

Ghulam Mohd. Wani Vs United India Insurance Co. Ltd. And Others

Court: Jammu And Kashmir High Court

Date of Decision: May 25, 2023

Acts Referred: Motor Vehicles Act, 1988 " Section 166

Hon'ble Judges: Rajesh Sekhri, J

Bench: Single Bench

Advocate: M. A. Bhat, Vishnu Gupta, Damini Singh Chauhan

Final Decision: Allowed

Judgement

Rajesh Sekhri, J",

1. Challenge in this appeal has been thrown to an award dated 25.07.2012 passed by Motor Accident Claims Tribunal, Ramban (for short, the",

Tribunal) in file No. 49/2008 titled "Ghulam Mohd. Wani v. United India Insurance Company Ltd. and others", vide which, compensation in the",

amount of Rs. 6,32,000/- (rupees six lacs and thirty two thousand) has been awarded in favour of appellant along with pendente lite and future interest",

@ 7% per annum. Appellant seeks enhancement of compensation awarded.,

2. Brief facts of the case are that on 21.04.2008, appellant while travelling in a bus bearing Registration No. JK02M-4595 on way from Ramban to",

Banihal met with an accident at about 5:00 p.m. near Battery Chasma, National Highway 1A allegedly due to rash and negligent driving of its driver-",

respondent No. 3, stated to be under active employment of owner of the vehicle-respondent No. 2. Offending vehicle is stated to be insured with",

respondent No.1-insurance company. Appellant preferred a claim petition in the tribunal stating inter alia that he was permanently disabled as a result,

of injuries sustained in the accident, he was 30 years old and was working as an operator in MD Plastics, village Nahar Pur, NH-8 Near Krishna",

Dharma Kanta Gurgaon, Haryana, and used to earn Rs. 8,300/-per month. The claim of appellant was resisted by respondent no.1-insurance company",

on various grounds and after framing of issues, appellant/claimant was called upon to produce evidence in support of the petition. The appellant",

adduced evidence with respect to his age and income by examining himself, Shafiq-ur-Rehman and Farooq Ahmed Wani. It is pertinent to mention",

that appellant also produced an income certificate issued by his employer. No evidence was led in defence. Learned Tribunal, after analyzing the",

evidence led by the claimant has allowed the claim petition and awarded compensation aforementioned and respondent No. 1 was directed to make,

payment of the awarded amount within a period of thirty days from the date of award.,

3. Appellant has questioned the impugned award inter alia on the grounds that learned Tribunal has taken his monthly income on the lesser side despite,

sufficient evidence on record, wrong multiplier of 17 has been applied as against the correct multiplier of 18 under Schedule of Motor Vehicles Act, ",

1988, and that learned Tribunal has awarded interest of 7% per annum against the prevailing rate of interest of 8% per annum. Appellant has also",

assailed the impugned award on the ground that his future income has not been taken into consideration and learned Tribunal has wrongly assessed,

loss of income as 50% whereas he has suffered 85% permanent disability as his left arm was totally amputated. He has also challenged the,

impugned award on the ground that learned Tribunal has not awarded any compensation on account of mental agony and love and affection.,

4. Having heard rival contentions of the parties, I have given my thoughtful consideration to the facts emanating from the record as also the law",

governing the field.,

5. While learned counsel for the appellant has reiterated the grounds urged in the memo of appeal, Mr. Vishnu Gupta, learned counsel for the",

respondent- Company has urged that multiplier applicable to the age group of 25 to 30 is 17 and not 18 as claimed by the appellant and, therefore,",

learned Tribunal has applied the correct multiplier. He further submits that as per the claim petition, appellant claims to be a businessman whereas he",

has annexed an income certificate issued by his employer to indicate that he was an employee, earning monthly salary of Rs. 8,300/- per month. Since",

appellant/claimant had neither produced any evidence to prove the income certificate nor led any evidence to establish that he was earning a particular,

amount on account of his occupation as a businessman, therefore, learned tribunal had taken monthly income of appellant as Rs.6,000/- which too, was",

on the higher side and in such cases, notional income of Rs. 3,000/- per month was required to be considered by learned Tribunal. He also emphasized",

that since there is no evidence on record with respect to exact occupation and monthly income of appellant, therefore, future prospects could not be",

taken into consideration.,

6. In support of his contention, learned counsel for respondent-Company has placed reliance on National Insurance Company Ltd. v. Pranay Sethi and",

ors. reported as 2017 ACJ 2700 (SC), Shri Nagar Mal and ors. v. The Oriental Insurance Company Ltd. and ors. [Civil Appeal No. 448 of 2018 dated",

