

(1975) 04 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Civ. First Miscellaneous Appeal against the Order of M.A.C.T. Dated 15.12.1973

Union of India (UOI)

APPELLANT

Vs

Om Prakash Chopra

RESPONDENT

Date of Decision : 30-04-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 110B

Citation : (1976) ACJ 269

Hon'ble Judges : Raja Jaswant Singh, C.J; Mian Jalal-ud-Din, J

Bench : Division Bench

Advocate : C.M Gupta, for the Appellant; V.S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

Mian Jalal-ud-Din, J.—This appeal is directed against the order passed by Motor Accidents Claims Tribunal dated 15th of October, 1973

awarding a sum of Rs. 40,000.00 as compensation to the Respondent.

2. Briefly speaking the facts that have given rise to this appeal are as follows:

3. Mr. Om Parkash Chopra the Respondent lodged a claim petition for compensation on account of bodily injury sustained by him in consequence

of the accident caused by the vehicle No. UG 45189 belonging to the Appellant No. 1 and driven by Appellant No. 2. the Respondent Petitioner

alleged that he was proceeding from Jammu to Pathankot in jeep No. DLI 9060 on 19th of June 1970. At about 5-30 p.m. when the jeep reached

Kalibari (Kathua) on the main Jammu Pathankot road the Appellant No. 2 who was driving the above mentioned vehicle on wrong side rashly and

negligently struck the vehicle against the Respondent's jeep with considerable force when the Respondent's jeep was going on a normal speed on

the correct side of the road. As the Appellant No. 2, the driver of the vehicle, could not exercise control over his vehicle it collided with the jeep as a result of which the Respondent was thrown out of the jeep and the rear wheel of the Army vehicle passed over his right arm. The Respondent fell down and became unconscious His right arm was completely crushed. He was removed to the Kathua Hospital and then taken to Amritsar for treatment. His right arm was amputated. Thereafter the Respondent was taken to Ludhiana Missionary Hospital. He was also under the treatment of a private Medical Practitioner. As a result of this treatment the Respondent had to undergo huge expenses amounting to Rs. 8,000.00. The Respondent Petitioner however claimed Rs. 5,000.00 as expenses on treatment and also Rs. 45,000.00 as compensation for mental shock, permanent loss of right arm reducing his earning capacity, total in all Rs. 50,000.00. The Respondent Petitioner further averred that as the Appellant No. 2 was at the time of accident acting in the discharge of duties towards Appellant No. 1 therefore both the Appellants were liable to pay compensation to the Respondent.

4. The claim was resisted by the Respondents on the ground that the accident took place because the jeep in which the Respondent was seated was driven carelessly negligently and in high speed as a result of which the jeep collided against the Army vehicle which was coming in an Army convoy at a normal speed. Therefore the Appellants were in no way responsible for the injuries sustained by the Respondent and were not therefore liable to pay any compensation to him.

5. On consideration of the pleadings of the parties the learned Tribunal raised the following issues in the case:

1. Whether the accident in question has resulted due to the rash or negligent driving of the vehicle of non-applicant No. 1 by non-applicant No. 2 ?

O.P. Petitioner

2. Was the non-applicant No. 2 driving the vehicle on wrong side of the road, and it is the approximate cause of the accident ? O.P. Petitioner

3. In the event of issue No. 1 or 2 being sustained is the Petitioner entitled to recover damages to the extent of Rs. 50,000.00? O.P. Petitioner

6. After examining the witnesses which the parties produced before it and on consideration of relevant factors involved in the case the Tribunal in

his well reasoned judgment returned the finding on issue No. 1 in favour of the Respondent Petitioner that the accident in question was the result of

rash and negligent driving of the army vehicle belonging to applicant No. 1 and driven by the applicant No. 2. The approximate cause of the

accident was reckless driving of the applicant No. 2 on wrong side of the road.

7. As regards issue No. 3 the Tribunal found that an amount of Rs. 5,000.00 had really been spent by the Respondent Petitioner in connection

with his treatment and this amount the Respondent Petitioner was entitled to claim from the Appellants.

8. On the question of compensation for mental shock, permanent loss of right arm and the consequent reduction in the earning capacity of the

Respondent the learned Tribunal awarded a claim of Rs. 35,000.00. Aggrieved by this order the Union of India and the Driver of the Army

Vehicle have come up in appeal before this Court. The Respondent has also filed cross objections as he has felt aggrieved with the quantum of

claim awarded to him. According to him he should have been awarded the full amount of Rs. 50,000.00. This judgment will, therefore, govern

both the appeal and the cross-objections.

9. We have heard the learned Counsel for the parties at great length.

10. To establish his case the Petitioner Respondent examined five witnesses in all including the Surgeon specialist and himself before the Tribunal.

The Respondents on their side examined 5 witnesses including K.N. Kutty whose statement was recorded through interrogatories. Shahab-ud-din

Respondent Appellant No. 2 has also appeared as his own witness.

