

(1995) 04 J&K CK 0007
In the Jammu And Kashmir High Court

Union of India (UOI) and Others

APPELLANT

Vs

Chemam Lal

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 165, 166

Citation : (1997) 2 ACC 134

Hon'ble Judges : V.K. Gupta, J

Bench : Single Bench

Judgement

V.K. Gupta, J.—This appeal is directed against a judgment dated 14.1.1993 passed by the learned Motor Accident Claims Tribunal,

Jammu, in Claim Petition No. 243 of 1988; Chemam Lal v. Union of India whereby an award of Rs. 52,500/-with interest @ 12 per cent per

annum has been passed against the appellant herein, in favour of the respondent Chemam Lal. The claim petition arose out of an accident which

occurred on 29.6.1988 at a place called Phongi Morh, 17 km. away from Akhnoor on Akhnoor-Naushera road while the respondent, who an

employee of the Military Engineering Service, was travelling in vehicle No. ZD 60885 belonging to Unit-862-EVVS C/o 56 APO. The allegation

of the respondents in the claim petition was that the accident occurred because of rashness and negligence on the part of driver Kali Ram driving

the aforesaid army vehicle and that as a result of this accident, whereas one other person died, the respondent sustained some serious injuries. The

appellants herein controverted the allegation of the respondent regarding the rashness and negligence of the driver in causing the accident. They

also denied liability to pay any compensation.

2. On the pleadings of the parties, the following three issues were framed by the Tribunal vide its order dated 8.1.1990:

(1) Whether on 29.6.1988 at a distance of 17 km. from Akhnoor towards Rajouri on the Akhnoor-Rajouri Road respondent No. 3 while driving

army vehicle No. ZD 60885 owned by respondent No. 1, rashly and negligently caused accident resulting into injuries which caused permanent

disablement to both the legs of the petitioner? OPP

(2) In case issue No. 1 is proved in affirmative, what amount of compensation the petitioner is entitled to get and from whom? OPP

(3) Relief?

3. Since one person had died in this accident who was also travelling in the same vehicle, his legal representative had filed claim petition entitled

Shanti Devi v. Union of India out of which C.I.M.A. No. 165 of 1991 was filed in this Court , because in that case also the Tribunal had passed an

award against the appellant on 17.9.1991.

4. Vide my separate judgment in that appeal I have upheld the finding of the Tribunal on issue No. 1. Because the accident in question was the

same, the finding of this Court on issue No. 1 in that appeal shall automatically govern the result of this appeal as well insofar as the finding on issue

No. 1 herein is also concerned. (The office shall keep a copy of judgment in C.I.M.A. No. 165 of 1991 on record of this case as well.) That now

takes us to issue No. 2 which relates to the compensation awarded by the Tribunal in favour of the respondent. As noticed the Tribunal has

awarded in all an amount of Rs. 52,500/- as compensation in favour of the respondent under various heads. Whereas an amount of Rs. 12,500/-

has been awarded for the pain and suffering, Rs. 15,000/- have been awarded for permanent disablement and loss of future amenities and Rs.

5,000/-havebeen awarded by the Tribunal towards medical and incidental expenses. Lastly, an amount of Rs. 20,000/- was awarded towards

compensation for future loss of income. All these sub-claims thus totalled up to Rs. 52,000/-.

5. On what basis did the Tribunal award the above referred various claims in favour of the respondent? Let us examine the entire evidence and the

material available to the Tribunal which could have formed the basis for its determining the amount of compensation, which it found was due to the

respondent. A careful scanning of the file and the record shows that the only evidence available to the Tribunal for determining the quantum and

amount of compensation was the photo-copy of a certificate dated 20.11.1992 issued by one Dr. Ashok Dhar, Registrar, Orthopedic Unit-III,

SMGS Hospital, Jammu. This certificate reads as under:

Certified that Cheman Lal son of Govind Ram r/o Naushera was under treatment of O.U. III vide MRD No. 238439 dated 29.6.1989. The

patient has developed knee stiffness (ROMP 80°) and shortening of right LL. by 2.5 cm. As a result patient has permanent disability of sixteen

per cent (16%).