19.01.2018], Raj Kumar v. Ajay Kumar reported as 2010 (13) SCR 179, Manusamy and others v. Managing Director, Tamil Nadu State Trans.",

Corpn. Ltd. reported as 2018 ACJ 740, Santosh Devi and ors. v. Mahaveer Singh and ors. reported as 2018 ACJ 2436, Nutan Rani and another v.",

Gurmail Singh and others reported as 2018 ACJ 2169, Syed Basheer Ahamad and others v. Mohd. Jameel and another reported as 2009 ACJ 690,"

National Insurance C. Ltd. v. Jagat Narain Goel and other reported as 2016 ACJ 512, Lal Singh Marabi v. National Insurance Co. Ltd. and others",

reported as 2017 ACJ 1362 and Savita v. Bindar Singh and others reported as 2014 ACJ 1261.,

7. Before adverting to the merits of the case, uncontroverted facts of the case are required to be noticed. The appellant laid a claim before learned",

Tribunal whereby he claimed to be a businessman having a monthly income of Rs. 7,000/-. It is also averred in the claim petition that appellant was",

hospitalized in Sher-i-Kashmir Institute of Medical Sciences, Srinagar vide MRD No. 505193. It is evident from the claim petition filed by none other",

than appellant that he was a businessman at the relevant point of time i.e. at the time of accident, earning a monthly income of Rs. 7,000/-. He was",

hospitalized and got treatment from a Government Medical Institute, namely, Sher-i-Kashmir Institute of Medical Sciences, Srinagar. Appellant",

nowhere claims to have got any treatment from any private institute and therefore, appellant did not place on record any proof with respect to medical",

expenses incurred by him.,

8. Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar and anr. reported as (2011) 1 SCC 343 commenting upon the principle of just and fair,

compensation has clearly ruled that:

"It should fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss,

suffered, as far as money can do so, in a fair, equitable and reasonable manner."

9. It is manifest from the afore-quoted observation of the Hon'ble Supreme Court that the object behind principle relating to fair and just,

compensation is to make a genuine attempt to restore the dignity of the being he had at the time of accident in a fair, equitable and reasonable manner.",

It is by far crystallized and trite that in granting compensation for personal injuries, the victim is to be compensated primarily for the following",

damages:

a. Pain and suffering and loss of amenities;

- b. Shorten expectancy of life, if any;"
- c. Loss of earning and loss of earning capacity or both,;
- d. Medical treatment; and,
- e. Special damages, if any."

Loss of earning and loss of earning capacity,

10. Reverting to the present case, appellant has assailed the impugned award on this count primarily on the ground that learned tribunal has taken his",

monthly income on the lesser side, despite sufficient evidence on record that he was working as an Operator in MD Plastics, Village Nahar Pur, NH-",

8, Near Krishna Dharma Kanta Gurgaon, Haryana and was drawing a monthly salary of Rs.8300/-. The appellant claims to be 30 years old at the time",

of accident. According to appellant, learned tribunal has also applied wrong multiplier of 17 as against correct multiplier of 18 as per the Schedule of",

Motor Vehicles Act, 1988.",

11. It is pertinent to mention that appellant in the claim petition laid in the tribunal, claims to be a businessman, earning a monthly income of Rs. 7,000/-",

. Contrary to the claim petition, the appellant placed on record some income certificate issued by MD Plastics reflecting his monthly salary as",

Rs.8300/-. However, appellant has failed to lead any evidence in support of the certificate and, therefore, income certificate annexed with the claim",

petition is not admissible in evidence. Be that as it may, since income certificate produced by the petitioner is contrary to his assertion made in the",

petition that he is a businessman by occupation, the said certification otherwise pales into insignificance and cannot be taken into consideration. In this",

view of the matter learned Tribunal has taken a speculative monthly income of the appellant at Rs.6000/-. Although appellant has not adduced any,

evidence to prove the income certificate placed on record, however, he and his witnesses PWs Shafiq-ul-Rehman and Abdul Wani have testified that",

appellant had a monthly income between Rs.7,000/- to Rs.10,000/- and in view of the fact that neither the appellant nor his witnesses, during the trial",

were confronted with respect to contradiction in the claim petition viz-a-viz the income certificate, therefore, on account of uncertainties and",

imponderabilities of life, monthly income of the appellant speculated by learned trial court at Rs. 6,000/- is maintained.",