11. The eye witnesses of the occurrence examined by the Respondent stated that the Army vehicle which caused the accident was going very fast

on the material date. The said vehicle also overtook the vehicles of Moti Ram witness. He went on the wrong side and coming rashly dashed

against the jeep of the Respondent. The Respondent Petitioner was thrown out of the jeep and he lay in a pool of blood. He was taken to the

Kathua Hospital. These witnesses further deposed that the jeep was going on the right track. Dr. L.K. Dhar surgeon specialist, who examined the

Respondent Petitioner at Kathua Hospital deposed that he found the following injuries on his person:

(i) Multiple abrasion on the left forearm and arm:

(ii) Multiple abrasions on both the lower limbs:

(iii) Wound on the right arm was examined under general anesthesia. The humerus bone of right side was slashed in its middle third part. All the

vessels and nerves were cut entirely and the limb was hanging by about 3 inches in its wide skin piece posteriorly with some fibers of triceps muscle. The

muscles below the bone had turned blue and no vascular was felt. Clinically the shoulder joint was also injured. The arm was amputated in its

middle third.

12. According to the doctor the amputation of the arm caused permanent disability to the Respondent Petitioner. His right arm having been

amputated it would definitely be a set back in the conduct of his day to day work. The above injuries especially injury No. 3 could be caused by

the impact of a vehicle coming from the opposite side. The injured was thrown out of his vehicle on the road and the vehicle from the opposite side

passed over his right arm. The front or the rear wheel from opposite side could have caused the aforesaid injuries.

13. As against this the substance of the depositions made by witnesses of the Appellants is that the jeep in which the applicant was seated was

driven in a rash and negligent manner by its driver and he was coming on the wrong side as a result of which the jeep struck against the army

vehicle driven by Shahabud-Din thus causing the accident. Shahabud-Din the applicant No. 2 could not therefore be said to be responsible for the

accident as also for the injuries sustained by the claimant.

14. The evidence produced by the applicant has not been believed by the learned Tribunal on the ground that the witness belongs to the same unit

of the Army where the applicant No. 2 is working. They have sympathy with the Appellant No. 2. There is no independent corroboration of their

testimony.

15. In my view the finding of fact arrived at by the Tribunal cannot be interfered with by this Court when there is no compelling reason justifying

such an interference. The Tribunal has given cogent reasons for not placing reliance on the statement of the witnesses produced by the applicants.

On the other hand it is found that the witnesses examined by the Respondent claimant are independent witnesses who were present at the time of

occurrence and they narrated the details of the incident with precise clarity. It

was conceded before us that soon after the accident a Commission of enquiry was constituted by the army personnel to go into the question as to on whom the responsibility for the accident would be located strongly enough the result of the Enquiry Commission has not been made available even upto the date by the Appellants.

16. For the foregoing reasons, we, therefore, affirm the finding arrived at by the learned Tribunal on issues Nos. 1 and 2.

17. This brings us to the question relating to the quantum of compensation claimed by the Respondent Petitioner. Now in so far as the amount spent by the Respondent for undergoing medical treatment is concerned the case is not seriously contested before us. Even on the material

available before us it is found that the claimant had to undergo considerable expenses in connection with his treatment at Kathua, at Amritsar and

thereafter at Ludhiana. He had even to engage the service of a private medical practitioner. According to the finding arrived at by the Tribunal the

Respondent has spent an amount of Rs. 5,000.00 on medical treatment which finding is, therefore, hereby affirmed.

18. Now in so far as the claim relating to compensation for the mental shock, loss of right arm and loss of health is concerned, the Tribunal has

found that the claimant is entitled to an amount of Rs. 35,000.00 instead of Rs. 45,000.00 as claimed by him. It is true that the disability caused to

the Respondent Appellant is a permanent one as a result of which he has suffered and will in future suffer pecuniary loss due to this disability. He

has been physically handicapped and has in fact been rendered disabled to attend to his normal work in the future. The mental shock caused to the

Respondent Petitioner, coupled with the loss of health has affected and will adversely affect his earning capacity. The principles relating to the grant

of compensation in such cases have been laid down in AIR 1962 S.C.I.; 1970 A.C.J. 110 and 1971 A.C.J. 206. The first two cases relate to fatal

accidents and were decided under the Fatal Accidents Act. The last was under Motor Vehicles Act. The ratio decidendi of the last reported

judgment is that u/s 110-B of the Motor Vehicles Act the Tribunal is required to fix such compensation which appears to be just. The power given

to the Tribunal in the matter of fixing compensation under the provision is wide. Even if it would be assumed that compensation under that provision

has to be fixed on the same basis as required to be done under Fatal Accidents Act, the pecuniary loss to the aggrieved party would depend upon

data which cannot be ascertained accurately but must necessarily be estimate or even partly a conjecture. The general principle is that the

pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other any

pecuniary advantage which from whatsoever resources come to them i.e, the balance of loss and gain to dependents must be ascertained.

19. In the light of the principles enunciated above it is quite clear that the future prospects of earning pecuniary benefits to the claimant were very

bright had he not met this accident. He was the Army contractor of good repute and was paying income tax. He was of the age of 42 when he met

the accident and normally would survive for another two decades if all things went well. In my estimation therefore an amount of Rs. 35,000.00

which has already been slashed down by the Tribunal from Rs. 45,000.00 is not unreasonable. This finding on issue No. 3 is, therefore, affirmed.

There is also no force in the cross-objection. In our view the Tribunal has awarded adequate compensation to the Respondent. The cross-

objections therefore deserve to be dismissed.

20. The result is that there is no force in the appeal and the cross-objections, both of them are therefore dismissed.

Jaswant Singh, C. J.

21. I have had the advantage of perusing the judgment prepared by my learned brother, Mian Jalal-ud-Din., J. and agree with the conclusions

arrived at and the order proposed by him.