

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No.114/2008

Date of order:-11/08/2016

Sham Lal Vs. United India Insurance Company and ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Appellant (s) :	Mr.Balwinder Singh, Advocate vice Mr. Rahul Bharti, Advocate.
For the respondent(s) :	Mr.Kamal Gupta, Advocate.

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| (a) | Whether approved for reporting in
Digest/Law Journal-Net | : Yes/No |
| (b) | Whether approved for reporting in
Press/Media | : Yes/No |
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1. This appeal is of the year 2008 and on admitted facts, the case is taken up for final disposal.
2. Mr. Balwinder Singh, counsel appearing for the appellant pleaded for enhancement of compensation. It is a case of injury. The appellant was one of the commuters travelling in offending vehicle from Udhampur to Gordhi, i.e. Bus No.JKU 0085 owned by respondent No.2 driven by respondent No.3 which met with accident on 04.03.2003. There were number of casualties, including the present appellant. He filed a claim for compensation before the Motor Accident Claims Tribunal which was decided by a common award dated 27.04.2005.
3. Insofar as present case is concerned, the issue regarding injuries sustained by appellant - Sham Lal which has been decided by the Tribunal reads as under;

“Issue No.2 (in CP No.2)

Petitioner Sham Lal has stated that his two teeth got broken in the accident. Besides that he received injuries on his neck and back. The petitioner has deposed that he was running a shop but due to this physical impairment, he is unfit to lift heavy load so his earning capacity has been effected. He has no source of income. He has spent Rs.60/70 thousand on his medical treatment.

PW Dr. Naresh Chopra has stated that injured has suffered 45% disability according to the medical certificate issued by Chief Medical Officer, Udhampur. The petitioner was suffering from compound fracture of L1 vertebra with subluxative of C2-C3 with compressive neuropathy right upper limb.

From the perusal of the aforementioned evidence it stands proved that the petitioner had suffered permanent disability up to the extent of 45%. Nevertheless there is no proof as to how much he had spent on his treatment. He was treated in Govt. Hospital, therefore substantial amount on medical expenses must have been borne by the State. Similarly, there is no proof how much of his earning capacity has been affected. Nevertheless he has suffered injuries in the back bone so his earning capacity is bound to have divindled. The petitioner is young man of 31 years so loss of earning capacity would be rather substantial. There petitioner must have suffered great pain and agony and must have spent something on his treatment. There is no rebuttal to the evidence on the part of the respondents.

For the fore going reasons I am of the opinion that the compensation to the extent of Rs.80,000/- (eighty thousand) would be adequate in the matter.”

4. The present appeal is filed seeking enhancement of compensation. The injury suffered by the appellant claimant is on the neck and back. His two teeth got broken. There was some physical impairment. Disability was assessed at 45%. Claimant is said to be running a shop and due to the accident, he is unable to run the business as before. The Chief Medical Officer, Udhampur has opined that the

appellant was suffering from compound fracture of L1 Vertebra with subluxative of C2-C3 with compressive neuropathy right upper limb. Therefore, there appears to be some serious injury in the accident which is quite obvious from the medical evidence.

5. Be that as it may, the Tribunal without apportioning the compensation held that 31 year old appellant, as he then was, has suffered loss, as his earning capacity is limited by the injury and he needs to be compensated for that, and that should include compensation for pain and suffering and also for cost of treatment. In all, the Tribunal awarded Rs.80,000/- (eighty thousand) as compensation to the claimant. The claimant is aggrieved by the meager compensation.
6. Assuming that the disability is assessed at 45% by the Doctor and if Rs.2000/- is granted per percent of disability, a sum of Rs.90,000/- has to be granted for the disability suffered. Claimant would be entitled to further compensation for pain and suffering, attendant charges, loss of income during period of treatment and extra nutrition, which were not granted. Therefore, the compensation is not just.
7. The appeal, therefore, deserves to be allowed and claimant would be entitled to further compensation in the following manner:

Disability at 45%	Rs.90,000/-
Pain and Suffering	Rs.25,000/-
Attendance Charges	Rs.10,000/-
Extra Nutrition	Rs.10,000/-
Loss of income during period of treatment	Rs.10,000/-
Total	Rs.1,45,000/-

The enhanced compensation will carry interest at 7.5% per annum from the date of claim till realization.

8. Appeal is allowed as above.

(Ramalingam Sudhakar)
Judge

Jammu,
11.08.2016
Varun