IN THE HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CIMA No. 546/2009

Cross Appeal No.04/2010

Date of decision: 25 /03 /2011

Bajaj Allianz General Insurance Co. Ltd

Versus

Anshul Verma and others

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

***Appearing Counsel*:**

For the Petitioner(s)/ appellant(s): Mr. Baldev Singh, Advocate

For the respondent(s) : Mr. A.K. Gandotra, Advocate

1. Whether approved for reporting in law journals? :**Yes/No/Optional**
2. Whether approved for publishing in Press ? : **Yes/No**

On 30th of November 2006, at about 3:30 P.M., vehicle No.JK02W/2178, driven rashly and negligently by Shri Parveen Singh – respondent No.3 herein, hit Master Anshul Verma – respondent No.1, at Paloura, Mandi Chowk, Janipur, Jammu. The injured was shifted to

Government Medical College, Jammu, and remained hospitalised for a period of more than five months. The injured through his father Shri Pawan Kumar, laid a claim petition under section 166/140 of Motor Vehicles Act before the Motor Accident Claims Tribunal, Jammu (in short "Tribunal"). The respondent No.1, in the claim petition, registered as File No.196 Claim, sought compensation of Rs.13,05,000/- with interest @ 12% per annum, on account of medical expenses, special diet, conveyance, loss of academic year, loss of earning capacity, pain and suffering, and future medical expenses. The respondent No.1 gave break-up of compensation demanded on different counts in para 21 of the claim petition.

The insurance company – present appellant, opposed the claim petition on the grounds that driver of offending vehicle – respondent No.3, did not possess valid and effective driving licence at the time of accident. The appellant also contested the claim as regards medical expenses incurred by respondent No.1, after the accident as also the period of hospitalisation of the respondent No.1 as pleaded in claim petition. The appellant even

disputed involvement of offending vehicle in the accident. The amount of compensation claimed by respondent No.1 was assailed as "huge", "imaginary" and "without any basis", and so was the rate of interest claimed. It was further pleaded that the accident had taken place due to negligence of respondent No.3.

The appellant – insurance company, in amended objections filed on 23rd April 2009, opposed the claim petition further on the ground that the offending vehicle at the time of accident was being plied in violation of route-permit and the appellant for the said reason was absolved of its obligation under the insurance policy to pay any compensation to respondent No.1.

The Tribunal, on perusal of pleadings, settled the following issues for determination:

1. *Whether an accident took place on 30.11.2006 at Paloura near Mandi Janipur Chowk Jammu due to rash and negligent driving of offending vehicle No.JK02W/ 2178 in the hands of erring driver in which petitioner Anshul Verma sustained grievous injuries? OPP*
2. *If issue No.1 is proved in affirmative whether petitioner is entitled to the compensation if so what amount and from whom? OPP*

3. *Whether driver of offending vehicle at the time of accident was not holding valid and effective driving license; if so how and what is its effect? OPR3.*
4. *Whether the insured has committed the violation of the route permit, if so what is its effect on the claim petition? OPR3*
5. *Relief. O.P. Parties."*

The respondent No.1 examined four witnesses namely Pawan Kumar, Vinod Kumar, Makhan Singh and Dr. S.K. Chadgal to substantiate his case before the Tribunal, and also appeared in the witness box. The appellant on the other hand decided not to examine any witness in support of case set up in opposition to the claim petition.

The Tribunal, on going through the pleadings and evidence brought on record, decided all the issues in favour of respondent No.1 and against appellant. The Tribunal held that the vehicular accident, causing injury to respondent No.1, had taken place due to rash and negligent driving of vehicle No.JK02W/2178 on 30th November 2006 at Mandi Chowk, Janipur, Jammu. The respondent No.1 was held to have failed to prove that respondent No.2 was not having a valid and effective driving license at the time of accident or to have been

plying the vehicle at the time of accident in violation of route-permit. The Tribunal, after returning finding on issues 1 to 4, proceeded to assess just compensation, payable to respondent No.1. The Tribunal, taking age of respondent No.1 as 08 years on the date of accident, applied multiplier of 15 and worked out compensation, payable on account of loss of income, as Rs.90,000/-, taking Rs.15,000/- as notional income and 40% as the extent of permanent disability. The Tribunal, after scanning evidence on record including statement of doctor, who treated respondent No.1 after respondent No.1 was hospitalised due to accident in question, awarded an amount of Rs.80,000/- on account of pain and suffering and further an amount of Rs.80,000/- on account of loss of amenities of life. An amount of Rs.70,000/- was awarded on account of medical expenses and Rs.10,000/- and Rs.20,000/- on account of transport charges and special diet during the period of recovery. The Tribunal thus in all awarded an amount of Rs.3.50,000/- with interest @ 7.5% p.a. from the date of filing of claim petition till realisation except on the amount awarded on account of loss of future income.

