

(2022) 09 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : CMAM No. 48 Of 2015

Union Of India & Ors

APPELLANT

Vs

Ghulam Mohammad Nengroo

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 337

Citation : (2022) 09 J&K CK 0009

Hon'ble Judges : M.A.Chowdhary, J

Bench : Single Bench

Advocate : Satinder Singh Kala, G.N.Shaheen

Final Decision : Disposed Of

Judgement

M.A.Chowdhary, J

1. Brief facts giving rise to laying of Motor Accident Claim and the appeal are that the Vehicles No. DLIGB- 4919 and JK13A-3224 (Maruti Car) on 31.12.2009, collided near Kidney Hospital Sonawar Srinagar, in a Road Traffic Accident, wherein occupants of the car received injuries. A case was registered vide FIR NO. 289/2009 at Police Station Ram Munshi Bagh Srinagar, for the commission of offences U/Ss 279/337 RPC; chargesheet was laid after investigation against HC Balbir Singh driver of vehicle No. DLIGB-4919 of 3rd Bn. Of CRPF, who on his pleading guilty to the charge was convicted U/Ss 279 RPC and 337 RPC and sentenced to payment of fine of Rs. 300/- and Rs. 400/- respectively by the Court of learned Judicial Magistrate (Sub Registrar), Srinagar vide his judgment dated 07.05.2011.

2. One of the occupants namely Gh. Mohammad Nengroo of the maruti car, who had been injured in the accident and as a result disabled permanently filed a claim petition before Motor Accidents Claim Tribunal Pulwama, claiming compensation. After a full dressed trial the tribunal granted him a total compensation of Rs. 3,91,600/-together with simple interest @ 6% p.a

throughout, vide judgment dated 05.02.2015 passed in claim No. 16 of 2010 titled Ghulam Mohammad Nengroo vs. Union of India and Ors.

3. Aggrieved of this award passed by the Tribunal appellants challenged the award mainly on two grounds;

i/ that there was contributory negligence on the part of the drivers of both the vehicles, which was ignored by the Tribunal.

ii/ that there was no loss of income due to disablement to the Claimant as he getting the same emoluments, as pension being a retiree.

4. Heard and considered.

5. Learned counsel for the appellants has vehemently argued that the appellants had taken a ground before Tribunal that the accident had taken place due to contributory negligence of both the drivers. However, the Tribunal ignored the contributed negligence on the part of the driver of maruti car and passed the award only on the part of negligence of the offending vehicle of the CRPF. He has further argued that while ascertaining the compensation, Tribunal misdirected itself who calculated the component of loss of future income, taking monthly income of the claimant as Rs. 40,000/- whereas there was no such case before the Tribunal as claimant pleaded an income of Rs. 25000/- to Rs.30,000/- per month from his pension as retired professor and had also not stated with regard to income from any other source which he may lose because of the disablement. It was finally prayed that the impugned award be set aside and modified holding that there was contributory negligence on the part of the driver of the maruti car which had collided with the offending vehicle due to negligence of the driver and also that the compensation granted on account of loss of future income be also held to be not due to the claimant.

6. Learned counsel for the respondent on the other hand, vehemently argued that the appeal filed by the appellants has no merit as the appellants have failed to lead any evidence with regard to contributory negligence on the part of the driver of Maruti Car and the driver of the offending vehicle had accepted the charge sheet by pleading guilty before the criminal court, as such, this plea cannot be raised by the appellants at this stage in the appeal. He has also argued that though the respondent as a retired professor had been getting the same pension as he was getting before the accident and after the disablement, however, the claimant being a retired person had been attending his agriculture pursuits with a farming background and due to his disablement he has been unable to pursue those activities and also that he cannot take up any private assignment of teaching due to disablement. He further argued that the Tribunal has rightly assessed the loss of income, based on his 6% disablement, certified by the board of doctors and proved by the claimant before the Tribunal, therefore, it was prayed to reject the appeal and the impugned order be upheld.

