

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CIMA No. 199/2005
Cross Appeal (C) No.6/2005

Date of decision: 09.12.2011

Mohd. Tariq New India Assurance Co. Ltd.	Vs. vs.	New India Assurance Co. Ltd. ors. Mohd. Tariq and ors.
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Coram:
MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. Sheikh Altaf Hussain, Advocate.
For Respondent(s): None.

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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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- 1) Engaged as labourer with Truck No.JKQ-5798, the appellant suffered injuries on November 22, 2001 when, it met with accident at 5.30 p.m near Malai-Mahore because of the rash and negligent driving of the Truck. The injuries received by the appellant rendered him permanently disabled to do any work. He approached the Motor Accidents Claims Tribunal, Reasi seeking Rs.5.00 lac as compensation for loss of earnings, disablement caused, and the expenses incurred on treatment.
 - 2) The New India Assurance Company Limited, the insurer of the Vehicle, did not file its Response to the Claim Petition despite availing several opportunities so to do. It was thereafter set ex-parte.
 - 3) On the basis of ex-parte evidence, the Motor Accidents Claims Tribunal, Reasi awarded Rs.1.00 lac along with interest @ 6% p.a. as compensation for appellant's

disablement and expenses incurred on treatment vide its Award dated September 16, 2004.

- 4) Dissatisfied with the quantum of compensation, the appellant has come up in Appeal to this Court seeking modification of Tribunal's Award and enhancement of compensation. The insurer too has filed Cross Appeal for setting aside the Award urging that it was not based on legal evidence. None, however, appeared for the Insurance Company when the Appeal and Cross Appeal were taken up for consideration. Finding that on last occasion too, the Insurance Company had opted not to appear, the appellant's Advocate alone was heard on the Appeal.
- 5) The Statements of the appellant and his witnesses Sushil Kumar, Mukhtar Ahmad and Jai Parkash support the appellant's case of his disability to undertake any work because of the injuries received in motor accident due to rash and negligent driving of Truck No.5798-JKQ with which the appellant was employed as labourer. According to them, the appellant was earning Rupees 4/5 thousand per month and his ailing father, wife and minor son were dependent on his earnings. According to the witnesses, because of the injuries received in accident, the appellant was unable to move without crutches.
- 6) The Medical Certificate issued by Medical Record Officer, Medical College Hospital, Jammu, placed on the records of the Tribunal, certifies as follows:-

“ Govt. Medical College Hospital Jammu
Medical Records Department
CERTIFICATE FORM

Medical Report submitted by Dr. Saleem Ahmed Registrar
Ortho IVth to the Medical Superintendent, Govt. Medical
Hospital, Jammu.

Certified that I have examined Mr. Mohammad Tariq S/o Mr. Abdul Rashid R/o Pouni Teh. Reasi Distt. Udhampur aged about 21 yrs on 4.12.2003 vide OPD No. 5842. He is an old case of type IIIrd compound fracture of Lt. proximal tibia with intra-articular

extension. He remained admitted in Ortho unit IVth w.e.f 22.11.2001 to 16.2.2002 vide MRD No. 279753 and MLC No. 5009.

He also had fracture of Rt. patella. He was operated on 22.11.01 and external fixator Lt. leg was applied popliteal artery and vein were repaired and fracture patella on Rt. side was fixed with K-wires and tension band wiring. At present he is suffering from stiffness of Lt. ankle with equinus deformity and stiffness of Lt. knee with range of motion 15-30 with chronic osteomyelitis of Lt. tibia. He has also stiffness of Rt. Knee with range of motion 0-90. He is permanently disabled by his Lt. Limb and Rt. Limb and his cumulative disability amounts to 50% (Fifty percent).
MOI. Two black moles on left cheek.

Countersigned
Dr. Anil Gupta
Act. H.O.U ortho IVth

sd/-
Dr. Saleem Ahmed
Registrar Ortho IVth

Government Medical College Hospital, Jammu.

No. MRD/4067

Dated 11.12.2003

Copy to the:-

Mr. Mohd. Tariq S/o Sh. Abdual Rashid R/o Pouni Teh.
Reasi for inf.

