

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

C.I.M.A. No. 491/2009

Date of decision: 27.09.2013

United India Insurance Co. Ltd. vs. Madan Lal and ors.

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal-Judge

Appearing counsel:

For appellant (s):	Mr. Vishnu Gupta, Advocates
For respondent(s):	Ex parte

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| i. | Whether approved for reporting in Press/Media | : | Yes/No/Optional |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |
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1. This is appeal in Accident Claim case.
2. Heard. I have perused the record.
3. On 04.03.2003, respondent No. 1 (hereinafter referred to as respondent) had boarded bus bearing registration No. JKU-0085. Respondent No. 3 was driving the bus. At a place called Ghordi, respondent No. 3 lost control over the bus and it fell down the road. Respondent was injured in this accident. He suffered fracture to his right leg.
4. Respondent preferred a claim for compensation of Rs. 3,75,000/ under section 166 of the Motor Vehicles Act

(for short the Act) before the learned Motor Accident Claims Tribunal, Jammu (for short the Tribunal). PW-Dr. R. S. Manhas stated before the learned Tribunal that the respondent was examined by him on 17.02.2004 and he was found to be a case of “fracture tulous right managed surgically” and was having “ankylosed ankle having suffered 30% permanent disability of right leg”. Doctor also proved the disability certificate issued by him-Mark-A.

5. Learned Tribunal after completion of inquiry found that accident had occurred due to rash and negligent driving of the offending bus by respondent No. 3 and vide its award dated 25.07.2009 awarded a compensation of Rs. 4, 85,600/ to the respondent. Liability of paying the compensation was foisted upon the insurer of the vehicle, herein appellant. Head wise break up of compensation awarded by the Tribunal is as under:

1. Loss of income	Rs. 3,45,600/
2. Loss of amenities of life	Rs. 60,000/
3. Pain and sufferings	Rs. 60,000/
4. Medical Treatment & hospitalization	Rs. 10,000/
5. Transportation Charges	<u>Rs. 10,000/</u>
Total	<u>Rs. 4, 85,600/</u>

6. Appellant-Insurance Company has challenged the award in this appeal on various grounds. However,

when the appeal was taken up for hearing on 13.09.2013, Mr. Vishnu Gupta, learned counsel for the appellant stated at the outset that he would be pressing the appeal only on the question of quantum of compensation awarded by the Learned Tribunal under the head “loss of income”.

7. Mr. Gupta sought to demonstrate that under this head learned Tribunal has awarded compensation for loss of future earnings of the respondent due to the disability suffered by him. Mr. Gupta would say that learned Tribunal, has fallen into error by awarding compensation for loss of future earnings because the respondent, being a Government school teacher, has suffered no loss of future earnings and no compensation on that score was available to him. Mr. Gupta argued further that even if it is presumed that compensation on this score was payable, learned Tribunal has further erred in computing the compensation as it has been computed having regard to the disability of a particular limb in disregard of the disability suffered by the whole body, which would be far less than that suffered by a particular limb. Mr. Gupta relied upon a recent judgment rendered by the Supreme Court in *Raj Kumar v Ajay Kumar and others*, 2011 ACJ 1. Besides, Mr. Gupta also relied upon two DB judgments of the High Court of Calcutta in *Anamika*

Mondal v United India Insurance Co. Ltd. 2010 ACJ 65 and New India Assurance Company Ltd v Amitaba Dass and another-2007 ACJ 2058.

8. **The only question thus raised for adjudication in this appeal is whether compensation of Rs. 3, 45,600/ awarded by learned Tribunal under the head “loss of income” is just and proper or learned Tribunal has fallen into error in this regard.**

9. It is indisputable that the compensation awarded by the learned Tribunal under the head “loss of income” as a matter of fact is the compensation for future loss of earnings to the respondent due to the permanent disability suffered by him. It is admitted case of the respondent that he is B.A. B.Ed. He is serving as a Master in Education Department and that the accident has not affected his service or salary. This has been stated by him in his cross-examination before the Tribunal

10. For proper adjudication of the question, I may, briefly, analyze the reasons which prevailed upon the learned Presiding Officer of the Tribunal in granting compensation under the head ‘loss of income’.

11. Learned Tribunal before proceeding to evaluate the compensation for future loss of earnings suffered by the respondent, while agreeing that he has not suffered any loss or decrease in income, has observed that 'assumption has to be done for whole of the life and not for the period in which the petitioner survives'. Meaning of this assumption, however, is not understandable because no distinction can be drawn between the term 'whole of the life' and the term 'period in which the petitioner survives'. Learned Tribunal has further observed that 'there is certain decrease in his income as it is also mentioned that the petitioner was cultivating his land himself but presently he is dependent on others to cultivate his land'.

12. In evaluating the future loss of earnings, learned Tribunal by applying guess work has assumed the monthly income of the respondent as Rs. 6,000/, taking note that he has failed to prove his actual income. Loss of future earnings has been taken as 30 per cent of the present income, that is, proportionate to the disability suffered by the respondent. 30 per cent of Rs. 6,000/ being Rs. 1800/, per annum future loss has been taken as Rs. 21,600/-. Learned Tribunal has capitalized this

loss by applying a multiplier of 16 on the basis of age of the respondent and has, thus, arrived at a figure of Rs. 3,45,600/ and has awarded the same as compensation for 'loss of income'/ future loss of earnings.

