

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

C.I.M.A No. 120/2009
MP No. 155/2012
&
Cross Appeal (C) No. 16/2009

Date of order:-30/01/2017

New India Insurance Co. Ltd.
Ramesh Kumar.

V. Ramesh Kumar and ors.
V. Subha Singh and ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Appellant(s) : Mr. Ritesh Mahajan, Advocate.
For the respondent(s) : Mr. R.K.Bhatia, Advocate.

-
- | | | |
|-----|--|------|
| i) | Whether approved for reporting in NET. | Yes. |
| ii) | Whether approved for reporting Digest/Journal. | No. |
-

1. The Appeal and the Cross-Appeal are of the year 2009.
2. It is a case of injury.
3. The Appellant-Insurance Company has filed the appeal challenging the quantum of compensation granted in this case by the Motor Accidents Claims Tribunal, Jammu vide award dated 31.12.2008 and the claimant has filed the Cross-Appeal seeking enhancement of the compensation.
4. In this case, accident happened on 18.01.2005. Ramesh Kumar, aged about 21 years, a Motor Mechanic, was sitting as a pillion rider on Scooter bearing registration No. JK02F-0955 and was coming from Ramgarh to Chumbian, The said Scooter, when reached at village Bandral, a 407 Matador bearing registration No.

JK02Q-5376, coming from opposite side, being driven in a rash and negligent manner by its driver, hit the Scooter, as a result of which the claimant-Ramesh Kumar suffered grievous injuries which are as follows:

- 1) Comminuted fracture Patella right.
- 2) In surgery his right knee cap removed.

He was hospitalized in Care-N-Care Hospital, Trikuta Nagar, Jammu. His leg was plastered for ten weeks and he has also undergone Physiotherapy. Disability of the claimant was assessed by the Doctor at 20%. It is the evidence of the claimant that he could not perform his duties as before and a substantial loss in earnings has been caused due to injury suffered. He pleaded that his income was Rs. 8,000/- per month and the claimant has claimed a sum of Rs. 40.00 lac as compensation.

5. The Tribunal found negligence on the part of the driver of the Matador and fixed the liability on the owner as well as the Insurance Company. On this finding, there appears to be no serious dispute by the Insurance Company in this appeal.

6. In relation to the disability assessed at 20% and taking note of the profession, namely, a Motor Mechanic, age of the injured-claimant and the disability in earning as before, the Tribunal adopted the multiplier method to grant compensation. It fixed the income of the injured-claimant at Rs. 6,000/- per month. Taking note of the various heads in which compensation was claimed, the Tribunal granted the following compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till liquidation:-

1. For loss of future income	Rs. 2,16,000/-
2. For pain and sufferings.	Rs. 30,000/-

3. For loss of amenities in life	Rs. 30,000/-
4. For medical expenses.	Rs.13,536/-
5. For transportation charges.	Rs. 30,000/-
6. For special diet expenses.	Rs. 10,000/-
Total.	Rs. 3,29,536/-

7. The Insurance Company pleads for reduction of compensation stating that higher multiplier is adopted and interest has been granted for loss of income in future.

8. This plea merits acceptance. Insofar as reduction of compensation is concerned, there is absolutely no justification for reducing the same any further because the nature of injury suffered by the claimant aged 21 years, a Motor Mechanic with 20% disability, has rightly affected his livelihood and his earning capacity to a greater extent.

9. Learned counsel for the claimant pleaded that the accident happened in the year 2005 and the claimant has not married due to the injury suffered and therefore, he is entitled to compensation for the loss of marriage prospects.

10. In this case, the Tribunal has granted meager amount for the loss of pain and sufferings and for loss of amenities in life. No amount has been granted for attendant charges and for physiotherapy.

11. Taking note of the above, while declining to reduce the compensation, the Insurance Company's appeal is allowed to the extent that there will be no interest on the loss of income in future till passing of the award.

12. The claimant's Cross-Appeal deserves to be allowed for the following:-

- i) 21 years old claimant, a Motor Mechanic needs his physical strength to pursue his occupation and, therefore, he is entitled to higher compensation both for the loss of pain and

sufferings as well as loss of amenities in life.

ii) During the period of treatment and Physiotherapy, he needs an attendant. No amount has been granted under this head.

iii) It is an admitted case of injury to a leg where physiotherapy is necessary. No amount has been granted under this head.

13. Accordingly, this Cross-appeal deserves to be allowed and compensation is enhanced as follows:-

1. For loss of future income	Rs. 2,16,000/- (No interest)
2. For pain and sufferings.	Rs. 50,000/-
3. For loss of amenities in life	Rs. 50,000/-
4. For medical expenses.	Rs. 13,536/-
5. For transportation charges.	Rs. 25,000/-
6. For special diet expenses.	Rs. 10,000/-
7. For Attendant Charges.	Rs. 15,000/-
8. For loss of marriage prospects.	Rs. 30,000/-
Total	Rs. 4,09,536/-

14. The enhanced amount shall bear interest @ 7% per annum from the filing of claim petition till the payment is liquidated.

15. The appeal is partly allowed in respect of interest on loss of income in the future and Cross-Appeal is allowed as above.

(Ramalingam Sudhakar)
Judge

Jammu
30.01.2017:

Tilak, Secy.

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.