(2010) 08 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : CIMA No. 23 of 2005 and CMP No. 245 of 2005

United India Insurance Company Ltd. APPELLANT

Vs

Amit Kumar and Others RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2010) 3 JKJ 136

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Judgement

Virender Singh, Judge

1. United India Insurance Company, the Appellant herein (for short to be referred to as Insurance Company) being aggrieved of the quantum of

compensation awarded in favour of Amit Kumar, the Respondent-claimant herein (for short to be referred to as claimant) to the tune of Rs.

3,06,000/- on account of the disablement suffered by him in a vehicular accident, has preferred the instant appeal.

2. It needs to be mentioned here that the claimant was also awarded a sum of Rs. 17,500/- for damage to his vehicle (motor cycle). However, no

appeal has been preferred in this regard.

3. The permanent disablement assessed in this case is of ten percent as per the evidence of Dr. Shalinder Sharma, who had examined the claimant

and issued disability certificate. It has also come in his evidence that the claimant would need another surgery for removal of implant. The medical

record of Govt. Medical College, Jammu produced by the claimant shows that he was admitted in Govt. Medical College, Jammu on 21-01-2002 under MRD No. 284099 and remained there in a particular ward upto 06-02-2002 and shifted to ortho-unit from where he was discharged on

11-2-2002 on the request of attendants of the patient as they wanted his treatment from a private doctor for the fracture of his left femur bone. The

evidence on record is that the Petitioner was being treated for respiration trauma also on account of sustaining multiple injuries.

4. At the time of accident, the claimant was of the age of 25 years and was engaged as Work Supervisor by Reliance Motors Company against

the salary of Rs. 4,000/- per month. The case put-forth by him is that on account of he being diploma holder was expecting a Govt. Job and in that

eventuality, his monthly income would have been increased. He could even run his own workshop and as such, his monthly income would have

been much more than the salary he was getting at the time of accident.

5. The loss of earning capacity of the claimant is assessed as 20% and keeping the future prospects in view, the income is assessed as Rs. 6,000/-

per month, thereby loss of Rs. 1,200/- per month and Rs. 14,400/- per annum. Applying the multiplier of fourteen, the loss of future income is

assessed as Rs. 2,01,600/- (14,400X14).

1. Loss of Future Income : Rs. 2,01,600/-

2. Cost of Treatment : Rs. 64,496.70

3. Shock and agony : Rs. 20,000/-

4. Loss of amenities of life : Rs. 20,000/-

6. With regard to the actual expenditure incurred in the treatment, the learned Tribunal has assessed an amount of Rs. 64,496.70. This assessment

is made on the basis of the bills and vouchers produced by the claimant. The total amount of compensation awarded to the claimant is under the

following heads:

7. Mr. R.P. Jamwal, Advocate appearing for the Insurance Company joins issue on quantum of compensation only and submits that the amount of

compensation has not been properly assessed by the learned Tribunal vis-a-vis the permanent disability suffered by the injured-claimant. Even

otherwise, the learned Tribunal has taken the monthly income of the claimant as Rs. 6,000/- whereas, he was getting Rs. 4,000/- per month from a

private firm. The learned Tribunal, according to Learned Counsel, has assessed the quantum of compensation at random without applying any

established method. Even the multiplier applied by the learned Tribunal is also on higher side. He goes on to submit that under all the four heads,

the amount awarded is on a higher side and as such, the total amount of compensation (Rs. 3,06,000/-) deserves to be reduced reasonably.

8. Mr. Jamwal lastly submits that since permission u/s 170 of the Motor Vehicles Act was obtained by the orders of learned Tribunal, the company

is within its right to challenge quantum of compensation, which fact is not disputed by Mr. Kapai, who otherwise submits that a just compensation

has been awarded in favour of the claimant keeping in view the injuries suffered by him, his pain and agony during his long stay in the hospital, after

effects of the injuries especially the permanent disability occurred on account of the fracture of femur bone. The appeal at hand, thus, deserves to

be dismissed, Mr. Kapai so submits.

9. After giving my thoughtful consideration to the submissions advanced by the Learned Counsel for the either side, I am of the considered view

that the amount of compensation awarded to the claimant is just compensation.

10. No doubt, while assessing the loss of earning capacity to the extent of twenty percent, the learned Tribunal has considered the income of the

claimant as Rs. 6,000/- per month but keeping in view the totality of facts and circumstances of the case, the loss of earning capacity, the young

age of the claimant, who was a motor mechanic and had also bright future ahead, the approach adopted by the learned Tribunal cannot be said to

be faulty in this regard. Even multiplier of fourteen applied by the Tribunal is again not on higher side. Resultantly, the amount of compensation

assessed under this head as Rs. 2,01,600/- is absolutely justified.

11. If one goes by the treatment taken by the claimant, he, in my view, deserves more amount but the learned Tribunal has calculated the amount

on the basis of the bills/vouchers only produced by the claimant. In such type of treatment, most of the time, the injured person or his attendants do

not keep the complete record of all the bills /vouchers and, therefore, the cost of treatment has to be calculated on guess work keeping in view the

nature of the injury and the tenure of the treatment. Therefore, the amount awarded by the learned Tribunal under this head cannot be said to be on

higher side.

12. For the other two heads, in my view, the amount of compensation awarded is also most proper.

13. In case titled R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the Hon'ble Supreme Court has held that:

In its very nature whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork,

some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be

viewed with objective standards.

14. In case titled Ramesh Chandra Vs. Randhir Singh and Others, , the Apex Court has held that:

Incapacity or disability to earn livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into

account deprival of earnings of a conceivable period.

15. It is further observed in the aforesaid judgment that an injury may bring about many consequences like loss of earning capacity, loss of mental

pleasure and many such consequential losses. Therefore, an injured becomes entitled to the damages for mental and physical loss also. No amount

of compensation can restore the physical frame of the injured. That is why it has been said that whenever any amount is determined as the

compensation payable for any injury suffered during an accident, the object is to compensate such injury ""so far as money can compensate

because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered

physical frame.

16. As a sequel to the aforesaid discussion, the amount of compensation to the tune of Rs. 3,06,000/- already awarded in favour of the claimant

does not call for any modification/alteration being just compensation. Ordered accordingly.

17. However, interest @9% per annum awarded by the learned Tribunal, in my view, is oh higher side. I reduce the same to 7% per annum.

18. The net result is that the claimant, Amit Kumar, is entitled to Rs. 3,06,000/- along with the interest @7% per annum from the date of filing of

the petition till its Realization. The amount already stands deposited by the Insurance Company with the Registrar Judicial pursuant to the direction of this Court way back in March, 2005 shall, however, be adjusted. He shall also keep note of the fact that Rs. 1,00,000/- has already been

released in favour of the claimant during the pendency of the present appeal.

19. The appeal at hand, thus, stands disposed of as indicated hereinabove.

20. Connected CMP(s), if any, also stands disposed of accordingly.

