

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CIMA No. 180/2009

CMP Nos. 417/2009 & 262/2009

Date of Decision: 26.04.2011

National Insurance Company Limited Vs Pawan Kumar & anr.

Coram:

Mr. Justice J. P. Singh.

Appearing Counsel:

For Appellant (s) : Mr. Jugal Kishore Gupta, Advocate.

For Respondent (s) : Mr. Raghu Mehta, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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The National Insurance Company Limited has filed this Appeal questioning the Motor Accidents Claims Tribunal, Jammu's Award of January 30, 2009 in File No. 267/Claim, whereby compensation amounting to Rs.9,76,000/- was awarded to Pawan Kumar- respondent for the disability suffered by him as a result of the injuries received while travelling in a Matador, on its head on collision with a Tipper bearing Registration No. JK02E/1965, on March 13, 2006.

Not disputing the findings of the Tribunal on the issues framed to deal respondent No.1's Claim Petition, barring the one pertaining to the quantum of compensation to which the claimant may be entitled to, the appellant's learned counsel, Mr. Jugal Kishore submitted, that having suffered 40% disability of the right upper limb, the claimant's loss of earning capacity was required to be assessed taking his monthly income at Rs.1500/- and not Rs.3000/- into consideration.

Substitution of the artificial limb having been ruled out by the Doctor produced by the respondent to substantiate his Claim, the award of Rs. 2.00 lac to meet the expenses needed for substitution of the Artificial limb was impermissible, says the learned counsel.

Rs. 1.00 lac each awarded for pain and sufferings and loss of amenities and pleasures of life too has been questioned as unsustainable.

Appearing for the respondent-claimant, Mr. Raghu Mehta, who was requested to assist the Court, as the respondent, appearing in person, had expressed inability to ensure the presence of his learned counsel to argue the Appeal, on the other hand, submitted that having lost all the prospects of promotion in the Police Department because of the disability suffered as a result of the injuries received in the Motor Vehicular Accident, the claimant was entitled to compensation more than the one awarded by the Tribunal, And the Award impugned in the Appeal may not, therefore, warrant interference. According to him had the claimant not suffered the disability, he would have risen to the rank of an Inspector in the Police Department and retired drawing not less than Rs.20,000/- per month as Pension, besides receiving other Retiral benefits. Learned counsel, therefore, submitted that having lost his right to consideration for permanent absorption, promotions and Pension in the Police Department, the compensation awarded by the Tribunal,

looked from any angle could not be termed as exorbitant or unjust as contended by the appellant's learned counsel.

I have considered the submissions of learned counsel for the parties and perused the evidence, the material placed on the records of the Tribunal by the claimant, and the Award impugned in the Appeal.

It was not disputed by the appellant's counsel that the claimant was working as Special Police Officer at the time of the accident and according to the past practice had excellent chances of his regularization as Constable in the Police Department, had he not been otherwise disabled to seek entry as Regular employee in the Police Department of the State Government.

In the background of the above factual position and to deal with the submissions advanced at the Bar on the issue as to what should be the just compensation to the claimant for the disability suffered by him in the Motor Vehicular Accident, first of all regard needs to be had to the nature of the injuries suffered by the claimant.

As indicated in EXPW-SKC, the Medical Report submitted by Dr. Som K. Chadgal, Registrar OU-Ist to the Medical Superintendent, Government Medical College Hospital, Jammu, the claimant was certified to have suffered ***crush injury right hand with traumatic amputation of 2nd, 3rd and 4th finger and condy. fracture of 1st and 5th metacarpal***, in the road traffic accident. He remained

admitted in Ortho-Ist vide MRD No. 412331 and MLC No. 1347 w.e.f. 13.03.06 to 15.03.06. He was treated surgically by thorough wound debridement and 1st and 5th right metacarpal was stabilized with K.wire. After discharge, he was attending Ortho OPD vide OPD Registration No. 11747 dated 20.03.06 and 12.06.06. **He was re-examined on 25th September, 2006 vide OPD Registration No. 7789 dated 25.09.06 and was having right flail thumb, amputated 2nd, 3rd and 4th metacarpal at the metacarophalangal joint, stiffness of the 5th metacarpal and of the wrist.** He had severe pain to the right thumb and wrist.

According to the Medical Report, his permanent physical disability of the right upper limb was 40%.

