
(1997) 11 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : 37/1995

United India Insurance Company Limited	APPELLANT
Vs	
Samitri Devi & Ors.	RESPONDENT

Date of Decision : 07-11-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (1997) KashLJ 453 : (1998) SriLJ 122

Hon'ble Judges : B.A.Nazki, J

Bench : Single Bench

Advocate : Kamal Gupta, D.R.Khajuria, Advocates appearing for the Parties

Judgement

1. The Insurance Companyappellant has filed this appeal challenging the award of Motor Accidents Claims Tribunal dated 18.2.1995.

2. The award has been challenged in this appeal on the following two main grounds:

1) That the respondent No. 1 had claimed a compensation of Rs. 67,300 only, whereas compensation of Rs. 1.05 lacs has been awarded in her

favour. It has also been averred that the interest has been awarded on the whole awarded amount whereas some of the amount has been awarded

to the appellant for future exigencies on which amounts no interest could be awarded.

3. I have heard learned counsel for the parties. Whether the Tribunal can award compensation more than that is claimed by the respondent No. 1

(petitioner) or not, has not still been authoritatively decided by the Courts. Various judgements have been cited at the Bar, but none of the

judgements has laid down any law. Merely a reference has been made in some of the judgments that a claimant was entitled to such and such

amount, but since he has claimed such amount, therefore, the claimed amount was awarded. In this connection, the learned counsel for appellant

has cited a judgment titled: United India Insurance Company V/s Smt. Bimlesh and others reported in 1991 (Volume 1) ACC 113. This is a

judgment from Punjab and Haryana High Court. In the said case, observation has been made by the Court in the following manner: ""Total

compensation would come to Rs. 1,68,000 Since in the claim petition a sum of Rs. 1,50,000 was claimed, the claimants are held entitled to a sum

of Rs. 1,50,000

4. Another judgment cited at the Bar is from Gujrat High Court reported in AIR 1995 Gujrat 170 titled. Kulsumbai V/s Shadgul G. Patadiys. In

this case also, only a reference has been made on the lines of the judgment, mentioned earlier (supra). Another judgment cited is titled: Satish

Kumar V/s Zila Singh and another reported in 1989 (Volume 1) ACC 369 which is from Punjab and Haryana High Court. In this case a

compensation of Rs. 40,000 was claimed by the claimant. After a long time, an application for amendment of the claim petition was moved, which

was rejected by the appellate court and the compensation of Rs. 40,000 awarded by the Tribunal, was maintained.

5. On the other hand, counsel for respondent No. 1 has cited a judgment from Bombay High Court titled Ramu Tolaram and others V/s Amichand

Hansraj Gupta and others reported in 1988 ACJ page 24. In this case, a compensation of Rs. 15,000 had been claimed, but a compensation of

Rs. 20,000 was awarded by the Tribunal to the claimant. When the argument was made that the Tribunal could not have given an award for an

amount higher than the amount claimed, the Court made the following observations:

I am inclined to take the view that the amount awarded by the Tribunal is quite apart from being reasonable. So far as the reasonableness of the

award is concerned, it can hardly be disputed. A man of 28 years of age has died. The Tribunal has taken his age to be 35 years. I am assuming

that his age was 35 years. Further, the Tribunal held his remaining lifespan to be 25 years. I see no reason why it should (Sic. not) be so. At least

till the age of 60, the man could have worked and provided wherewithals to his family. The general damages of Rs. 15,000 are, therefore,

themselves very much inadequate. Further, the widow is certainly entitled to damages for loss of consortium and the amount of Rs. 5,000 granted on that account cannot be said to be much of a munificence. The only technical objection, therefore, would be as to whether the court can award the amount larger than the one claimed. On this point, there may be some difficulty. When Court fees are required to be paid on any claim ad valorem, the fact that the claim is restricted to a smaller amount and the fact that the court fees commensurate with the claim is paid would have a telling effect and the court would be helpless in granting to the applicant more than what is claimed by him. But, in the instant case, the claim of the claimant was itself nebulous. From the prayer clause it is clear that though Rs. 15,000 is specified, it is further stated that such other amount as the court might find just, proper and reasonable should be paid. This means that the claim is not restricted to Rs. 15,000, but the extent of the claim is left to the Court. Further, the point to be noted is that the court fee payable on the claim is not ad valorem court fee but fixed court fee. If that is the position then there is no reason why this discrepancy in the statement made in para 21 and in the prayer clause should not be resolved in favour of the claimant.....

6. From the aforesaid observation, it becomes clear that the said Court has not laid down any law. In the facts and circumstances of the case before the said Court, it came to the conclusion that the claimant herself had not restricted her claim to Rs. 15,000 but she had left it open to the Tribunal. Therefore, the Tribunal awarded a compensation of Rs. 20,000 to the claimant.

