

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

Condl(c) No.57/2010

c/w

CIMA No.116/2010

Date of order:-29/09/2016

Om Parkash Vs. Oriental Insurance Company Ltd. & ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Petitioner/Appellant (s)	:	Mr.V.Bhushan Gupta, Advocate.
For the respondent(s) :		Mr. D.S. Chouhan, Advocate.

(a) Whether approved for reporting in Net : Yes/No.

(b) Whether approved for reporting in
Press/Media : Yes/No.

Condl(c) No.57/2010

In view of the reasons assigned, a good ground is made out for condoning the delay of 202 days in preferring the appeal. Delay is accordingly condoned and appeal is taken on board.

Condonation application stands disposed of.

CIMA No.116/2010

1. This appeal is of the year 2010 and the same is filed seeking enhancement of compensation.
2. The appellant/claimant is a 43 years old agriculturist. He is also a ration dealer and is also working as Extra Deptt. Post Master in the Post Office.
3. The accident in this case happened on 25th July, 2005. The appellant/claimant was walking on the road and the offending vehicle – insured with the respondent Insurance Company, was driven in rash and negligent manner by its driver who reversed the vehicle and caused the serious injuries to the appellant/claimant. The appellant/claimant suffered serious injuries in the accident. He suffered Mal united fracture dislocation in right elbow joint with unnarnerve palsy with wasting of hypothea ner eminence of right hand and fore arm,

consequent upon he could not work in the field for long number of months. He suffered physical disability which was assessed by the Doctor at 40%. He led in oral and documentary evidence to support his claim. The Tribunal after discussing the case in hand passed the following order:

“Issue No.2

It has come in the evidence of petitioner that he was earning from the agricultural and dairy resources. More-so he is drawing Rs.2600/- PM as salary from employment as EDPM in Post Office. His total income is referred as Rs.10,000/- PM from all the sources.

On careful analyzing and scanning the oral evidence on record, it can be gathered that the earnings/salary of the petitioner as EDPM was not affected at all as he is still in the aforesaid employment. Income referred on account of agricultural/dairy resources has not been proved by concrete and solid evidence. It can, however, be held that the petitioner might be earning not less than Rs.1500/- PM from the agricultural/dairy resources. Age of the petitioner/injured is referred as 42 years, which has not been rebutted by the respondents. Accordingly, the age of the deceased is considered as 42 years at the time of accident and being injured/disabled to the extent of 40% as to his arm.

In the second schedule appended to Motor Vehicle Act, multiplier chart is detailed which is applicable to the deceased/injured of different age groups. Maximum Multiplier of 15 is applicable to the deceased/injured having age above 40 years but not exceeding 45 years. However, keeping into future contingency/uncertainties of life, multiplier in the instant case is required to be scaled down to 10. On multiplying the yearly income with the multiplier of 10, the amount of compensations is calculated as $\text{Rs.1500} \times 12 \times 10 = \text{Rs.1,80,000/-}$. As the petitioner has suffered disability to the extent of 40%, certainly his income has reduced to the aforesaid extent. Accordingly compensation is required to be calculated while keeping into consideration suffering of disability to the extent of 40% as his right arm. Hence, the amount of compensation payable to the petitioner is worked out as $\text{Rs.1,80,111} \times 40/100 = \text{Rs.72000/-}$. Rs.5000/- are granted for pain sufferings. More-so, Rs.15000/- are granted by way of medical expenses. Both these amounts are being granted as per schedule 2nd appended to M.V.Act. On adding the aforesaid amount, total amount of

compensation comes out as Rs.72000 + 5000 + 15000 = Rs.92,000/-.”

4. The appellant/claimant seeks enhancement of compensation for the 40% disability suffered by him. Though the method adopted by the Tribunal is little circuitous, this Court is agreeable that the compensation for loss of earning capacity to the disability should be enhanced marginally, considering the age of the injured-claimant and the nature of his occupation namely agriculturist.
5. The award of the Tribunal is modified and the claimant is entitled to the following enhanced compensation along with interest at the rate of 7.5% per annum from the date of filing of claim petition before the Tribunal:-

S.No.	Heading	Award of the Tribunal	Modified Award
1.	Compensation payable to the claimant for loss of earning capacity.	Rs.72,000/-	Rs. 72,000/-
2.	For pain and sufferings	Rs. 5,000/-	Rs.20,000/-.
3.	For medical Expenses	Rs.15,000/-	Rs.15,000/-
4.	For Loss of amenities.	Nil	Rs.15,000/-.
5.	For attendant’s charges.	Nil	Rs.5,000/-
6.	For Extra nutrition	Nil	Rs.7,500/-
7.	For loss of income during period of treatment	Nil	Rs.75,00/-
Total		Rs.92,000/-	Rs.1,42,000/-

This appeal is allowed in the above terms enhancing the award of the Tribunal.

(Ramalingam Sudhakar)
Judge

Jammu,
29.09.2016
Varun