

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 17/2017
MP No. 1/2017

Date of Order: 29.03.2017

National Ins. Co. Ltd.	vs.	Shindli Ram & anr.
------------------------	-----	--------------------

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

Appearing Counsel:

For the Appellant(s): Mr. Rajesh Kumar, Advocate.
For the Respondent(s): Mr. Dinker Gupta, 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 claimant is not disputed.

2. It is a case of injury. Accident in this case happened on 13.12.2013. Claimant –Shindi Ram. 60 years old, was travelling in a Maruti Car and the vehicle was driven in a rash and negligent manner which hit a rock and the claimant suffered fracture injuries to his left elbow. Claimant –injured was shifted to PHC Chenani and from there to GMC Jammu where he remained under treatment from 14.12.2013 to 14.01.2014. He claims compensation stating that his income was Rs. 10,000/- with an additional income of Rs.2000/- per month as per his ration card.

3. The Tribunal, however, fixed the income of the injured at Rs.75,00/- and after adopting multiplier of 9 granted following amount as compensation:

S.No.	Heads	Award of Tribunal
01.	Loss of income	Rs. 3,24,000/-
02.	For medical treatment	Rs. 50,000/-
03.	Future medical treatment	Rs. 25,000/-
04.	Loss of amenities of life	Rs. 25,000/-
05.	Pain and sufferings	Rs. 25, 000/-
Total		Rs. 4,49,000/-
With interest @ 9% per annum.		

4. In appeal it is contended that the income fixed by the Tribunal is on higher side. The Tribunal has also erred in taking the additional income of Rs. 2000/- per month. It is further pleaded by the appellant-Insurance Company that there were no exceptional circumstances which compelled the Tribunal to award the interest @ 9% per annum instead of 7.5%.

5. On the other hand counsel for the claimant –injured stated that he was supporting a large family. He was also having an additional income from agricultural work. However due to the accident and injury, he is unable to do the same on account of 40% disability of the left upper limb.

6. On going through the nature of injury suffered by the claimant, i.e., the fracture and 40% disability which will limit his earning capacity, the period of hospitalization which is said to be of one month, the pecuniary loss has to be determined in the following manner:

The Income in this case is not based on records but on oral plea. Therefore, considering the age of injured-claimant as 60 years and his ability to earn income cannot be the same as an young person. Hence the income should be taken as Rs. 5000/- per month, taking note of 40% disability and by adopting 9 as multiplier which is not in dispute, the award of compensation is as follows:

S.No.	Heads	Award of Tribunal	Modified award
01.	Loss of income	Rs. 3,24,000/-	Rs. 2, 16, 000/- (5000 x 40 % x 12 x 9)
02.	For medical treatment	Rs. 50,000/-	Rs. 50,000/-
03.	Future medical treatment	Rs. 25,000/-	Rs. 25,000/-
04.	Loss of amenities of life	Rs. 25,000/-	Rs. 25,000/-
05.	Pain and sufferings	Rs. 25, 000/-	Rs. 25, 000/-
Total		Rs. 4,49,000/-	Rs. 3,41,000/-

7. Insofar as grant of interest @ 9% is concerned, the accident happened in the year 2013. The rate of interest offered by the Banks at the relevant point of time has to be considered and the interest on the award of compensation is reduced to 7.5% per annum as 9% interest is on the higher side.

8. Insofar as interest on loss of income in future is concerned, it cannot be made applicable as interest will ensure only for the past. The plea raised by the counsel for the appellant-Insurance company that interest cannot be granted on loss of future income is accepted. Therefore, the 7.5 % interest will apply on all other heads except on amount of Rs. 2,16,000/- awarded for loss of future income. It is set aside.

9. The award passed by the Tribunal is modified and reduced as above. The appellant is entitled to seek refund of the excess after settling the claimants. Claimant is entitled to withdraw the award modified as above.

10. The appeal is allowed as above.

(Ramalingam Sudhakar)
Judge

Jammu:

Sunita.

29.03.2017

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.