12. Appellant has also taken exception to the tribunal pegging down the functional disability to 50% as against 85% certified by the doctor. Learned,

counsel for the respondent-Company has submitted that extent of disability of limb reflected in the disability certificate cannot be assumed as extent of,

disability of the whole body. It is by far trite position of law now that the assessment of compensation under the head of loss of future earnings,

depends upon the impact of permanent disability suffered by the claimant on his earning capacity. Adjudicating authorities or tribunals are not obliged,

to apply the percentage of permanent physical disability, in a perfunctory fashion, as the percentage of economic loss or loss of earning capacity, but",

they are obliged to assess functional disability of the complainant. This principle of law has been considered at length by Hon'ble Supreme Court,

in Raj Kumar (Supra). Relevant observation of the pronouncement for the facility of reference reads thus:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future",

earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply",

the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of",

economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent",

disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding",

loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future",

earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability",

will result in award of either too low or too high a compensation."

13. Hon'ble Supreme Court, on ascertainment of the effect of permanent disability on the actual earning capacity of the victim or claimant, has",

also made following observation in paragraph 13 of the aforesaid judgment:

"Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain,

what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also,

relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of",

work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or",

(ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying",

on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale",

of activities and functions so that he continues to earn or can continue to earn his livelihood."

14. In the background of aforesaid principle of law enunciated by Hon'ble Supreme Court, functional disability of the appellant assessed by the",

tribunal at 50% as against 85% permanent disability certified by doctor, appears to be just and fair, in view of the facts and circumstances of the",

present case. Appellant claims to be working as an operator in a private company and drawing a monthly salary of Rs.8300/-. However, as discussed",

earlier, he failed to produce any evidence in this respect and, therefore, the income certificate produced by appellant, being inadmissible in evidence,"

cannot be taken into consideration. It needs reiteration, though at the cost of brevity, that appellant laid the claim petition claiming to be a businessman",

by occupation, earning monthly income of Rs.7,000/- and in view of contradictory stands taken by the appellant in the tribunal, speculative income of",

Rs. 6,000/- per month assessed by the tribunal has been maintained. It is also pertinent to mention that appellant has suffered amputation of his left",

mid arm. In these circumstances, extent of permanent disability suffered by the appellant would not result in corresponding loss of his earning",

capacity. Therefore, assessment of functional disability of 50% by learned tribunal is also maintained."

15. According to the appellant, tribunal has also applied wrong multiplier of 17 as against the correct multiplier of 18, as per schedule of Motor",

Vehicles Act, 1988."

16. For the use of multiplier, Hon'ble Supreme Court in Sarla Verma and ors. v. Delhi Transport Corporation and anr. reported as 2009 (3)",

Supreme 487 has held that in cases falling under Section 166 of the Motor Vehicles Act, Davies' method is applicable. Relevant extract of",

judgment, with respect to the multiplier, is reproduced below for the facility of reference:"

"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma,

Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by",

one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for",

46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-",

5 for 66 to 70 years."

17. Appellant claims to be 30 years at the time of accident and it is evident from the afore-quoted judgment that correct multiplier for the age group,

between 26 to 30 years is 17 and not 18, therefore learned trial court has applied the correct multiplier."

Loss of future income,

18. Learned tribunal ought to have, but did not award any amount towards loss of future prospects as also for medical expenditure. Hon'ble",

Supreme Court in Santosh Devi v. National Insurance Company Ltd. reported as AIR 2012 SC 2185, dwelling on the issue of addition to income for",

Calculation Table,

Loss of income, Rs. 6000/- per month

Future prospects (@ 30% as per para 15 of this

judgment)", "Rs. 1800 (i.e. 30% of Rs.

6000)

Deduction towards functional disability @ 50%, 50% of Rs. 7800 = Rs. 3900

Total income after adding future prospects and

deducting functional disability @ 50%", "Rs. 46800 per annum (i.e. Rs.

6000 + Rs. 1800 $\hat{=}$ Rs. 3900)

Multiplier i.e. 17 (as per second schedule and

Section 166)", "Rs. 7,95,600 (i.e. Rs. 46800 X 17)

Total amount of compensation, "Rs. 7,95,600/-

Damages on account of pain and sufferings, "Rs. 10,000/-

Medical expenses, "Rs. 1,00,000/-

Loss of amenities, "Rs. 10,000/-

Special damages (as per para 18), "Rs. 25,000/-

Grand total, "9,40,600/-