While appearing as a witness in the case, Dr. Chadgal stated that the claimant would be unable to handle weapons and artificial limb could not be fixed in such cases. According to him, the disability would increase to 100% as the claimant would feel difficulty in doing routine work.

The evidence which has come on records reveals that the claimant was getting Rs.1,500/- per month as Honorarium from the Police Department, which was, however, later raised to Rs.3000/- in the year 2007.

In the background of the above factual matrix about the nature of the injuries suffered by the claimant and the admitted position that

he was working in the Police Department on Honorarium, I proceed to deal with the submissions to determine the issue in question.

Appellant's learned counsel's submission that the claimant had neither suffered demotion nor was his salary reduced, because of the disability suffered by him, so he can not be said to have incurred any loss in his earning capacity, is found untenable, because having not yet acquired the status of a Permanent employee in the Police Department and receiving only Honorarium for his temporary engagement, the question of claimant's demotion or drawing less salary may not be relevant to consider his loss of earning capacity. This is so because the loss of earning capacity has to be judged in the light of the claimant's disablement to receive the pecuniary and other service benefits and enjoy other amenities and pleasures of life, which he would have otherwise enjoyed but for the disablement.

What is, therefore, required to be seen is as to how the disability has deprived the respondent-claimant of his future prospects in the Police Department besides his ability to earn as an able bodied person, which he was before the accident, would earn in the ordinary course.

It has come on records that the respondent is now disabled to handle weapons. Because of the disablement rendering him unfit to serve in the Belt Force for his inability to handle weapons, he now loses chances of regularization in the Police Department, besides

competing for entry into Police Service as constable taking benefit of his experience as Special Police Officer.

In other words, all his expectations of becoming a Permanent employee of the Police Department and earning promotions have dashed to the ground depriving him of the enhanced amenities, pleasures and quality of life.

Taking all these factors into consideration and finding that the respondent was a handsome able bodied person before the accident serving in the Police Department as Special Police Officer, though on Honorarium of Rs.1500/- at the time of the accident which was immediately thereafter raised to Rs.3000/-, his average monthly income for assessment of compensation for the disablement caused to him for loss of the earning capacity, needs to be determined taking into account his promotional prospects in the Police Service.

Had the respondent been regularized in service, he would have been earning double the amount he is presently receiving from the Police Department as Honorarium. In the event of his promotions, there would have been increase in his monthly salary. His average monthly income would not thus in any case have been less than Rs. 7000/-. Deducting Rs.3000/- from the average monthly income which the respondent is now getting as Honorarium or which he may otherwise earn by doing sedentary job in case he was retained in the Police or at some other place, his loss of earning

capacity per month can safely be assessed at Rs.4000/- and thus calculated the annual loss of earning capacity to the respondent would come to Rs.48,000/-.

Selecting '16' as the multiplier, in view of the age of the claimant indicated as 25 years at the time of the accident in the Claim Petition, the loss of his earning capacity, applying the Multiplier method to assess compensation, would come to Rs.7,68,000/-.

Even if the appellant's learned counsel's argument that no amount was awardable for replacement of limb were to be accepted, the respondent cannot be denied compensation for pain, discomfort and the inferior quality of life which he would now live with disfigured thumb and amputated fingers. The Award of Rs.1.00 lac by the Tribunal to the claimant under the head of pain and sufferings cannot, therefore, be said to be unjust.

The Tribunal has not, however, awarded any compensation to the claimant for the disfigurement of his right hand. Rs.50,000/-, therefore, would be just compensation to the claimant for the disfigurement of his right hand.

The total compensation to which the respondent-claimant may thus become entitled to, in terms of Section 168 of the Motor Vehicles Act would come to Rs.8,18,000/-.

For all what has been said above, the Award of the Tribunal needs to be modified as Award for an amount of Rs.8,18,000/- carrying 7.5% interest from the date of filing of the Claim Petition.

This Appeal, therefore, succeeds to the extent indicated above and is, accordingly, allowed modifying the Award of the Motor Accident Claims Tribunal, Jammu dated 30.01.2009 in File No. 267/Claim as Award for Rs.8,18,000/- along with interest @ 7.5% per annum from the date of the filing of the Claim Petition till its realization.

The amount deposited by the appellant is directed to be released in favour of the respondent-claimant. The remaining amount, if any, shall be paid by the appellant to the claimant within eight weeks.

(J. P. Singh)
Judge

JAMMU:
26.04.2011
Pawan Chopra