

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 213/2008

CMP No. 296/2009, CMP No. 3/2009 & CMP No. 107/2009

Date of order: 17-03-2010

United India Ins. Co. Ltd. Vs. Radhika & Ors.

Coram:

Hon'ble Mr. Justice Mansoor Ahmad Mir, J.

Whether approved for reporting: *YES*

Appearing Counsel:-

For the Appellant(s) :-	Mr. R.P.Jamwal, Advocate
For the Respondent(s):-	Mr. O.P.Sharma, Advocate for R.1. Nemo for R- 2 & 3.

This Civil First Miscellaneous Appeal is directed against the Judgment and award dated 30th of June' 2008 passed by the Motor Accident Claims Tribunal, Jammu, in claim petition titled Radhika Vs. Balwinder Singh & Ors. Claim petition, whereby and whereunder compensation to the tune of Rs. 3,88,500-00 with interest @ 7.5% from the date of presentation of claim petition till its realization came to be passed in favour of the claimant-respondent no.1 and against the appellant-insured, on the grounds taken in the memo of appeal (for short hereinafter, impugned award).

It is necessary to give a flash back of the case, the womb of which has given birth to the instant appeal, which can be summarized as under:-

Claimant-respondent no.1, being the victim of the vehicular accident filed a claim petition before the Motor Accident Claim Tribunal, Jammu on the grounds, that on 26th of March' 2002, she was coming from school at about 10 am, after appearing in examination and was hit by the offending scooter bearing registration No. JK02Q-9227 at Govindpur Bazar road, which was being driven rashly and negligently by its driver namely Balwinder Singh, respondent no.2. She sustained injuries, was rushed to the hospital and came to be admitted in the Government Hospital, Gandhi Nagar, Jammu and later on was referred to Government Medical College, Jammu. She remained admitted in Government Medical College, Jammu from 24th of March' 2002 till 30th of March' 2002. She sustained grievous injuries which has rendered her permanently disabled for ever. Claimant-respondent no.1 has claimed the compensation to the tune of Rs. 6.30 Lacs as per the break-ups given in para no.17 of the claim petition.

Appellant-insurer and respondents 2 & 3 filed written statement-objections. Following issues came to be framed:-

1. Whether an accident took place on 26.3.2002 at Satwari, Jammu due to rash and negligent driving of offending vehicle No. 9227-JK02Q by its driver/respondent No.1 in which petitioner sustained greivous 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 offending vehicle was being driven in contravention of insurance policy by an unauthorized and invalid driver? OPR-3
4. Relief. O.P.Parties.

Claimant-respondent no.1 was directed to lead evidence. She examined PWs Girdari Lal, Surjit Singh and Dr. R.S.Manhas as witnesses in support of her claim. Respondents were directed to lead evidence, but despite providing sufficient opportunities they failed to avail the same and consequently the evidence of the respondents came to be closed vide order dated 16th of August' 2003. An application filed by the appellant-insurer under Sec. 170 of Motor

Vehicles Act, came to be allowed by the Tribunal and permission was granted to it to contest the claim petition on all the grounds which are available to the insurer and the driver. But despite of that insurer-appellant failed to lead any evidence. Thus the evidence of the claimant-respondent no.1 has remained un-rebutted.

It is profitable to give a brief resume of the evidence of the claimant-respondent no.1 in order to arrive at just conclusion, whether the findings recorded by the Tribunal are legally sound.

PW Surjit Singh has deposed that on 26th of March 2002 at about 10/10.30 A.M he was standing outside a shop. He saw a scooter which was being driven by its driver (a young boy of Sikh community) rashly and negligently and hit the claimant-respondent no.1, who sustained injuries and was taken to Government Hospital at Gandhi Nagar, Jammu where from she was referred to Government Medical College, Jammu.

PW Girdhari Singh has deposed that on 26th of March' 2002 his daughter Radhika, claimant-respondent no.1, had gone to People's Academy School, Old Satwari, Jammu. She became the victim

of vehicular accident and was taken to hospital and came to be admitted in Government Medical College, Jammu. She sustained injuries on right leg and fracture on both legs and she was also suffering from body pain. She remained admitted in the hospital for 10-12 days and he incurred thirty thousand to thirty five thousand as expenditure for her treatment, but in spite of all she suffered permanent disability.

PW Dr. R.S.Manhas has deposed that he was posted as Registrar, Ortho Unit-II Government Medical College, Jammu. He examined claimant Radhika vide Ortho OPD No. 3707. Claimant was a case of fracture of both bones right leg and was managed conservatively in the said hospital. She was suffering from pain in right leg with malunion and anterior angulation of leg bones of right leg bones. She is rendered physically handicapped and permanently disabled because of the said injuries. The disability certificate came to be marked as EXPW-RS. He has further deposed that 4% disability will definitely cause difficulty for her in running, playing games etc. In cross examination, he has deposed that she has to undergo pain and that can be controlled by analgesic and physiotherapy. She

cannot run and walk properly and has to avoid running.

ISSUE No.1

All the witnesses have deposed that respondent no.2, namely Balwinder Singh, while driving the scooter-offending vehicle rashly and negligently on 26th of March' 2002 hit the claimant-respondent no.1, who sustained injuries and became permanently disabled. There is no evidence in rebuttal, thus the evidence of claimant-respondent no.1 has remained un-rebutted. Accordingly, it is held that claimant-respondent no.1 has proved the Issue no.1 in her favour and came to be rightly decided by the Tribunal.