The appellant – insurance company questions the award on the grounds that the Tribunal erroneously assessed the compensation on account of loss of income and arbitrarily took Rs.15,000/- as annul income of respondent No. 1. It is urged that respondent No.1, as per his own showing, was guilty of negligence and the Tribunal completely shut its eyes to the relevant material available on the file. The Tribunal is said to have erroneously assumed 40% permanent disability as also loss of income and loss of amenities of life, without there being any supporting material to draw conclusions regarding these aspects of the case. It is pointed out that while respondent No.1 claimed only an amount of Rs.5,000/- on account of transport charges, the Tribunal went ahead to grant an amount of Rs.10,000/- on said count. It is further pleaded that respondent No.1, having been responsible for delay in disposal of claim petition, cannot be rewarded by awarding interest @ 7.5.% on the compensation assessed.

The respondent No.1, not contended with the amount of compensation, awarded in his favour by the Tribunal, has in Cross Appeal registered as Cross Appeal

No.04/2010, assailed the Award on the grounds that the Tribunal, while assessing compensation on account of loss of income, failed to appreciate that the accident had the effect of restricting job opportunities of respondent No.1. The amount of Rs.90,000/- on account of loss of future income, it is urged, is too meagre and far less. The Tribunal is said to have made the assessment, oblivious to the fact that the vehicular accident in question had resulted in 40% permanent disablement and diminished the prospects for respondent No.1 to tie marital knot with the girl of his choice. It is pleaded that while assessing just compensation, the Tribunal has very conveniently failed to appreciate that respondent No.1 was because of the accident likely to incur expenses on future medical treatment. The respondent No.1 on the grounds urged in the Cross Appeal seeks enhancement of compensation assessed by Tribunal on the grounds taken in the memorandum of appeal.

I have gone through the pleadings and also record received from Tribunal. I have heard learned counsel for the parties.

The respondent No.1, as stated, examined four witnesses to substantiate his claim for compensation. The witnesses examined include PW – Dr. Som K. Chadgal, Orthopaedic Surgeon, who treated respondent No.1 at Government Medical College, Jammu. The witnesses – Pawan Kumar, father of respondent No.1, Vinod Kumar and Makhan Singh, witness to accident in their testimony, gave viewed details of vehicular accident, the pain and trauma suffered by respondent No.1 and also expenses incurred on treatment of respondent No.1 during hospitalisation in Government Medical College, Jammu, with effect from 30th November 2006 to 29th December 2006 and loss of income as also loss of amenities of life to respondent No.1, because of the accident. PW – Dr. Som K. Chadgal gave an elaborate account of treatment and medical procedures undergone by respondent No.1 during his hospitalisation. PW – Dr. Som K. Chadgal stated that respondent No.1 was admitted as a case of crush injury of left foot with unstable ankle and the fracture dislocation of the ankle, was managed by putting steinmanes pins and skin grafting. Respondent No.1, after medical procedures were

done, was re-examined at Government Medical College, Jammu. The respondent No.1 was found to have no movement at left ankle joint tarsal and metatarsophalongeal joints of left foot. He was also found to have chronic osteomyelitis of the tarsal bones and with equines and inversion of foot. The respondent No.1, after he was discharged, complained of pain in left ankle and foot when respondent No.1 put weight on the left ankle and made an attempt to walk. Respondent No.1 could not walk without a limp.