13. Assessment of the future loss of earnings made by the learned Tribunal is not correct for the manner in which it has been made. Learned Tribunal has acted too mechanically, in disregard of the judicially evolved principles.
14. It is well settled that the percentage of the loss of future earnings on account of physical disability cannot be equated with the percentage of the disability of the body. Generally percentage of the loss of future earnings will be less than the percentage of disability though in some cases it may be higher than the percentage of disability. It is also well settled that percentage of disability of a particular limb (part of the body) cannot be equated with the percentage of disability of the whole body as the disability of the whole body generally is less than that of a particular limb (part of the body).
15. The assessment of future loss of earnings due to permanent disability of body has been discussed in

detail and principle laid down by the Supreme Court recently in Raj Kumar's case (*supra*). It is useful to referred and quote some important extracts from the judgment. In para 7 of the reporting in 2011 ACJ 1, Their Lordships have observed:

"7. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45 per cent of the left lower limb, it is not the same as 45 per cent permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60 per cent permanent disability of the right hand and 80 per cent permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140 per cent (that is 80 per cent plus 60 per cent). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100 per cent."

16. In para 8, Their Lordships have observed:

"8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and

impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45 per cent as the permanent disability, will hold that there is 45 per cent loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation [(see for example, the decisions of this court in *Arvind Kumar Mishra v. New India Assurance Co.Ltd.* – 2010 ACJ 2867 (SC) and *Yadava Kumar v. Divisional Manger, National Insurance Co. Ltd.* - 2010 ACJ 2713(SC)]”

17. In para 10 Their Lordships have laid down a guiding principle for ascertainment of the effect of the permanent disability of the body on the actual earning

capacity, which needs to be followed by all the Tribunals. This reads:

“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to driver or do carpentry.”

18. As regards the assessment of the compensation for loss of future earnings by a Government employee, their Lordships in para 10 have observed:

“on the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be hundred per cent as in the case of a driver or carpenter, nor 60 per cent which is actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of ‘loss of future earnings’, if claimant continues in government service, though he may be awarded compensation under the head of “loss of amenities” as a consequence of losing his hand”

19. Their Lordships in that case also dealt with the manner in which medical evidence as regards the disability has to be dealt with. In this regard, in para 12, their Lordships have held that “if a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with respect to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with respect to a limb, Tribunal will have to seek the doctor’s opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.”

20. In para 12, Their Lordship have observed :

“The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed 14 local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.”

21. In Anamika Mondal’s case (supra) the injured was an assistant teacher in secondary school and she continued to be employed in the same job with no loss of income. She had not produced any evidence to show that she suffered any pecuniary loss or loss of future prospects. Tribunal had awarded her compensation of Rs. 40,000/ under the head of “loss of

earning capacity". High Court of Calcutta, however, in appeal filed by the claimant, refused to maintain the compensation under this head even though no cross appeal was filed by the insurance company.

22. In Amitaba Dass' case (supra) the claimant, who was a police officer, had suffered 25 per cent physical disability due to fracture in fibula of left leg. He however, joined his duty on the same post with no loss of salary. There was no evidence that the claimant would suffer any promotion avenue. The Tribunal however, took the loss of income suffered by him 25 per cent equal to the extent of the disability suffered and awarded a compensation of Rs. 4,50,000/ in this regard. High Court of Calcutta in appeal by the Insurance Company set aside the award to this extent.

23. In this case PW Dr. R. S. Manhas has certified vide certificate, Mark-A, that the respondent has suffered 30 per cent permanent disability to his right lower limb. In his cross examination, doctor has made clear that disability is that of the affected limb only and not of the whole body. No effort, however, either by the counsel for the parties or by the learned Tribunal, has been made to ascertain the extent (percentage) of disability

in respect of the whole body. In any case when considered in context of the whole body, disability suffered by the respondent has to be taken as less than 30 per cent. Learned Tribunal therefore, has fallen into error by computing the compensation for loss of future earnings on the basis of the extent of disability of a particular limb, even if it is presumed that compensation under this head was payable.

24. It was not the respondent's (claimant's) case before the Tribunal that the disability has caused him loss of service or decrease in rank or salary. Respondent has rather admitted that his service and salary have not been affected. There is nothing in the evidence led by the respondent that disability suffered by him is likely to affect his promotion and other avenues in future.
25. In such a situation no compensation under the head 'future loss of earnings' (Loss of income) principally can be awarded. However, there is a scope for slight deviation, which must be made so that the respondent is not deprived of fair compensation.

26. It needs to be noticed that the respondent is a person of rural habitat and it is common knowledge that in such areas Government employees, besides performing their official duties, have to perform variety of agricultural pursuits. It has come in the evidence of PW-Dhani Ram that respondent owns land which he gets cultivated through laborers as he cannot do the farming himself. It can thus be presumed that the respondent should be spending towards engagement of labourers for cultivating his land, which can be equated with loss of future earnings. However, no evidence to ascertain actual loss on this score is available. Besides, it is important to take note that a victim of an accident is entitled to compensation for loss of amenities, which in this case has been awarded as Rs. 60,000/-. In this context impression arising is that, while awarding compensation on this score, it must be lurking in the mind of the learned Presiding Officer of the Tribunal that compensation for future loss of earnings is being/ has been separately awarded, which would have had impact on fixing the amount as compensation for loss of amenities. Having regard to these aspects of the case, in my considered view respondent should be awarded compensation for Rs. 50,000/ only for future loss of earnings and compensation for 'loss of amenities' to be enhanced to Rs. 1,00,000/.

27. For the aforementioned, this appeal is accepted, the award of learned Tribunal is modified accordingly and the respondent is held entitled to following compensation:

1. Loss of income	Rs. 50,000/
2. Loss of amenities of life	Rs. 100,000/
3. Pain and sufferings	Rs. 60,000/
4. Medical Treatment & hospitalization	Rs. 10,000/
5. Transportation Charges	Rs. 10,000/

Total	Rs. 2,30,000/
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28. Interest as awarded and other conditions, if any, imposed by the learned Tribunal shall remain intact.

(Janak Raj Kotwal)
Judge

Jammu:
27.09.2013
Rakesh