28.11.1992 Sd/-

Dr. Ashok Dhar,

Registrar, Ortho Unit-III

6. Now if one takes a closer look to the contents of the certificate, one finds that all that it says is that the respondent had developed knee stiffness

(ROMP 80°) and shortening of right IX by 2.5 cm. The certificate recorded that as a result of this, the permanent disability of 16 per cent had

occurred insofar as the patient was concerned. A very careful scanning of the record of the Trial Court shows that neither the certificate's photo-

copy was proved by any competent witness, nor was it admitted to evidence nor did any doctor, or for that matter any expert witness relating to

the field of orthopedic medicine 'appeared in the Court to depose about the contents of the certificate or the nature of injury /disablement suffered

by the respondent. In the total absence of any evidence available to the Tribunal, the Tribunal went on to award compensation in favour of the

respondent against various heads of claims. It determined an amount of Rs. 12,500/- towards disability allegedly suffered by the respondent to the

extent of 16 per cent and Rs. 15,000/- for permanent disfigurement. The question that arises for consideration is this:

What was the basis for the Tribunal in coming to the conclusion as to whether the respondent at all suffered any disability, if so, to what extent,

nature of the disability, whether it was temporary or permanent and as to how, in what manner and to what extent did the respondent suffer any

disfigurement and whether the disfigurement allegedly suffered was temporary or permanent?

There is no doubt that the attitudes of the Tribunal in deciding claim cases arising out of motor accidents should be sympathetic towards the claimant and that rigid and strict rules of evidence may not be followed in all cases, yet it cannot be gain-said that some basic, elementary requirements of tendering evidence to prove certain facts, relevant to the issues involved have to be observed in each and every case. If a claim petition relates to an alleged death of a person, the minimum that is required to be established is that the person concerned had died and that he had died as a result of an accident which was caused due to the rashness and negligence of the person driving the offending vehicle. The very fact that the Tribunal frames issues for determination of these facts, proves that the issues so framed have to be proved by the parties, who allege these facts and the only method by which the issues are proved is by leading cogent, reasonable and unimpeachable evidence. Again, I must hasten to add that the requirement and degree of proof in cases relating to motor accidents is neither very strict nor very rigid, but at the same time conjectures and surmises cannot take the place of proof and that the fact alleged has to be established by nothing else, except the proof of the fact, with relation to the evidence adduced, orally or by aid of documents or both.

7. In a case relating to the demand of compensation arising out of an alleged injury suffered by a claimant, the only method by which the nature of injury, its extent, effect, the adverse consequences suffered, fall out in future and so on and so forth, can be established is by production of proper evidence to conclusively prove the following factors:

- (1) That the claimant actually suffered injury;
- (2) That the injury was caused because of the accident in question;
- (3) The nature of the injury;
- (4) The suffering inflicted upon the claimant as a result of injury;
- (5) Whether the injury has resulted in disablement, if so, partial or total, temporary or permanent, extent of disablement or factors related thereto;
- (6) Treatment given to the claimant including his remaining in the hospital for such treatment;
- (7) The adverse consequences of the injury;
- (8) The fall out of the injury in future, with relation to the earning capacity as

well as style of living, etc.

The list is only illustrative; it is not exhaustive.

8. All these facts and related matters have got to be proved, in some manner or the other. The only method by which these can be proved is by

production of a doctor in the Court who testifies in his oral deposition with regard to the aforesaid facts, with reference to either the document or

his personal knowledge or otherwise. The purpose of the doctor, who either treated the petitioner initially, at intermediary stage or finally or who

even examined the petitioner at subsequent or later stage is to enable the Court to understand the aforesaid facts so as to determine the quantum of

compensation to which the claimant may be found entitled. The purpose is also to enable the opposite party in the claim petition to elicit such

relevant facts from the cross-examination of the witnesses as it thinks might be helpful in its defence or in properly assisting the Court to arrive at a

just and reasonable amount of compensation. I do not think any other method can be a substitute for this.

9. Compare this situation with an alternative course of action where a party simply produces a document in the Court which may be an original

certificate issued by a doctor or a hospital or even, in a large number of cases, a mere photocopy of such a certificate. First of all, one does not

know whether the certificate is genuine or not, because no presumption as such can be drawn to its authenticity unless it happens to be a public

document under the provisions of Evidence Act. Secondly, one does not know whether the person who issued the certificate, really, bona fide

and genuinely recorded the facts mentioned in the certificate. Thirdly, one does not know whether the facts recorded at the time of issuance of the

certificate hold good even till the stage of the disposal of the claim petition or for future. Similarly, one does not know whether the doctor issuing

the certificate treated the claimant at the initial stage, whereafter substantial improvements might have been effected in the state of the injuries

sustained by the claimant. Likewise, the doctor issuing the certificate, in some cases, may not have treated the claimant at all and may have only

been asked by his superior doctor to issue the certificate, merely on the basis of some observations or some indirect references.