The appellant – insurance company on the other hand did not adduce any evidence to prove that it was not liable to pay any compensation because of fake driving licence and vehicle having been plied at the time of accident against the route-permit. The appellant – insurance company did not even adduce any evidence to controvert the evidence adduced by respondent No.1, touching the extent of loss suffered by respondent No.1 because of accident or the amount of just compensation, the respondent No.1 was entitled to claim. In view of failure on the part of appellant – insurance company to rebut the evidence adduced by respondent No.1, learned

Tribunal was left with no option but to place reliance on the evidence so produced. There was no reason for the Tribunal to disbelieve the statement of PWs – Pawan Kumar, Vinod Kumar, Makhan Singh and Dr. Som K. Chandgal, who, as already pointed out, in their statements gave elaborate and viewed description of the vehicular accident in question, the pain and discomfort suffered by respondent No.1, loss of academic year, loss of amenities of life. The appellant – insurance company, after it frittered away the opportunity given to it, to controvert and contradict the evidence brought on file by respondent No.1, cannot be heard saying that the award was not based on any evidence.

On going through the award, impugned in the appeal, it is more than clear that the Tribunal made an elaborate discussion of evidence available on the file, touching the amount of compensation claimed on each count and on objective appraisal of the available evidence, determined the compensation payable on the basis of well settled principles/ guidelines that are to guide the Tribunal while determining the compensation. The Tribunal as against Rs.5,00,000/- claimed by

respondent No.1 on account of loss of income – earning capacity, awarded an amount of Rs.90,000/-, having due regard to the extent of disability. Similarly, the Tribunal while determining the amount of compensation on account of medical expenses incurred, did not go by claim projected in para 21 of the claim petition, but arrived at its own conclusions having regard to the testimony rendered by PW1 - Pawan Kumar and PW4 – Dr. Som K. Chadgal, as also treatment of respondent No.1 at Government Medical College Jammu and thereafter at Dr. Hardas Singh Orthopaedic Hospital and Super Speciality Centre, Amritsar. The Tribunal as against Rs.1,80,000/- claimed on account of medical expenses, awarded an amount of Rs.70,000/-. The amount awarded on account of pain and suffering and loss of amenities of life, is Rs.1,60,000/- as against Rs.2,00,000/-, claimed by respondent No.1. The Tribunal has not assessed any separate compensation on account of loss of one year studies, presumably taking the loss so suffered to be covered under loss of amenities of life. In the circumstances as against Rs.5,00,000/- claimed (Rs.3,00,00/0 on account of loss of precious one

year in the studies and Rs.2,00,000/- on account of pain and suffering and mental agony etc) only Rs.1,60,000/- is awarded by Tribunal.

The Tribunal, while determining just compensation, has taken into account case law on the subject and made exercise in light of principles laid down in the reported cases referred to in the award. There is thus no merit in the case set up by appellant – insurance company to question the award except as it regards to assessment of compensation on account of transportation charges. There is substance in the ground urged in the appeal that Tribunal ought not to have awarded Rs.10,000/- on account of transportation charges when respondent No.1 had restricted the claim on said count to an amount of Rs.5,000/-. Reliance placed by learned Tribunal while awarding an amount of Rs.10,000/- on account of transportation charges as against the claim of Rs.5,000/- on law laid down in *AIR, APSRTC Vs M. Ramadevi and ors, 2008(1) Supreme 566*, is grossly misplaced. Where the compensation claimed has a reference to the actual expenditure incurred by the claimant, the Tribunal cannot by flight of imagination, work out a different

amount, claiming that the amount projected does not create any impediment in its way to make an award over and above the amount claimed. Such a course may be open, where the compensation is to be made on the basis of some guesswork or hypothetical considerations, like in case of pain and agony or loss of expectations of life but not in a case where the claimant bases his claim on the actual expenditure incurred by him. It is understandable that a claimant either because of ignorance or because of having no comprehension of the agony and incapacity that awaits him in his life because of the accident, may not be in position to reflect the right amount in the claim petition, the Tribunal in such case(s) may on its own work out the probable loss likely to be suffered by claimant because of direct or indirect consequences of the accident and not feel handicapped in making the assessment, of course, in a dispassionate and objective manner. The Tribunal, as we know, is under Statutory duty to assess "just compensation" and in the areas like identified above the Tribunal may embark on the said exercise independent of the claim projected by the claimant, but as already said there is no scope for such an

exercise where the claimed amount has reference to actual expenditure incurred by claimant. So viewed where a claimant puts forth the claim on account of medical expenses, transportation charges etc. on the basis of the expenditure incurred, the Tribunal lacks jurisdiction to make an exercise to work out the compensation on said counts, oblivious to the claim set out in the petition. The law laid down in *Budhwanti versus Nidhan Singh and others, 2009 ACJ 2651*, is of no help to the appellant – insurance company as the facts of the reported case are markedly different from facts of present case.

