

OF JAMMU AND KASHMIR AT JAMMU

CIMA No. 225/2003

CMP nos. 769/2003 & 88/2006

Date of decision: 23.09.2008.

Union of India and ors Vs. Arjana Kumari & Ors.

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. Tashi Rabstan, CGSC.

For Respondent(s): M/S Raman Sharma and Anil
Kumar, Advocates.

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported in Digest/Journal | : Yes/No |
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Mr. Ashok Kumar was driving his motor cycle with one Anil Kumar as pillion rider, from Udhampur to Jammu on August 10, 2001, when Mr. Ravi T- of 651 of EPU C/O 56 APO, driving rashly and negligently, Army truck No. 9980-12781-P had hit the scooter as a result whereof both the scooter riders received grievous injuries on their person. Ashok Kumar, however, succumbed to the injuries received by him in the accident.

Arjana Kumari, the wife, Ruderashi and Akanksha, the minor daughters, of Ashok Kumar filed their claim

claim, wrongly shown as claim petition no. 355/claim in the award of the Tribunal, and Anil Kumar, the survivor injured filed his petition no. 391/Claim against Union of India, Ravi-T, driver of the offending vehicle and the Commanding Officer of 651-EPU, before Motor Accidents Claims Tribunal, Jammu.

Denying its liability to pay the amount claimed in the claim petitions, Union of India and the driver of the Army vehicle attributed the accident to the rash and negligent driving of the scooter by Mr. Ashok Kumar deceased.

In order to resolve the dispute raised in the claim petitions, the parties to the claim petitions were put to issues, which for facility of reference are reproduced hereunder:-

1. Whether an accident took place on 10.8.2001 at Kattal-Battal Nagrota Jammu due to rash and negligent driving of offending army vehicle No. 99PO-12781P by its driver/respondent no.2 in which deceased namely Ashok Kumar Bhagat has died and the petitioner Anil Kumar sustained grievous injuries? OPP
2. In case issue no.1 is proved in affirmative whether the petitioners are entitled to the compensation, if so, to what amount and from whom? OPP
3. Relief? OPParties.

to prove the issues the claimants-respondents had examined Kuldeep Kumar, Dr. Naresh Chopra besides Anil Kumar and Arjana Kumari claimants as their witnesses. Appellants had produced only Ravi T, the driver of the Army vehicle as their witness to rebut the evidence produced by the claimants and in support of the case set up by them in defence to the claim petitions.

Appreciating the evidence of the parties and deciding both the issues in favour of the claimants-respondents and against the appellants-Union of India, the Tribunal awarded an amount of Rs. 9,67,568/- as compensation to the claimants in claim petition no. 355/claim and an amount of Rs. 3,31,400/- in claim petition no. 391/Claim along with interest at the rate of 9% per annum from the date of filing of the claim petitions.

Appellants-Union of India and its Commanding Officer has filed this single appeal against the two awards dated September 5, 2003 of the Motor Accidents Claims Tribunal, Jammu.

Mr. Tashi Rabstan appearing for the appellants made two submissions to question the award of the Tribunal made in favour of Anil Kumar-respondent. His first submission is that the Tribunal had erred in

he statement of Anil Kumar claimant in assessing his monthly income and his second contention is that the Tribunal had committed an error of law in allowing an amount of Rs. 30,000/- to the claimant which had been stated to have been spent by him to defray the medical expenses incurred by him for his treatment.

Elaborating his submissions learned counsel urged that in view of the finding recorded by the Tribunal, that Anil Kumar claimant had not produced any medical bills/vouchers to prove the amount of expenditure incurred by him on his treatment, award of an amount of Rs. 30,000/- on account of medical expenses incurred by the claimant-Anil Kumar cannot be justified.

Meeting the submissions of the appellants' counsel, Mr. Raman Sharma, learned Advocate appearing for Anil Kumar claimant submitted that even though the claimant had not produced the medical bills, yet in view of the grievous injuries suffered by the claimant in the accident, rendering him disabled to the extent of 30%, Tribunal's award for an amount of Rs.30,000/- on account of medical expenses, was justified, particularly when the claimant had still been spending

treatment of the injuries he had suffered in the accident.

