

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 128/2012
MP No. 1/2016

Date of Order: 21.10.2016

New India Ass. Co. Ltd.	vs.	Gaurav & ors.
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Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

Appearing Counsel:

For the Appellant(s):	Mr. R. K. Gupta, Sr. Advocate with Mr. Prem Sadotra, Advocate.
For the Respondent(s):	Ms. Radha Sharma, Advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal-Net	:	Yes/No

1. Appellant-Insurance Company has challenged the Award only on the quantum. The finding on negligence and the liability of the Insurance Company to compensate the claimants is not disputed.

2. Accident in this case happened on 21.12.2007. Gaurav-claimant, a 22 years young man running a photoshop, was traveling in the matador bearing No. JK02F-3266 and on reaching Sarore Adda, a vehicle bearing No.PB-07-R-5699 going from Jammu towards Vijaypur collided with the said matador. As a result the claimant was injured. He suffered cervical spine injury with quadriplegia. Injured was hospitalized for 21 days from December 2007 to February 04, 2008. He claimed compensation of Rs. 34.00 lacs and has been awarded Rs. 25.00 lacs in the following manner:

S.No.	Head	Award
1.	For loss of future income	Rs. 11,52,000/-
2.	For pain and sufferings	Rs. 2,25,000/-
3.	For loss of amenities of life	Rs. 2,00,000/-
4.	Expenses incurred on medicines & Physiotherapy	Rs. 1,00,000/-
5.	Future expenses to be incurred on medicines and physiotherapy	Rs. 2,00,000/-
6.	Transport charges incurred	Rs. 38,000/-
7.	Future transport charges	Rs. 75,000/-
8.	Attendant charges incurred	Rs. 72,000/-
9.	Future attendant charges	Rs.2,88,000/-
10.	Special diet charges	Rs. 50,000/-
11.	Future Special diet charges	Rs. 1,00,000/-
Total		Rs. 25,00,000/-
With interest @ 7.5% per annum		

3. In appeal the learned counsel for the appellant-Insurance Company contended those additional claims were made in the claim petition, without any supporting material or evidence. The Tribunal has granted exorbitant amounts under several heads. To be specific the compensation under the following Heads is pleaded as not justified:

Head 1.	Loss of income determined is excessive
Head 2 & 3	The award is exorbitant under these two heads.
Head 4 & 5	The award is in excess as against the bills. No proper documentary proof has been placed in support.
Head 6 to 9	The additional amounts have been granted as against the claim made in the petition.
Head 10 & 11	Under these heads the amount has been granted are excessive and not commensurate with the nature of injury.

3. Considering the young age of injured/claimant the nature of injury, the witness examined to support the claim, the Tribunal took into consideration the evidence of the claimant, i.e., Dr. I. K. Wangnoo, Pw-Bua Ditta who issued Disability certificate. Except

petitioner no other witness was examined to say about the future expenses that is to be incurred for diet charges, etc.

➤ **Loss of future income**

Insofar as this Head is concerned due to nature of accident and injuries suffered, disability is 100%. Therefore, the sum of Rs. 11,52,000/- fixed as compensation based on loss of earning capacity due to injury and 100% disability appears to be justified. Even though Rs.6000/- per month is objected as excessive, however the possibility of a young earning higher income in future cannot be ruled out. Hence, the sum of Rs.11, 52,000/- stands **confirmed**.

➤ **Pain and suffering**

The Tribunal has granted Rs.2,25,000/- as against claim of Rs.5,00,000/-. The Tribunal has taken into consideration the 100% disability suffered, the nature of injury, i.e., cervical spine injury with quadriplegia, whereby the injured is unable to walk as before. There will be pain and suffering for the rest of his life. Therefore, this Court finds no reason to reduce the quantum any further and the same stands **confirmed**.

➤ **Loss of amenities of life**

Considering the nature and injury and 100% immobility, the Tribunal granted Rs. 2,00,000/- which is not excessive and the same is **confirmed**.