10. Compare the situation again with a scenario when the doctor, a qualified

expert witness appears in the Court and, in the surroundings, environments and atmosphere of the Court, after taking oath or affirmation makes oral deposition with regard to the facts in issue. Here, in the Court room, he knows that he is making a deposition on oath and that whatever he is stating should be truth and nothing but the truth. The matter does not end there. This doctor, the witness is subject to cross-examination by that person who is required to pay the amount of compensation. After all, the respondent in the claim petition is the one who ultimately is to be burdened with the liability of paying the compensation amount. Does not he have a right to cross-examine this one person, on whose entire testimony depends the determination of the compensation amount which in a large number of cases can be very high and substantial. In my view, therefore, the approach adopted by the Tribunal in this case and in a large number of other cases relating to injuries sustained by the claimants was wholly erroneous and contrary to the basic principles of fair-play as also opposed to the elementary rules of tendering of evidence and proof with regard to the facts in issue in a case of the relevant facts. I have noticed that in a large number of cases relating to injuries, the Presiding Officers of the Tribunals merely refer to such certificates which by themselves may in some cases be even photo-copies of the originals and proceed to award huge sums of money by way of compensation for injuries allegedly sustained by the claimants. This practice has to be stopped forthwith and it has to be ensured that in future, the Tribunals do follow the guidelines mentioned above and ensure that adequate and reasonable proof, with reference to either oral or documentary evidence, based on the very basic and elementary rules of evidence law (of course, not the rigid or strict rules) is available before embarking upon the question of assessing the loss or damage sustained by a claimant and determining the quantum of the compensation.

11. Related to this aspect is another equally important aspect concerning the claim of the claimants with regard to the expenditure incurred by them for treatment, medicine, travelling, etc., etc. Again it is only illustrative and not exhaustive. As observed above in the matter of proof relating to injuries, some principles may in a relaxed manner and without observing rigidity or strictness of the rules of evidence are required to be followed in

insisting that the claimant at least produces some material to the Court to prove or establish that the expenditure claimed was actually incurred by him or the amount claimed was actually spent by him. It is invariably seen that in a large number of cases, the Tribunals determine and award the compensation for such expenditure or expenses, without there being an iota of evidence in the manner worth the name to even remotely suggest that the claimants had actually spent the money. One method of doing so can be the production of the documents in support of such claims.

12. u/s 165 of the Motor Vehicles Act, a Motor Accident Claims Tribunal is required to be constituted for adjudicating upon the claims for compensation in respect of the accident involving the death of or bodily injuries to persons arising out of the use of motor vehicles, etc. u/s 166 of the Act, an application for compensation arising out of an accident of the nature specified in Section 165(1) may be made, amongst others, by a person who has sustained the injury. In the newly introduced Section 163-A, a provision has been made for payment of compensation to a person who has suffered disablement due to accident arising out of the use of motor vehicles. In the explanation, incorporated with Section 163-A, the expression permanent disability has been referred to in the same context as occurs in the Workmen's Compensation Act, 1923, by saying that it shall have the same meanings and extent as is given to it in the aforesaid Act.

13. A cumulative reading of aforesaid three sections of the Motor Vehicles Act, 1988, leaves no one in any doubt, as indeed, it should not that the Tribunal has to adjudicate upon the issue relating to the injury sustained by a claimant, including the injury resulting in permanent disability and that this adjudication is dependent upon the proof of the fact that the injury was in fact sustained by the claimant in the course of use of a motor vehicle, or in other words, as the sections say arising out of an accident occurring to a motor vehicle. When one carefully looks to the contents of the three sections, one finds that the claimant has to prove, with reference to cogent, plausible and reasonable evidence that the injury was sustained by him in the course of and because of an accident occurring to a motor vehicle and that he suffered because of such injury, and that he is entitled to compensation, hence his application u/s 166 of the Act. If at all, these three sections cumulatively fortify the principle that without evidence and

proof of the injury and its resultant effects, the amount of compensation cannot be determined at all.

14. In the case before us, it shall be seen that the Tribunal had awarded the compensation in favour of the respondent merely on the basis of photo-copy of a medical certificate.

15. For the reasons stated above, I partly allow appeal set aside the award insofar as the finding on issue No. 2 is concerned and remand the case

to the J Tribunal for returning a fresh finding on issue No. 2, in the light of the observations made above and on the basis of guidelines and

parameters prescribed in this judgment. The record be sent back forthwith. The parties through their learned Counsels are directed to appear

before the M.A.C.T., Jammu, on 19.7.1995.

16. Copies of this judgment shall be circulated immediately to the Presiding Officers of all the Motor Accidents Claims Tribunals in the State for

their information and guidance, because the decision herein on the important question of law is involved.