7. Now coming to the facts of the present case, para "14" of the claim petition needs a mention, which is reproduced hereinbelow:

14. Quantum of compensation demanded and grounds thereof.

= The petitioner suffer multiple injuries on her body including fractures on her/ left leg on this account hereby put her claim of compensation to the tune of Rs.67,300 in the following matter:

a) Compensation for pain and mental shocks caused to the petitioner due to the injuries suffered in this accident Rs. 20,000.

b) Cost of medicines and other treatments given to the petitioner during this period and medicines in future to be taken Rs. 10,000

- c) Fee paid to the Dr. O.P. Bhagat for visiting at home of the petitioner Rs. 500
- d) Expenditure incurred on special diet given to the petitioner as per directions of the Doctor and also to be given in future Rs. 10,000
- e) That the petitioner could not move and is not capable to do the work of tailoring out of which the petitioner use to earn to be suffered by the petitioner near about six months more= Rs. 1,800
- f) Inconvenience caused to the relatives of the injured=Rs. 2,000
- g) After the accident and after the treatment, the fractured leg will not get the force as left leg was previously holding and damage due to this, the petitioner shall suffer damage by permanent disablement =Rs. 20,000

8. After para "17", the petitioner (respondent No. 1 herein), has made the following prayer in her claim petition:

9. "It is therefore, most humbly prayed that the claim petition of the petitioner may kindly be accepted and the claim amount Rs. 67,300 may kindly be awarded in favour of the petitioner and against the respondents with costs and with interest @ 24% p.a. from the date of the accident till the realisation of awarded amount.

10. The learned Tribunal has misdirected itself while making the award. On account of cost of medicines and other treatment given to

claimant/respondent No.1 during the period in question and the medicines to be taken by her in future, was claimed at Rs. 10,000 but the learned

Tribunal has awarded her an amount of Rs. 13,000 She claimed that she was earning Rs. 4000 p.m. by resorting to tailoring work, and could not

earn this amount for another six months and sought a compensation of Rs. 1,8000 on this count. The Tribunal further awarded an amount of Rs.

30,000 on account of permanent disability of the claimant, although she had claimed Re. 20,000 on this count. She has been awarded Rs. 15.000

only on account of loss of income Rs. 20,000 have been awarded to the claimant for pain, suffering and shock suffered by her as a result of the accident.

11. As a matter of fact, while analysing Section 166 of the Motor Vehicles Act, one comes to the conclusion that the discretion given to the

Tribunal to fix the amount of compensation which appears to it to be just, has to be fixed within the amount claimed by a claimant. Basically,

compensation is paid for the losses incurred by a person in an accident, and the claimant is the best assessor for claiming the loss. Even otherwise,

under Torts it is for an aggrieved person to claim a compensation or not to claim compensation and in case he claims compensation, it is for him to

claim the damages. In case he slashes down his claim, nobody else has the power to enhance the amount of such claim

12. There is another reason for following this course. Let us taken the present case When the claim was filed, if the Insurance Company while

appearing before the Tribunal would have stated that they do not want to contest the claim petition, what would have been the effect? The Tribunal

in accordance with the provisions of Section 168 of Motor Vehicles Act, would not have conducted an enquiry, but would have awarded the

amount claimed by the claimant/respondent No.1. It is only in those cases, where the respondents in the claim petition deny their liability, or take a

stand that the compensation claimed is more than what is required to be paid in accordance with law, that the Tribunals exercise their discretion.

Since, there is no authoritative judgment on the point, it is creating difficulties in day to day working of the Tribunal. Learned counsel for the

respondent No.1 has brought to my notice an award passed by the same Presiding Officer of the Tribunal, who has passed the award impugned in

this appeal. In the instant case, while relying on the judgment of Bombay High Court (supra), the learned Presiding Officer of the Tribunal has

stated that in terms of Section 168 of Motor Vehicles Act, he was not bound by the claim made by the claimant, but he has to fix a just

compensation, and therefore, he could award more than what had been claimed. The award brought to my notice has been passed on 30/4/1996

by the same learned Presiding Officer of the Tribunal in case titled: Manga Ram V/ s Pt.Mela Ram and others, photostat copy whereof has been

taken on record. In that case, the same Presiding Officer of the Tribunal has stated that "looking to the age of the injured, a multiplier of 9 would be

appropriate and thus the future loss of earning is assessed at Rs. 1500 X 12 comes to Rs. 18,000 annual loss to be multiplied by 9 comes to Rs.

1,62,000 totalling Rs 2.62,000 But the petitioner has claimed Rs. 2,50,000 as compensation to which he is found entitled to with 12% interest" 13.

The second contention of the appellant is counsel is that the interest has been ordered to be paid on whole of the amount, and in this behalf he has

relied upon a judgment of the Supreme Court reported in AIR 1995 SC 755, titled: R.D. Hattangadi V/s M/s Pest Control (India) Pvt. Ltd., in

which it has been stated that no interest can be ordered to be paid in respect of the amounts which are claimed for future expenditures. I accept

this argument also, allow this appeal, set aside the award dated 18.2.1995, and modify the award in accordance with the following terms:

i) That a compensation of Rs. 67,300 only shall be paid to respondent No.1 (claimant). Out of the said amount, interest shall be paid on Rs.

55,000 only at the rate specified by the Tribunal. Award is modified accordingly. This appeal is accordingly disposed off.