COURT OF JAMMU AND KASHMIR AT JAMMU

Case: CIMA No.129/2008 c/w Cross Appeal (C) No.07/2009

Date of Decision:08.04.2011

Union of India and anr.	Vs.	Yakub
Yakub	Vs.	Union of India & anr.

Coram:

Hon'ble Mr. Justice Virender Singh, Judge

Appearing counsel:

For appellant(s) : Mr. N. A. Choudhary, Advocate.
For respondent(s): Mr. P. S. Parmar, Advocate.

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i) Whether approved for reporting in Press/Journal/Media : No

ii) Whether to be reported in Digest/Journal : Yes

Yakub (for short 'claimant'), aged 40 years, met with an accident with army vehicle make jonga bearing registration No.92B-52046H being driven by one Hav. Jasbir Singh of 4 Dogra Regiment on 28.04.1999 and received injuries as a pillion rider on a scooter bearing registration No.JK02F-7461, whereas one Ramesh Chander, who was driving the said scooter died in it. A criminal case (FIR No.113/1999) was registered against aforesaid Hav. Jasbir Singh under Sections 279/337/338/304-A RPC, in which, he was ultimately acquitted.

The claimant filed a petition praying for compensation under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') to the tune of Rs.8,50,000/- (Rupees eight lacs fifty thousands only) under various heads. Learned Motor Accidents Claim Tribunal Jammu (for short 'the Tribunal') has held him entitled to compensation of Rs.1,40,000/- in all with simple interest at the rate of 7% p.a. except interest on pecuniary damages from the date of institution of the petition till realization of the award money. Aggrieved of the said award, the appellants-Union of India & another have preferred CIMA No.129/2008 and Cross Appeal (C) No.07/2009 by the claimant for enhancement of the compensation. Hence, these two appeals have been clubbed together for disposal by this Court.

It is averred by the claimant that on the date of accident, he was sitting on the scooter bearing No.JK02F-7461 being driven by Ramesh Chander (since deceased) and when they were proceeding towards Udhampur at Garhi (place of accident), one army jonga bearing No. 92B-52046H being plied by Hav. Jasbir Singh of 4 Dogra Regiment came from the opposite direction in a rash and negligent manner and at a very high speed, hit the scooter resulting into death of Ramesh Chander and multiple

injuries to the claimant. It is then averred by the claimant that he suffered head injury and compound fracture right femur, for which, he remained admitted in Udhampur Hospital for sometime, where from he was referred to Government Medical College & Hospital Jammu, where he remained admitted from 28.04.1999 to 17.06.1999. He was operated upon and a rod was put in his right leg. The disability of the claimant of right lower limb has been assessed as 15% with no chance of any improvement in near future. The claimant asserted that on account of the aforesaid disability, he was unable to bend his leg after the accident or even walk at a reasonable pace. So far as expenditure is concerned, the claimant averred that he had spent more than Rs.60,000/- on his treatment and anticipated another expenditure of Rs.20,000/- for undergoing further surgery for the removal of implant.

He averred that at the time of accident, he was working as Pastor in KEF Church, Jyotipuram Reasi, earning Rs.6,000/- per month by performing religious ceremonies at the time of marriage and other functions of the Christian Community.

Contesting the petition of the claimant, the appellants (respondents before the Tribunal) pleaded that

the accident had occurred on account of fault of the scooter driver only, who was driving it in rash and negligent manner and had banged into the army vehicle. It was further pleaded that Court of Enquiry was held by Army authorities in this regard in which the scooterist was held responsible for this accident.

From the pleadings of the parties, the following issues were struck:-

> "(i) Whether an accident took place on 28.4.1999 at Ghari NHW IA, Udhampur due to rash and negligent driving of the army offending vehicle No.92B52046H by its driver in which petitioner sustained injuries, if so of what nature? (OPP)
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> (ii) If issue No.1 is proved in affirmative whether petitioner is entitled to the compensation, if so of what amount and from whom? (OPP)
>
> (iii) Relief."

While returning finding in favour of the claimant on issue No.1, the learned Tribunal held Hav. Jasbir Singh responsible for causing the accident.

