

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

CIMA No.183/2004

Date of Order : July 11, 2008

Mst. Shakuntla Devi Vs. **Sunny Gupta & Anr.**

Coram

Hon'ble Mr. Justice Virender Singh

Appearing counsel:

For appellant(s) : Mr. R.P. Sharma, Advocate.

For Respondent(s) : None.

- i) Whether approved for reporting in Press/Journal/Media : Yes
 - i) Whether to be reported in Digest/Journal : Yes
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Smt. Shakuntla Devi (hereinafter to be referred to as Appellant) being dissatisfied with the compensation awarded to her to the tune of Rs.35,000/- vide impugned award dated 30th of June, 2004 passed by learned Motor Accidents Claims Tribunal, Udhampur, (hereinafter to be referred to as Tribunal) has filed the instant appeal for enhancement of compensation.

The appellant projected her case of permanent disability suffered by her due to rash and negligent driving of Scooter No.3083-JK-14 allegedly driven by Sunny Gupta, respondent-1, and owned by Satish Kumar Gupta, respondent-2. Sunny Gupta is son of Satish Kumar Gupta. Incidentally, the offending vehicle was not insured on the date of accident.

In support of her case, appellant herself has stepped into witness box and stated that she remained hospitalized for 5/6 days and after her discharge from the hospital, she was getting treatment at Jammu and Amritsar privately. She further stated that she had to spend a sum of Rupees one lac on her operation. The injury on her left leg had resulted into 30% permanent disability. Her case was that, at the time of accident, she was doing the job of tailoring and her income was about Rs.100/- per day. She disclosed her age as 45 years at the time of accident.

Besides producing two other witnesses, namely Bhushan Kumar and Sanjeev Sharma, the appellant, in order to prove her permanent disability produced Dr. K.K. Kudyar into witness box and got proved the disability certificate. This witness also stated that the appellant was getting treatment from Karan Singh Memorial Hospital, Amritsar.

The learned Tribunal ultimately awarded the aforesaid amount of Rs.35,000/- to the appellant.

Record reveals that, at one stage, the respondents had put in appearance. However, they have not caused their appearance thereafter.

I have heard Mr. P.R. Sharma, learned counsel for the appellant, and with his assistance gone through the entire Tribunal record minutely.

While taking me through the observations made by the learned Tribunal with regard to the quantum of compensation, Mr. Sharma submits that the finding of the learned Tribunal to the effect that the petitioner (appellant) has not produced any proof with regard to the tailoring job is not correct. He submits that not that the appellant herself had stated in clear terms that she was earning Rs.100/- per day from her tailoring job, her version was also corroborated and supported by PW Sanjeev Sharma. This evidence was not controverted or rebutted by the respondents. According to Mr. Sharma, the learned Tribunal should have taken into account the earning of the appellant to the tune of Rs.3,000/- per month and without assigning any cogent reason, the learned Tribunal has awarded a very meagre amount in favour of the appellant. According to the learned counsel, he has not even assessed the value of services, which the appellant was rendering to the family. She was not only an earning member contributing monetarily to the family, but being a housewife, value of her services to be rendered towards the family has also to be considered, as held by Hon'ble Supreme Court in case **Lata Wadhwa and others Versus State of Bihar and others, AIR 2001 SC 3218.** In support of his contention, Mr. Sharma also relies upon a Division Bench Judgment of this Court rendered in **National Insurance Co. Ltd. Versus**

Mohammad Sultan Asim and others, 2004 (1) SLJ 96 and another Judgment of this Court rendered in **Union of India through M.E.S. Deptt., Nagrota, Jammu and another Versus Kamal Krishen, 2002 KLJ 692.**

Mr. Sharma lastly submits that the appellant had received 30% permanent disability and in case her monthly income is assessed at Rs.6,000/-, viz., Rs.3,000/- from the job of tailoring and Rs.3,000/- as value of services rendered by a housewife to the family, it would become around Rs.72,000/- per annum and thereafter applying the multiplier of 13 as laid down in section 163-A of Motor Vehicles Act (as amended up to date), the total loss of earning would be around three lacs. The exact figure, according to Mr. Sharma, would be Rs.2,80,800/-. Besides this, the appellant is also entitled to another sum of Rupees one lac as medical expenses incurred on the treatment at Udhampur, Jammu and Amritsar for which she was able to produce certain bills to the tune of about Rs.34,000/- only, as she could not procure all the bills. According to Mr. Sharma, the appellant is also entitled to some reasonable amount for pain and suffering and for loss of amenities. On the basis of these submissions, learned counsel submits that the appellant deserves the compensation to the tune of Rupees five lacs, as claimed by her in her original claim petition filed before the learned Tribunal. According to Mr.

Sharma, interest @ 6% per annum is also on lower side and it calls for enhancement to the tune of 9% per annum at least.

As stated above, there is no opposition from the side of both the respondents.

In my view, the appellant deserves the enhancement of the compensation to a reasonable amount but not as claimed by Mr. Sharma. The learned Tribunal has not put forth any reasoning much less cogent reasoning for awarding Rs.35,000/- only in favour of the appellant and simply observed that the appellant had not given any proof regarding income from her tailoring job. It was observed that she being middle aged lady of 45 years at the time of accident, could contribute something like Rs.1,000/- per month in monetary terms towards the family. From this all, he assessed the compensation at Rs.35,000/-, and decided Issue No.3, which was with regard to quantum of compensation. Taking it from that angle also, I feel it is on too lower side.

Let us now assess the compensation in its right perspective keeping in consideration the submissions advanced by Mr. Sharma. Although with regard to details of expenditure incurred on medical treatment, Mr. Sharma has relied upon certain bills attached with the Tribunal file, yet I can safely presume that the appellant must have spent about Rs.50,000/- for

purchasing the medicines etc. After all, it was a lengthy treatment and she might not have kept all the bills. In my considered view, she is entitled to the said amount.

Another fact, which cannot be ignored, is that the learned Tribunal has not awarded any compensation under the head 'pain and suffering'. Keeping in view the injuries suffered by her, another sum of Rs.50,000/- would be just and appropriate under this head.

The learned Tribunal has also not taken any pain to award compensation under the head 'loss of amenities', which covers the 'permanent disability'. According to the medical evidence on record, it is a case of 30% permanent disability. Despite the fact that the learned Tribunal has agreed with the doctor's evidence and decided Issue No.1 in favour of the appellant, still he has not granted any amount on this count. I club both these heads and keeping in view the age of the appellant, the physical loss and other factors into consideration, grant another sum of Rs.1,50,000/- in her favour. The appellant, thus, deserves the total compensation to the tune of Rupees two lacs. In other words, an enhancement to the tune of Rs.1,65,000/-.

So far as interest part is concerned, in my view, it does not call for any alteration/modification, as the same (@ 6% per annum) is justified in this case.

The net result is that the appeal on hand is allowed and the awarded amount is modified/ altered in the aforesaid terms.

Jammu
July 11, 2008
T.Arora, PS

(Virender Singh)
Judge