Signed in Ink
Medical Record Officer,
Govt. Medical College Hospital,
Jammu
(Seal)"

- 7) The Medical Certificate issued by Medical Record Officer, Medical College Hospital, Jammu corroborates the claimant's version of receiving injuries in accident and disablement caused thereby.
- 8) While considering the appellant's Claim, the Tribunal has not taken note of his monthly income before he was rendered disabled to earn living because of the injuries received in accident. Although the Tribunal has indicated in its Award that the appellant would be unable to move without crutches for rest of his life, yet only Rs.1.00 lac which includes Rs.25,565/- spent on treatment of injuries, was awarded as compensation.
- 9) During the course of consideration of Appeal, the appellant, who was on crutches, showed the condition of his lower limbs.

The wounds were oozing and the lower limbs were in bad shape. According to the appellant, the doctors had advised amputation of leg but this could not be done because of non-availability of funds.

- 10) I have considered the appellant and his learned counsel's submissions. Law laid down by Hon'ble Supreme Court of India in *Raj Kumar vs. Ajay Kumar and another*, reported as (2011) 1 SCC, 343 has been taken note of while considering the material placed on records of the Tribunal.
- 11) Before examining the appellant's case for enhancement of compensation, it would be advantageous to refer to what was said by Supreme Court of India on General Principles relating to compensation in injury cases. It reads thus:-

“ General Principles relating to compensation in injury cases:

The provision of the Motor Vehicles Act, 1988 (“the Act”), for short) makes it clear that the Award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The Object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.”

- 12) The evidence produced by the appellant amply demonstrates that the injuries received by him in motor vehicular accident have disabled him for rest of life to earn his living. This apart, he has suffered pain and trauma and continues to remain in painful condition as it was so demonstrated when he appeared in the Court.

Having been disabled to earn living because of the injuries received in motor accident at the age of 19, his disability is required to be taken as hundred percent notwithstanding the fact that the Medical Certificate indicates him to have suffered 50% disability. This is so

because his permanent disablement to undertake any work to earn living, entitles him to receive compensation for the loss caused to him in his earnings for rest of the life. In terms of the law laid down by Hon'ble Supreme Court of India, the loss caused to him because of his disablement is, therefore, required to be assessed, besides awarding him compensation for pain and trauma.

- 13) Although the claimant did not produce any oral evidence to prove the Medical Certificate and the bills in support of his claim for reimbursement of the amount spent on his treatment and there is no documentary evidence on records about his earning Rs.4/5 thousand per month, yet non production of oral evidence in support of the documents placed on records and the documentary evidence in support of his monthly income does not , in any way, nullify the effect of unimpeachable oral evidence, which otherwise corroborates the case set up by the appellant about his employment as labourer and having suffered injuries disabling him to earn his living for rest of his life.
- 14) In the absence of documentary evidence to support his claim that he was earning Rs.4/5 thousand per month by working as labourer with Truck, it is difficult to record finding as to the exact monthly income of the appellant. However, the oral evidence produced by him amply demonstrates and proves that he was working as labourer and feeding his family from his income. In these circumstances, some guess work needs to be applied to determine his income. It would be safe to take his monthly income as Rs.2,000/- when he was disabled because of the injuries. The annual loss caused to him because of his disablement would, therefore, be Rs.24,000/-. The suitable multiplier in view of his age, as

indicated in *Sarla Verma's* case, would be 18. Applying multiplier method for assessing compensation, he would entitle to Rs.4,32,000/-. Adding Rs.25,000/- as compensation for pain and trauma and Rs.20,000/-, which may be needed by him for further operation, the appellant is found entitled to Rs.4,77,000/- as compensation.

The above amount of compensation, taking over all view of the appellant's case, would be just and reasonable compensation to him for the disablement caused, in that, if the above amount was kept in a Fixed Deposit, it would yield near about the same amount, by way of monthly interest, which the appellant had been spending for his and his family's sustenance.

- 15) In view of the above, finding of the Tribunal is modified and the appellant held entitled to Rs.4,77,000/- as compensation along with interest @ 6% per annum.
- 16) This Appeal, accordingly, succeeds and is, therefore, allowed modifying the Motor Accidents Claims Tribunal, Reasi's Award dated 16.09.2004 as Award for an amount of Rs.4,77,000/- along with interest @ 6 % p.a. from the date of filing of the Claim Petition till its realization.

Cross Appeal (C) No.6/2005 shall stand dismissed.

Insurance Company to satisfy the Award within six weeks.

(J.P.Singh)
Judge

Jammu:
09.12.2011
Vinod.