On issue Nos.2 & 3, the learned Tribunal while considering the case of the claimant on all aspects,

awarded compensation to the tune of Rs.1,40,000/- under the following different heads:-

"PECUNIARY DAMAGES

a)Loss on account of disability	:Rs.50,000/-
b)Loss of income for one year	:Rs.50,000/-
c) Loss on account of medical Expenditure.	:Not proved.
Total	:Rs.1,00,000/-

NON-PECUNIARY DAMAGES

a)Pain and suffering	:Rs.20,000/-
b)Loss of amenities of life	:Rs.20,000/-
Total	:Rs.40,000/-"

Heard Mr. Choudhary, learned counsel appearing for Union of India and Mr. Parmar, learned counsel appearing for claimant.

Mr. Choudhary submits that the finding returned by the learned Tribunal on Issue No.1 in favour of the claimant and against the respondents deserves to be disturbed simply on one ground that without the driver of the offending vehicle being arrayed as party respondent being the main tort feasor, he has been held to be responsible for the accident. Therefore, on this short count only, the claim petition filed by the claimant deserves to be rejected.

On quantum of compensation also, Mr. Choudhary joins issue submitting that without there being any cogent evidence, the claimant has been awarded Rs.1,40,000/- and therefore, the amount of compensation deserves to be reduced reasonably.

Per contra, Mr. Parmar appearing for the claimant, submits that may be the claimant in his original claim petition has not arrayed Hav. Jasbir Singh as party respondent before the Tribunal, the claim petition still could be determined as the driver of the offending vehicle is not a necessary party. He can at the most be said to be a proper party. In support of submissions, Mr. Parmar has relied upon a judgment handed down by this Court in **'Union of India and others Vs. Nusrat Khan and another' 2009 ACJ 2875**.

Mr. Parmar, otherwise, submits that there is ample evidence on record to prove that Hav. Jasbir Singh was rash and negligent and on account of his fault only the present accident had taken place. Therefore, the learned Tribunal has rightly decided issue No.1 in favour of the claimant.

On quantum of compensation, learned counsel submits that the claimant has received 15% permanent disability in this case and at the time of accident he was

working as Pastor in the Church, for which, he had projected his monthly income as Rs.6,000/- only and still the learned Tribunal has granted very less compensation. His grievance is that without any cogent reason, recurring loss of income of the claimant as Rs.5,000/- only in a year has been assessed and, on it, even the multiplier of 10 is also on lower side. Therefore, the compensation granted under different heads is not the just and fair compensation and, as such, it deserves to be enhanced suitably in Cross Appeal (C) No. 07/2009.

Issue-wise finding:

This Court being the First Appellate Authority is an authority both on facts and law, therefore, I am once again entering into details of the present case with regard to both the main issues.

Issue No.1.

No doubt, the driver of the offending vehicle Hav. Jasbir Singh was not arrayed by the claimant in the main petition, but in my considered view, in the present set of circumstances, that aspect would not make any difference as the accident is not only admitted by the appellants in their reply filed to the main writ petition, may be, taking the plea that the rider of the scooter was driving it in rash and negligent manner, which resulted in the collision with

the army vehicle (jonga), even driver Hav. Jasbir Singh has also stepped into the witness box in support thereof. He categorically admitted the accident and shifted the blame on Ramesh Chander (deceased). He also produced the copy of the judgement of criminal case in which he stood acquitted. He has also been cross-examined at length from claimant side. In support of his case, driver Hav. Jasbir Singh also produced one Sukhdev Singh, who also toed his plea of defence.

In view of the above, when driver of the offending vehicle had himself stepped into witness box being the first tortfeasor, even if he has not been arrayed as party respondent would not technically make any difference. He can be said to be party to the proceedings. Therefore, the claim petition cannot be dismissed on this ground alone as submitted by Mr. Choudhary, learned counsel for the appellants. My view is fortified by a judgment of Hon'ble Supreme Court handed down in case '**Machindranath Kernath Kasar v. D. S. Mylarappa & Ors.**' reported in **AIR 2008 Supreme Court 2545**.

