

0HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU.

CIMA No.244/2006

CIMA No. 321/2006

Date of order: 31.07-2009

NIC	vs.	Hamnawaz and ors
Hamnawaz	vs.	NIC and ors.

CORAM

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE

Appearing counsel:

For appellant(s) :	Mr. R. K. Gupta, Advocate
For respondent(s):	Mr. Piyush Gupta, Advocate

(i)	Whether to be reported in Press, Journal/Media:	Yes
(ii)	Whether to be reported in Journal/Digest:	Yes

Having arisen out of same award, both the appeals are disposed of by this common judgment.

While traveling on a Motorcycle on 26.8.2003, Hamnawaz-respondent No. 1 in CIMA No. 244/2006 was hit by a rashly and negligently driven Tipper bearing registration no. JK02 4997 near University Gate, Jammu, as a result of which he sustained multiple grievous injuries and is permanently disabled. A FIR was registered against the

erring driver under Sections 279, 337 and 338 RPC in the concerned Police Station. The respondent No.1 was taken to Maharishi Dayanand Nursing Home, B. C. Road, Jammu in view of the availability of C.T. Scan and other facilities in the said hospital, which were not available in Government Hospitals. He was admitted in the said hospital and examined by Dr. Anil Sharma, who has stated that due the fatal injuries, both the lower limbs of respondent no.1 are not functioning and he has become paraplegic. A claim petition stood filed by the respondent no.1 before the Motor Accident Claims Tribunal, Jammu and a compensation of Rs. 20 lacs was claimed by him. During the pleadings, the Tribunal has framed the following three issues:

1. “Whether an accident took place on 26.8.2003 near University Gate Jammu due to rash and negligent driving of offending Tipper No. JK02/4997 in the hands of the erring driver in which the petitioner Hamnawaz sustained grievous injuries. OPP
2. If issue No. 1 is proved in affirmative whether petitioner is entitled to the

- compensation, if so, to what amount and
from whom? OPP
3. Whether driver of the offending vehicle at
the time of the accident did not have a valid
driving licence? OPR
4. Relief OP Parties”

After framing the issues, the claimant/petitioner examined the witnesses in support of his claim. In rebuttal, the appellant-company did not examine any witness. The Tribunal awarded a compensation of Rs. 16,51,484/- alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the payment is made. Both the parties have preferred appeals against the said award. The appellant in the present appeal has questioned the award on following three counts.

1. That the Tribunal has not rightly assessed the income of the claimant-respondent no.1 as 4,000/- per month, despite the fact that while assessing the same nothing could be said about his definite income.

2. The award of compensation on account of 100 % loss of income was not factually correct as the upper limbs of the claimant are functional.
3. That the Tribunal has not made one third deductions in the personal expenses of the petitioner/claimant.

In CIMA No. 321/2006, the appellant/claimant has stated that while awarding the compensation of Rs. 16,51,484/-, the Tribunal did not take into consideration the following things:-

- a) Expenses of the attendant till date.
- b) Future expenses on attendant.
- c) Physiotherapy expenses.

I have heard learned counsel for the parties and perused the record.

The only controversy, which is required to be determined in these appeals, is whether the compensation has been assessed properly or not. The issue regarding rash and negligent driving of the offending vehicle by its driver is not

in dispute. As a matter of fact, the claimant/petitioner has proved the cause of accident by examining the witnesses. In rebuttal, the appellants/respondents have not examined any witness.

The assessment of the compensation payable to a victim of an accident is to be assessed under two categories; pecuniary damages and special damages. The pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. The non pecuniary damages are those which are incapable of being assessed by arithmetical calculations. Pecuniary damages may include expenses incurred by the claimant on medical attendance, loss of earning of profit up to the date of trial, and other expenses required to be incurred on account of such accident. Non pecuniary damages are in the nature of damages for mental and physical shock, suffering in future, damages to compensate for the loss of amenities of life, which may include a variety of matter i.e. on account of injury the claimant may not be able to walk, run or perform

normal activities and inconvenience, hardship, discomfort, disappointment, frustration and mental stress of life.

Applying these principles to the present case, the Tribunal has assessed the compensation for the loss of income for 33 month during the trial as 1,32,000/-. This amount has been worked out at the rate of 4000/- per month as monthly income which the petitioner/claimant would have earned till the date award was passed. On the basis of the statement of the claimant and employer with whom the claimant was working, the monthly income of the claimant has been assessed at Rs. 4,000/-. This in my opinion has correctly been done.