As regards the appellants' counsel's submission that the Tribunal had erred in believing the statement of claimant-Anil Kumar, to assess his monthly income at the time of the accident, at Rs. 3000/-, learned counsel submitted that no fault can be found with the finding of the Tribunal in view of the fact that the statement made by Anil Kumar regarding his income had remained unchallenged in cross-examination and, in that view of the matter, in the absence of any rebuttal by the appellants, the Tribunal was right in believing his statement.

Appellants' counsel had not disputed the award made in favour of claimants in petition no. 395/Claim.

I have considered the submissions of learned counsel for the parties and gone through the records of the Tribunal.

Anil Kumar-claimant had made a categorical statement before the Tribunal that he had been employed with Sunny Engineering Works as Supervisor at monthly salary of Rs. 3000/-. This statement of the claimant had not been questioned by the appellants during his cross examination. The appellants had not produced any evidence either, to

set up and the statement made by the claimant that he had been working as a Supervisor with Sunny Engineering Works at the time of the accident at a monthly salary of Rs. 3000/-.

As the claimant's statement of his being a Supervisor with Sunny Engineering Works at a monthly salary of Rs. 3000/- at the time of the accident had not been challenged in the cross examination and no evidence had been led by the appellants to rebut it, so the Tribunal was justified in accepting claimant's statement and assessing compensation for his injuries taking his monthly income, at the time of the accident, at Rs. 3000/-.

I, therefore, do not find any merit in the appellants' counsel's submission that the Tribunal had erred in taking the monthly income of the claimant at Rs. 3000/-.

I, however, find merit in the submission of the learned counsel that the Tribunal had allowed an amount of Rs. 30,000/- to the claimant on account of amount spent for the medical expenses, without there being any evidence on records in support thereof. It cannot therefore be said that the claimant had proved the amount, which had actually been spent by him to

medical expenses incurred by him for his treatment.

In order to succeed in a claim seeking recovery of amount spent on medical expenses, a claimant is required to prove the actual amount spent by him on such expenses. Such proof may be supplied either by production of documentary evidence or by leading such evidence on the basis whereof it may be said that the amount claimed had actually been spent by the claimant on the medical expenses. Such oral evidence may include the evidence of those who had received the amount spent by the claimant on the medical expenses.

Mere statement of a claimant that he had spent some amount on medical expenses, without giving details thereof, may not thus be sufficient enough to award/decreed the amount claimed by the claimant on account of medical expenses.

The award made by the Tribunal for an amount of Rs. 30,000/- in favour of respondent-Anil Kumar, on account of medical expenses, cannot thus be justified.

I, however, cannot lose sight of the categorical statement of the claimant that even at the time of his making the statement before the Tribunal on 1.8.2002, he is stated to have been spending an amount Rs.

nonth on medicines. This statement of the claimant has not been contested in the cross-examination.

In view of the facts and circumstances of the case, I think that some amount needs to be awarded to claimant-Anil Kumar on account of medical expenses because even if the claimant had been treated in the government hospital for some time, yet it cannot be lost sight of that he would have spent some amount to get medicines from the market as well because all the required medicines, as the experience shows, may not be available in the Government Hospitals.

Keeping in view the nature of injuries suffered by Anil Kumar in the accident and his unchallenged statement that he was still on medicines, I think it just and proper to award him an amount of Rs.5000/- as against Rs. 30,000/- which had been awarded by the Tribunal to him, on account of the medical expenses.

Resultantly, the award of the Tribunal, in so far as it pertains to claimant- Anil Kumar, shall stand modified to be an award for an amount of Rs. 3,06,400/- along with interest as awarded by the Tribunal.

As the joint appeal against the two awards is impermissible, so the appellants' learned counsel was



not contesting the award made by the Tribunal in claim petition no. 395/claim.

This appeal in so far as it pertains to claim petition no. 391/claim, is accordingly allowed. It is, however, dismissed in so far as it questions the award made in claim petition no. 395/claim.

(J.P.Singh)
Judge

Jammu
23.09.2008
Anil Raina, PS