➤ **Expenses incurred on medicines & Physiotherapy & Future expenses to be incurred on medicines and physiotherapy**

Insofar as medicines and physiotherapy, Rs. 1,00,000/- has been granted as against Rs.42,000/- which is supported by Medical

bills and Rs. 2,00,000/- for future expenses to be incurred on medicines and physiotherapy has been granted. Assuming that some amount is expended for physiotherapy at best it could be around Rs. 75,000/-. The Tribunal has also granted substantial amount for future medical expenses towards medicine and physiotherapy. There again no evidence is let in. Keeping that in mind the expenses required for physiotherapy during the time of treatment, the amount is reduced to Rs. 75,000/- as against Rs. 1.00 lac granted. For future medical expenses and physiotherapy, it is fixed at Rs.1.00 lac as against Rs. 2.00 Lac.

➤ **Transport charges incurred and Future Transport charges**

Insofar as transport charges both during the time of treatment and for future as against the claim of Rs. 50,000/-, the Tribunal has granted Rs. 38,000/- + Rs. 75,000/-. By the nature of injury suffered and the prolonged nature of ailment, the said sum of Rs. 38,000/- + Rs. 75,000/- is not excessive because the injured claimant has to necessarily depend on other persons and alternatives to transport himself. He cannot move around on his own, therefore, the said sum stands **confirmed**.

➤ **Attendant charges incurred and future attendant charges**

On this head, the Tribunal has granted Rs. 72,000/- during the period of treatment. For future attendant charges Rs. 2,88,000/- has been granted. This appears to be without any basis or evidence. No doubt he would need an attendant but amount has to be just and reasonable. As against the claim of Rs. 50,000/- , the sum of Rs. 72,000/- has been granted during for the period of treatment. For future attendants charges also some amount has to

be granted that should be reasonable and based on evidence. The Tribunal has granted Rs. 2, 88,000/-. Keeping in mind the young age of claimant and the award in other respects is **reduced to Rs. 1,50,000/-**. Rs. 72,000/- granted for attendant charges during treatment **is confirmed**.

➤ **Special diet charges and future special diet charges**

Insofar as special diet is concerned, Rs. 50,000/- was granted during the period of treatment and for future special diet charges Rs. 1,00,000/- has been granted as against a total claim of Rs. 1,00,000/-. There again the Tribunal without any evidence or material has granted the two amounts. However, keeping in mind the nature of injury and the young age, the special diet charges Rs.50,000/- granted during the treatment **is confirmed** but insofar as future special diet is concerned it is **reduced to Rs. 50,000/-**.

S.No	Head	Award	Modified Award	
1.	For loss of future income	Rs. 11,52,000/-	Rs. 11,52,000/-	confirmed
2.	For pain and sufferings	Rs. 2,25,000/-	Rs. 2,25,000/-	Confirmed
3.	For loss of amenities of life	Rs. 2,00,000/-	Rs. 2,00,000/-	Confirmed
4.	Expenses incurred on medicines & Physiotherapy	Rs. 1,00,000/-	Rs. 75,000/-	Reduced
5.	Future expenses to be incurred on medicines and physiotherapy	Rs. 2,00,000/-	Rs. 1,00,000/-	Reduced
6.	Transport charges incurred	Rs. 38,000/-	Rs. 38,000/-	Confirmed
7.	Future transport charges	Rs, 75,000/-	Rs, 75,000/-	Confirmed
8.	Attendant charges incurred	Rs. 72,000/-	Rs. 72,000/-	Confirmed
9.	Future attendant charges	Rs.2,88,000/-	Rs.1,50,000/-	Reduced
10.	Special diet charges	Rs. 50,000/-	Rs. 50,000/-	Confirmed
11.	Future Special diet charges	Rs. 1,00,000/-	Rs. 50,000/-	Reduced
Total		Rs. 25,00,000/- Rupees Twenty five Lacs only	Rs. 21,87,000/- (Rupees Twenty One lac eighty seven thousand only)	

4. Accordingly, the appeal stands allowed and the award is modified as above. The claimant will be entitled to withdraw the amount on deposit. Insurance Company is directed to deposit the amount with interest, if not already deposited.

(Ramalingam Sudhakar)
Judge

Jammu:

Sunita.

30.06.2016

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