On account of paraplegia, the claimant is unable to move like a normal man and is also not capable to earn anything in future also. The future loss of income assessed by the Tribunal at the rate of Rs. 4,000/- and applied multiplier of 18 has also been rightly done.

The petitioner being age of 28-29 years at the time when the award was passed, the multiplier of 18 has been

rightly been applied in this case. In respect of medical expenses incurred, the actual bills produced and proved by the claimant/petitioner has been worked out to be Rs. 3,55,484/- for which there is no dispute and the compensation has been rightly assessed.

In respect of pecuniary damages suffered by the claimant, the compensation has been awarded, and on account of non pecuniary damages, the same has been awarded on the following counts:

- a) For pain and suffering = Rs. 1,50,000/-
- b) For loss of amenities of live= Rs. 1,50,000/-

To the extent of mental shock, pain and agony, the Tribunal has very rightly awarded the compensation keeping in view the nature of injuries suffered by the claimant. On account of loss of amenities of life, the compensation of Rs. 1,50,000/- has been awarded. There is no dispute that claimant has suffered loss of amenities on account of said accident. He is not capable of doing his routine work due to non functional of sphincter muscles, due to which his bladder

and bowl movement has become uncontrollable. In a situation like this, the amount of frustration is immense as he has to depend on others for doing his routine work. I feel that under the head 'amenities of life', the Tribunal has not awarded the compensation in consonance with the suffering of the claimant. Accordingly, an amount of Rs. 2,00,000/- is awarded to the claimant on this count.

It has come in the evidence of the Doctor that the claimant is totally dependent on others because of paraplegia and he requires an attendant for the purpose of doing his normal work. No compensation has been awarded by the Tribunal on this ground. Since the nature of injury is permanent and looking into uncertainty of life, he requires permanent attendant to look after. I feel it appropriate to award an amount of Rs. 1,00,000/- on this count. Learned counsel for the appellants has stated that the upper limbs of the petitioner/claimant are functional is misconceived. As already stated hereinabove that his movement is absolutely curtailed and mere because upper limbs are functional would

not mitigate the suffering of the claimant. He cannot perform his normal activities as the movement of his lower limbs is absolutely curtailed.

The judgment relied on by learned counsel for the appellant has no application in the present case. In 2007 (3) Supreme 136, entitled, Oriental Insurance Company limited vs. Meena Variyal, the issue deals with the question that the driver is a necessary party, he is to be impleaded before adjudication of claim. In the present case, it has been stated that despite notice issued to the driver, he has not appeared and was set ex-parte. It cannot be said that the driver was not impleaded as party. Regarding other judgment 2005 ACJ 1131, entitled, New India Assurance Co. Ltd. vs. Charlie and anr., it deals with the computation of compensation where agriculture is source of income. The Supreme Court has said that where source of income is agriculture, the normal rules about deprivation of income are not applicable.

On the other hand, learned counsel for respondent/ claimant has relied on the Division Bench judgment of this

court reported in 2006 (2) JKJ 342(HC), entitled New India Assurance co. ltd. and anr. vs. Imtiaz Bano and anr. Para 26 (11) of the judgment is quoted as under:

“ In the case Ward v. James, 1965 (1) All ER 563, it was said:

Although you cannot give a man so gravely injured much for his “last year, you can, however, compensate with for his loss during his shortened span, that is, during his expected “years of survival” You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury be rendered unconscious for the rest of his days, or owing to back injury, be unable to rise for his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him that they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.”

In this case also person had suffered injuries, which has rendered for paraplegia.

In view of the above, I dismiss CIMA No. 244/2006 and partly allow CIMA No. 321/2006. Accordingly, the award payable to the claimant is as under:

1. For medical Expenses: Rs. 3,55,484/-
2. For loss of income during trial: Rs.1,32,000/-
3. For loss of income (Future): Rs. 8,64,000/-
4. For pain and suffering: Rs. 1,50,000/-
5. For loss of amenities of life: **Rs. 2,00,000/-**
6. For future expenses on attendant: **Rs.1,00,000/-**

Total: **Rs. 18,01,484/-**

The awarded amount shall be paid to the claimant, if the same has not already been paid.

Disposed of alongwith connected CMP, if any.

(SUNIL HALI)
JUDGE

Jammu
31.07.2009
Karam*