In the circumstances the appeal is to succeed to the extent of the amount awarded on account of transportation charges.

Let us now focus on the grievances voiced by respondent No.1 in Cross Appeal No.04/2010. The respondent No.1 is sour that the Tribunal has not awarded any compensation on account of loss of marriage and future medical expenses. It is pleaded that the amount awarded thus does not reflect the loss suffered by claimant and cannot be held to be just

compensation within meaning of Section 166 Motor Vehicles Act. The grievance as regards failure on the part of Tribunal to take into account the loss of marriage prospects is without any substance and thus unsustainable. The respondent No.1 has not in his claim petition laid claim to compensation on account of loss of marriage prospects. The Tribunal, obviously, was not expected to look into the said aspect of the case and proceed ahead to determine the compensation on account of loss not so projected by respondent No.1. The respondent No.1 thus cannot draw any support from law laid down in *N. Narahari versus versus Suresh Kumar and another, 2001, ACJ, 1383.*

As regards award of compensation for loss of amenities of life, the Tribunal has awarded an amount of Rs.80,000/- on said count, though no compensation was specifically claimed on said count. The Tribunal appears to have assumed the claim to have been included in Para 21 (4) & (6). The respondent No.1 thus cannot press into service law laid down in *R.D.Hattangadi versus Pest Control (India) Pvt. Ltd. and others, 1995 ACJ 366.* Learned counsel for appellant – insurance company/

respondent No.1 on the other hand has rightly relied on law laid down in *National Insurance Co. versus Jawahar Lal & others, 2009 (Supp.) JK Judgments HC-234*, to canvass that the Tribunal, in absence of pleadings, cannot order payment of compensation.

The grievance as regards failure of Tribunal to award compensation on account of future medical expenses has, however, merit. The Tribunal, having regard to the nature of injury, medical treatment administered and medical procedures undergone by respondent No.1 ought to have considered grant of compensation on account of future medical expenses, more so when such a claim was specifically laid and projected in the claim petition. It needs no emphasis that the child of tender age with restricted movement of left ankle joint, tarsal and metatarsophalongeal joints, chronic osteomyelitis of the tarsal with steinmanes pins in ankle joint and an external fixator and complaining of pain left in left ankle, even three years after accident, on 24th March 2009 when PW – Dr. Som K. Chadgal, appeared to record his testimony in the Tribunal, would require constant medical treatment and periodical

medical checkups. The Tribunal was duty bound to take into account future medical expenses while determining just compensation. So viewed compensation determined by the Tribunal, cannot be held to be just compensation within meaning of Section 166 Motor Vehicles Act. The Cross Appeal thus is to succeed to the extent of award of compensation on account of future medical expenses. The respondent No.1 is entitled to be awarded at least 50% of the amount awarded by the Tribunal on account of medical expenses, so as to cover the future medical expenses likely to be incurred by respondent No.1.

In view of above discussion while award dated 17th September 2009 is upheld and maintained except to the extent of compensation determined on account of transportation charges, which shall be Rs.5,000/- in place of Rs.10,000/-, the appellant in Cross Appeal – respondent No.1 is further held entitled to an amount of Rs.35,000/- on account future medical expenses.

Resultantly CIMA No.546/2009 and Cross Appeal No.04/2010, are disposed of in the following manner:

Appellant – Anshul Verma is held entitled to compensation of Rs.3,80,000/- (Rupees three lacs and eighty thousand only) on all counts less by interim compensation already paid and the appellant – insurance company/ respondent No.1 in the Cross Appeal held under obligation to pay an amount of Rs.3,80,000/- with interest @ 7.5% P.A. except on future loss of income. Half of the compensation amount shall be kept in fixed deposit, in the first instance, for a period of six years with liberty to respondent No.1 to receive the interest that may accrue thereon to meet medical and other expenses. The Insurance Company – appellant in CIMA No.546/2009 and respondent in Cross Appeal No.04/2010, shall bear the costs throughout.

Decree sheet be drawn up. Record be sent down

Disposed of.

(Hasnain Massodi)
Judge

Jammu
25 /03 /2011
Ajaz Ahmad