid same salary as was paid to him before the accident. The unfortunate accident, as a matter

of fact, has closed the doors for the respondent to strive for enhancement of his promotional prospects and attain excellence as Police Officer.

9. This is only one part of the story. The respondent, once he retires on superannuation will not be able to organize his affairs and start post retirement life same way as he would have been able to do had he not met with the accident. It is a fact of common knowledge that Police Officers/Officials and ex-servicemen after their retirement take up a job in security apparatus of Private Organizations, Government Corporations, Financial Institutions and even Private Business establishments. The respondent with his left leg amputated below knee level would not be in a position to take up any such job as may be readily available to his colleagues free from such disability and would not be able to supplement his post retirement income in shape of pension paid by the State. The respondent definitely is not be the same person as he was before the unfortunate vehicular accident.

10. Viewed thus, it does not sound convincing that the respondent because of the accident is not to suffer any loss at all. The accident is bound to diminish promotional prospects of the respondent and have a negative impact on his potential to take up by job after his retirement. True that such loss cannot be computed by employing multiplier/multiplicand method, but the loss suffered can be quantified by making use of guess work. Having regard to all the facts and circumstances of the case including rank, pay-scale, remaining service, expected promotional avenues etc., an amount of Rs. 3,00,000/- (Rupees three lacs only) would represent the loss suffered by the respondent on the aforementioned factors/counts and must be awarded in lieu of Rs. 5,04,000/- awarded by the Tribunal, applying the routine formula made use of while calculating such loss in case of unemployed victim or a victim having no fixed or guaranteed recurring income.

11. The ground as regards award of Rs. 10.00 lacs for implantation of artificial limb is equally specious and better to be ignored. The Tribunal, it needs to be emphasized, has awarded only an amount of Rs. 2.50/- lacs to enable the respondent fix/implant the artificial limb. The Orthopedician crossed the witness box, deposed that the respondent during his expected life span shall have to replace the artificial limb atleast four times, as it requires replacement after regular intervals. The Tribunal, accordingly, took into account the amount expected to be incurred for replacements and awarded Rs. 10.00 lacs on account of implantation and replacement of artificial

limb. The amount made, at the first glance, appears exorbitant and excessive but once it is realized that only an amount of Rs. 2.50/- lacs is awarded to enable the respondent buy and get fixed the artificial limb, the argument regarding assessment on higher side pales into insignificance. It needs to be pointed out that in ""Oriental Insurance Co. Ltd. v. Mukhteshwar Chib and ors."" 2010 ACJ 833 : 2009 (2) JKJ HC 102, an amount of Rs. 10.00 lacs awarded for purchase of artificial limb was left with uninterfered.

12. For the reasons discussed above, the award is modified as under:-

The appellant - Insurance Company shall pay an amount of Rs. 16.25/- lacs to the respondent as loss on account of injuries suffered by the respondent/claimant in vehicular accident involving appellants Vehicle No. JK02F -- 5321 with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

13. The appeal is, accordingly, disposed of alongwith Connected CMP(s).