In the aforesaid judgment, while examining the issue, whether in the claims cases before the Motor Vehicles Accident Claims Tribunal, the driver of a vehicle who has been accused of negligence is a necessary party

to the proceedings or whether the owner alone can be impleaded, their Lordships while observing that natural justice would mandate involvement of a driver as an adverse finding on negligence cannot and should not be made against him without giving the opportunity to atleast make a representation as witness, observed in the given circumstances of that very case that the driver of the bus had sufficient opportunity to make a representation against the allegation of negligence as he was examined as RW1 in the claim cases filed by the passengers, even though he was not formally impleaded as a respondent and, therefore, upheld the finding of the High Court that the driver was a 'party' to the proceedings. So is the factual position in the case at hand.

Viewed, thus, I do not detain myself any further in delving deep into the aforesaid aspect.

The evidence on record discussed by the learned Tribunal, in my considered view, is enough to hold that the accident had occurred on account of rash and negligent driving of the driver of army vehicle bearing No. 92B-52046H. It is well settled that acquittal in a criminal case would have no bearing upon the claim case before the Tribunal as in a criminal case the prosecution

has to prove the charge beyond any shadow of reasonable doubt, whereas before the accident Tribunal the claimant(s) is supposed to prove the negligence of the driver of the offending vehicle on preponderance of probabilities, which onus, is discharged by the claimant in the present case. Similarly, discharge of the driver of the offending vehicle in an enquiry held by the army would again have no effect. Even otherwise, the finding returned by the Tribunal is that no document was produced by the driver in this regard. Therefore, the finding returned by the Tribunal on Issue No.1 deserves to be upheld, as such, is upheld.

Issue No.2.

Let us now advert to the quantum of compensation to which the claimant is entitled.

As stated above, the claimant was of the age of 40 years on the date of accident. He projected his earning as Rs.6,000/- per month prior to the accident. When stepped into the witness box, he stated that he remained confined to bed for one year after accident and during this period, it was his total loss of income. He further deposed that only after 3 /4 years of the accident, he was able to render the services in the Church and on account of this accident his come had reduced to Rs.3,000/- p.m. He

further stated that he was walking with the help of stick. Certain medical bills (worth Rs.4,567/-) were also produced by him.

From the evidence of doctor, who had given treatment to the claimant, it revealed that he (claimant) had suffered fracture shaft of femur right side with head injury. The disability of right lower limb was assessed as 15% with no chance of improvement. Taking all these aspects, the learned Tribunal has awarded Rs.1 lac under the head 'pecuniary damages' and Rs.40,000/- under the head 'non-pecuniary damages'.

I have examined the case of the petitioner from all angles and in my view, the compensation awarded to him is not just and fair compensation and it deserves to be enhanced.

In case **'Ramesh Chandra v. Randhir Singh and others'** reported in **(1990) 3 SCC 723**, the Apex Court held that "incapacity or disability to earn livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprival of earnings of a conceivable period."

In case '**Divisional Controller, KSRTC v. Mahadeva Shetty & another'** reported in **(2003) 7 SCC 197** where

the claimant was a mason, the Hon'ble Supreme Court has held thus:-

> ".....It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired."

In case **'R. D. Hattangadi v. Pest Control (India) (P) Ltd. & others'** reported in **(1995) 1 SCC 551**, while fixing compensation in case of injury affecting earning capacity, the Apex Court held as under:-

> "...**No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate**

such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame."

In the aforesaid judgment only, the Apex Court held thus:-

"**in its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.**"

In a very recent judgment handed down by the Hon'ble Supreme Court in case '**Yadava Kumar v. The Divisional Manager, National Insurance Co. Ltd. & another**' reported in **2010 (5) R.A.J. 116**, while drawing the distinction between 'compensation' and 'damage' their Lordships have observed in para 20 as under:-

"20. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a

slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

In the aforesaid judgment, while referring to Second Schedule under Section 163 of Motor Vehicles Act, which gives a structured formula for the calculating compensation in accident cases, the Hon'ble Supreme Court held that multiplier method is to be applied in case of injuries also.