ISSUE No. 2:

It will be proper to deal with Issue no.2 later after deciding and determining the Issue no.3.

ISSUE No. 3:

Appellant-insurer has to discharge the onus, but it has failed to do so. Thus, only on this count, the issue is to be decided against the insurer-appellant and in favour of the insured and respondents no. 2 & 3. Even otherwise there is no prima-facie proof on file

that driver-respondent no.2 has driven the offending vehicle in breach of the insurance policy. Accordingly Issue no.3 is decided in favour of the insured/ owner-driver and claimants against insurer-appellant. .

ISSUE No. 2:

In order to assess what is just compensation, which could be awarded in injury cases guess work is to be made. It has been held in *Awaleen Vs. United India Insurance Co., & Ors*, 2005(2) JKJ 515 [HC] as under:-

“10. The guess work involves some hypothetical considerations, some amount of sympathy linked with nature of disability caused while making award. This aspect should be viewed with objective standards. The money cannot relieve human sufferings or personal deprivations. It cannot restore the charm of injured.

In case *Ward v. James* 1965 (I) ALL RT 563, it was said:-

“Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him 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 hapless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, he unable to rise from his bed. He has lost every thing that makes life worthwhile. Money is no good to him. Yet judges and juries have to do the best they can and give him what 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."

11. While assessing the compensation which is payable to the petitioner, the damages are to be assessed separately as pecuniary damages and non-pecuniary damages. Pecuniary damages are those which the injured has actually incurred and which is capable of being calculated in terms of money and; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations."

By guess work, it can be said and held that at least claimant-respondent no.1 could have earned Rs. 3000/- per month after attaining the age of majority i.e., age of 18 years. Even as a house-wife, she could have earned Rs. 3000/- per month because she has to maintain the house, house hold goods and has to look after her family. But because of the disability, she is not in a position to discharge the duties of a house-wife and even she cannot run and walk freely. According to evidence of an expert i.e., medical evidence, disability certificate EXPW-RS, she is not in a position to run. She has to undergo pain and take drugs (analgesic) and undergo physiotherapy. She has incurred 4% disability and this permanent disability has affected 4% of her earnings capacity. Thus it has affected her earning capacity to the tune of Rs. 120/- per month. As per the schedule appended to Motor Vehicles Act and keeping in view the age of the injured, multiplier of 15 is applicable. Thus the permanent disability has affected the earning/income of claimant-respondent no.1 to the tune of Rs.21,600 (120 x 12 x 15).

Claimant-respondent no.1 has claimed Rs.

35,000/- as medical expenses. Admittedly, the claimant-respondent no.1 has to be on drugs and the expenses under the Head 'future treatment' was to be granted but has not been granted. The Tribunal has awarded Rs. 50,000/- in toto for treatment, thus it is maintained.

As per medical evidence, claimant-respondent no.1 has gone through pain right from her accident till she was discharged and has to undergo pain and suffering throughout her life. She has to avoid running and undergo physiotherapy. Rightly, it can be said and held that she has to spend Rs.1000/- per month for drugs and physiotherapy and that comes to Rs. 12000/- per annum. While applying the multiplier of 15, she has to incur at least Rs. 1.80 lacs (12000 x 15). This is being estimated while exercising guess work. The claimant has not questioned the impugned award on the ground of inadequacy of compensation, thus Rs. 1.50 lacs as awarded by the Tribunal, is awarded under the head 'pain and sufferings' is maintained.

The permanent disability has affected her matrimonial life for the simple reason that it has shattered her physical frame. It is difficult for her to

get a good match, virtually she has lost all amenities and she has to undergo sufferings till she is alive. The Tribunal awarded Rs. 1.00 lac under this head, which is too meagre rather trivial. Rs.1.00 lac is no match for a comfortable matrimonial life, which she could have got and enjoyed, had she not met with an accident. As discussed herein above, claimant-respondent no.1 has not questioned the inadequacy of compensation, thus Rs. 1.00 lac awarded under the head 'loss of amenities' is maintained.

Claimant-respondent no.1 was in hospital and she was on special diet and would have incurred huge expenditure during the said period i.e., expenditure on attendant, diet, fare charges, to and fro from home to hospital. The Tribunal has awarded a meagre amount of Rs. 30,000/-, which has not been questioned by the claimant-respondent no.1, the same is thus maintained.

The appellant-insurer has not questioned its liability. Even otherwise appellant-insurer has not discharged its onus and accordingly, Issue no.3 came to be rightly decided.

Viewed thus claimant-respondent no.1 is held

entitled to the compensation to the tune of Rs. 3,51,600/- (21600 + 50,000 + 1,50000 + 100000 + 30000) with interest @ 7.5 & p.a from the date of presentation of the claim petition till its full and final realization, minus the amount already paid. The appellant-insurer is saddled with the liability and has to satisfy the award.

The impugned award is accordingly modified as indicated above. Disposed of along with all CMPs.

Send down the record.

(MANSOOR AHMAD MIR)
Judge

Jammu:
17-03-2010
Sanjay