7. On perusal of the trial court record, it is found that the appellants as

respondents before the Tribunal had raised a plea of contributory negligence and issue had been also framed by the tribunal, onus of proof placing on the respondents, however, the respondents did not lead any evidence to prove that there was any contributed negligence on the part of the driver of the maruti car wherein the claimant was travelling as an occupant. On investigation by the police it had been concluded that there was negligence on the part of appellant Balbir Singh the driver of the CRPF vehicle and charge sheet was produced against him in the court of law wherein he pleaded guilty to the charge and sentenced to fine which he paid. The driver of the vehicle has stated in the statement that the accident had taken place due to negligence and fast speed of the driver of maruti car wherein the maruti car had been completely damaged and three occupants of the vehicle had also been injured. Had the accident been taken place due to the negligence of the maruti driver the vehicle would not have been completely damaged as stated by the driver of the offending vehicle. Investigating officer of the case while being examined stated that the accident had taken place due to the negligence of the offending vehicle only and he had concluded his investigation in that direction. The witnesses examined by the respondent had not stated anything whereby it could be inferred that there was negligence of the driver of the vehicle No. JK-13A 3224, rather the evidence brought on record established that it was driver of the offending vehicle who was plying the vehicle at a very high speed and that the rash and negligent driving of respondent no. 3 caused accident.

8. The Tribunal had rightly concluded on the basis of the evidence that there was negligence on the part of the driver of the offending vehicle and not the driver of vehicle No. JK-13A 3224 wherein the claimant was travelling as an occupant thus the plea raised by the appellants with regard to contributory negligence during the appeal appears to have been made a ground just for the sake of it and is not based on any evidence before the Tribunal. There being no evidence with regard to any contributory negligence, the Tribunal has rightly decided issue no. 3 onus of which had been placed on the respondents.

9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv)

inconvenience, hardship, discomfort, disappointment frustration and mental stress in life.

10. So far as the plea of loss of future income is concerned the claimant had pleaded in his claim petition that he had monthly income of Rs. 25,000/- whereas on his examination before the Tribunal he has stated that he as retired professor, had monthly income of Rs. 30,000/- from his pension only as he was not doing any other work except to look after the farming which he had been doing even now. The Tribunal passed award having regard to the disablement of 6%, besides other components and held that the respondent suffered loss of income as well, which is not borne out even from the statement of claimant himself. The Tribunal had assessed the compensation payable to the claimant as follows:

Loss of future income

Rs.2,01,600/-

Medical and transportation
expenses

Rs.1,10,000/-

Pain and suffering

Rs. 30,000/-

Loss of amenities of life

Rs. 50,000/-

Total compensation

Rs.3,91,600/-

11. Since there was no loss of income to the claimant due to disablement, as himself admitted by him, the tribunal seems to have misdirected itself, to grant compensation under the head of loss of income. The Tribunal, however, had granted compensation of Rs. 1,10,000/- on account of medical and transportation expenses, Rs. 30,000/- on account of pain and suffering and Rs. 50,000/- on account of loss of amenities of life. Though there was no loss of income, however, I am of the opinion that Rs. 30,000/- granted by the Tribunal on account of pain and suffering is on a lower side, keeping in view 6% permanent disablement of the claimant, as certified by the board of doctors and proved by Dr. Abid Hussain, as per disability certificate issued by the board of doctors. The claimant had suffered fracture of both bones of left leg, operated twice and fracture radial styloid process right side and the leg of the claimant shortened by half an inch of affected leg, therefore an amount of Rs. 30,000/- on account of pain and suffering is not justifiable and the same requires to be enhanced. In the considered opinion of this court an amount of Rs. 1,00,000/- on

this count will be just compensation to the claimant (respondent herein) . As a result of the discussion made hereinabove and the foregoing reasons, the grant of compensation under the head of loss of future income is declined and rejected. The compensation under the component of pain and suffering due to shortening of leg of the claimant, is modified from Rs. 30,000/- to Rs. 1,00,000/-. Compensation under the other two components of expenses on treatment and transport and loss of amenities is maintained.

12. In the aforesaid backdrop, the respondent is thus held to be entitled to the compensation under following heads:-

Medical and transportation

Expenses

Rs. 1,10,000/-

Compensation on account of pain

and suffering

Rs. 1,00,000/-

Compensation on account of loss of

amenities

Rs. 50,000/-

Total compensation

Rs. 2,60,000/-

The compensation of Rs. 2,60,000/ shall be payable together with simple interest @ 6% P.A, from the date of institution of the claim petition i.e. 01.09.2010. Interim compensation under no fault liability shall be adjustable. Court fee shall be first charge on the awarded compensation.

13. For reasons discussed above, Appeal, is disposed of as partly allowed. The impugned award is ordered to be modified in the above said terms.