In the aforesaid judgment on the issue of applying multiplier method keeping in mind the percentage by which the injured person's earning capacity is reduced, their Lordships referred to the following judgments rendered by the Supreme Court:-

1. '**Sunil Kumar v. Ram Singh Gaud and others' 2007 (4) R.C.R. (Civil) 794**; and
2. '**Mukesh Kumar Sharma v. Ramdutt and Ors.,' 2006 ACJ 1792**.

In the aforesaid case, the permanent disability received by the injured was assessed as 20% and the income was assessed as Rs.36,000/- per annum. While taking into account the Second Schedule under Section 163 of the Act, which gives a structured formula for calculating compensation in case of accident, considering the age of the injured, multiplier of 17 was adopted. Ultimately loss of future earning was assessed as Rs.1,22,400/-.

Let us also apply the ratio of aforesaid judgments in the facts of present case for awarding just and fair compensation to the claimant.

No doubt, the claimant could not put forth any documentary evidence with regard to his monthly income. However, when he stepped into the witness box, he stated that his monthly income was Rs.6,000/- and because of the accident it has been reduced to Rs.3,000/-. He also stated that he had resumed his services in the Church after 3-4 years. From this, the learned Tribunal observed that the claimant was rendering services in the Church and earning Rs.3,000/- per month. Keeping in view the loss of income on account of less mobility, the learned Tribunal only assessed Rs.5,000/- in a year stating that

the occasions of marriage or other religious festivals are very few and then applied the multiplier of 10.

In my considered view, keeping in account the permanent disability of the claimant at 15%, the approach adopted by the learned Tribunal is not correct. The learned Tribunal has assessed as Rs.50,000/- annual income of the claimant and the said amount has also been awarded to him as loss of income for one year under pecuniary damages. If it is so, then the claimant is also entitled to the same compensation under the same head for another 3-4 years as well. In that eventuality, he is entitled to claim another Rs.1.5 to Rs.2 lacs. If we go by this calculation, the claimant was earning more than Rs.4,000/- per month. For assessing the future loss of income, I apply some guess work keeping in view the age of the claimant and his job as Pastor and take his monthly income as Rs.5,000/-. It comes to Rs.60,000/- per annum. At the time of accident, his age was 40 year. By applying the multiplier of 14, it comes to Rs.8,40,000/-. Percentage of disablement is 15%. The loss of future earning would be, thus, **Rs.1,26,000/**-. In my view, the claimant is entitled to it.

Let us now examine, whether the claimant is entitled to the enhancement of compensation under other heads also.

Admittedly, on account of medical expenditure, no amount has been awarded to him observing that the same is not proved. It is not necessary that the claimant will keep all the medical bills with him. As per medical evidence, he remained admitted in the hospital for considerably good period. Therefore, it has to be presumed that he must have spent reasonably good amount for his medical treatment. When the claimant stepped into the witness box, he stated that he was still on medication. Keeping all these factors into consideration, I grant him Rs.50,000/- as lump sum on account of medical expenditure.

In my considered view, the amount granted under the heads 'pain and suffering' and 'loss of amenities of life' as Rs.20,000/- (each head) is just and fair.

After considering the case of the claimant on all aspects, he deserves to be granted **Rs.2,16,000/-** as compensation, under following different heads:-

Rs.1,26,000/- for loss of future earning

Rs.50,000/- on account of medical expenditure

Rs.20,000/- for pain and suffering

Rs.20,000/- for loss of amenities of life

In view of the aforesaid discussion, total amount of compensation of Rs.1,40,000/- as already awarded by the learned Tribunal deserves to be enhanced by another sum of **Rs.76,000/-** (Rs.2,16,000/- less Rs.1,40,000/-). Ordered accordingly.

The rate of interest @ 7% as already awarded by the Tribunal except the interest on pecuniary damages shall remain as it is without any modification/ alteration.

The net result is that CIMA No. 129/2008 filed by Union of India & another is dismissed, whereas Cross Appeal (C) No. 07/2009 filed by the claimant is allowed by modifying the award in the aforesaid terms.

(Virender Singh)
Judge

JAMMU
08.04.2011
Narinder