HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

(**Through Virtual Mode**)

Reserved on: 19.06.2020
Pronounced on: 25 .06.2020

CMAM No. 52/2010

National Insurance Company Ltd. .....Appellant(s)

Through :-

Mr. J.A. Kawoosa, Advocate.

V/s

Umar Ghulam Zargar and ors. .....Respondent(s)

Through :-

Mr. Mir Manzoor, Advocate.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

1. Umar Ghulam Zargar (respondent No. 1 herein) was a young boy aged about 15 years, who used to undergo studies and live a normal life like any other child of his age. Unfortunately on 02.04.2007, while he was travelling in a vehicle bearing Registration No. JK03A-1365 alongwith other passengers, the said vehicle on reaching Village Siligam, KP Road, Anantnag met with an accident, as a result of which the above named boy suffered multiple grievous injuries. The passenger vehicle in question was being driven in a rash and negligent manner by its driver at the time of the accident. The injured was immediately rushed to District Hospital, Anantnag, wherefrom he was referred to SKIMS, Soura for treatment. An FIR bearing No. 21/2007 for offences under Sections 279, 337 and 304-A RPC was registered in respect of

the accident with Police Station Aishmuqam. The injuries caused to the respondent No. 1 herein had serious consequences to him, as he slipped into coma and became bed ridden. The injured ultimately was declared 100% permanently disabled by the doctor.

2. PW-Dr. Abrar Ahmed Wani, Assistant Professor, Department of Neurosurgery, SKIMS Soura has stated that the injured was admitted to SKIMS on 02.04.2007 and operated upon on 03.04.2007. He was discharged from the Hospital on 09.06.2007. The doctor has further stated that the injured was admitted in a comatose condition and even at the time of his discharge, he had not regained his consciousness. He has further stated that the injured is 100% permanently disabled and the chances of his recovery are rare. He has observed that only a miracle can help the injured to recover. The doctor has explained that the injured cannot eat by himself and he has to be fed through a tube by somebody and that he needs constant supervision by an attendant. He has also stated that the injured needs special diet and follow up treatment, because such patients are prone to infection. He has further stated that the injured will require a special type of bedding to prevent him from bed sores. The doctor admitted the correctness of the Certificate of Disability EXP-M, which has been issued by him.

3. With the aforesaid facts and evidence on record, the Motor Accident Claims Tribunal, Srinagar, (*hereinafter referred to as* ***'the Tribunal'***), on a claim petition filed by the injured through his father, passed an award of ₹18, 55,000/- (Rupees Eighteen Lacs and Fifty Five Thousand) in favour of the injured with a further direction that out of the aforesaid amount,

an amount of ₹18, 30,000/- (Rupees Eighteen Lacs and Thirty Thousand) shall be paid by the insurer/appellant herein, whereas the balance amount shall be paid by the driver of the offending vehicle. The Tribunal also awarded interest @ 6% from the date of presentation of the claim petition till final realization of the awarded amount and in case, the amount is not realized within two months from the date of the award, the rate of interest shall be payable @ 9% from the date of default.

4. The appellant-insurance company herein being aggrieved by the quantum of compensation awarded by the Tribunal has filed the instant appeal on the grounds that the compensation has been awarded without any basis and without any independent evidence on record and that penal rate of interest could not have been awarded, as the said practice has been deprecated by the Hon'ble Supreme Court. However, findings of the Tribunal as regards the occurrence and liability of the appellant insurance company to indemnify the insured have not been challenged by the appellant insurance company.

5. I have heard learned counsel for the parties and perused the impugned award, the grounds of the appeal and record of the Trial Court.

6. The short question that is involved in the instant appeal is as to how to assess the just compensation in a case of instant nature. No one can dispute the fact that no amount of compensation can restore the injured boy to his earlier position. However, it is the duty of the Tribunal to ensure that the injured boy is paid the compensation, which is just and reasonable. Let us now undertake the exercise to achieve the aforesaid objective.

7. Vide the impugned award, the Tribunal has awarded the copensation in favour of the injured under the following heads:-

S. No.	Heads	Amount awarded by the Tribunal
(i)	Medical Expenses	₹4,00,000/-
(ii)	Transport Charges	₹2,00,000/-
(iii)	Attendant Charges	₹2,70,000/-
(iv)	Expenses on account of special mattress.	₹30,000/-
(v)	Expenses on account of special diet	₹90,000/-
(vi)	Expenses on account of purchase of feeding tube	₹25,000/-
(vii)	Loss of income to the father of the injured	₹90,000/-
(viii)	Compensation on account of pain and suffering	₹3,00,000/-
(ix)	Compensation on account of loss of amenities	₹2,50,000/-
(x)	Compensation on account of loss of expectation of life	₹50,000/-
(xi)	Compensation on account of the fact that the inured has been rendered to live a vegetative life	₹1,50,000/-
Total		**₹18,55,000/-**

8. So far as the first head, i.e., medical expenses is concerned, learned counsel for the appellant has laid much emphasis on the fact that the injured has placed on record medical bills in the amount of ₹ 98,510.88/- only whereas the Tribunal has awarded a sum of ₹4,00,000/- on account of medical expenses, which is based on no evidence.

9. In the above context, it may be noted that there is evidence on record in the shape of statement of the doctor that the injured has remained admitted to the hospital from 02.04.2007 to 09.06.2007, 24.03.2008 to 29.03.2008 and 01.04.2008 to 08.04.2008. The doctor has clearly stated that the injured will need follow up treatment throughout his life, as such like patients are prone to infection. The injured has thus remained admitted to the hospital from time to time and he needs treatment throughout his life. Therefore, limiting the amount only to the bills, which has been paid in the name of the claimant only, would not be reasonable.

10. It is a fact of common knowledge that when a person is faced with a situation of life and death of his son, it is inconceivable to expect such a person to go on preserving all the medical bills for their reimbursement at a later stage. Therefore, the Tribunal in the instant case was justified in awarding medical expenses beyond the amount of bills produced by the claimants. Having regard to the nature of injuries suffered by the injured and the period for which he has undergone treatment and is expected to undergo treatment in future, the amount awarded by the Tribunal under this head is just and reasonable.

11. As regards the amount of compensation awarded under the head "transport charges", it has been argued that there is no basis for awarding transport charges in the amount of ₹2,00,000/-.

12. In this regard it is shown from the evidence on record that the injured has been reduced to a vegetative state and that he needs frequent treatment

from the hospital throughout his life. Therefore, arranging a special vehicle for him to carry him to the hospital is a necessary consequence. It was not necessary for the injured to place on record the bills to show that he has incurred expenses on hiring a special vehicle for visiting the hospital keeping in view the nature of injuries suffered by him and the mental state of his guardians, for whom the priority would have been to restore the health of the injured and not to collect the vouchers. Having regard to the nature of the injuries suffered by the injured, the frequency with which he may be required to visit the hospital and the multiplier applicable to his age group, an amount of ₹2,00,000/- awarded by the Tribunal as transport charges in favour of the injured appears to be just and reasonable.

13. It has been argued by the learned counsel for the appellant that the Tribunal was not justified in awarding the compensation on account of loss of wages to the father of the injured as well as the attendant charges. The argument appears to be misconceived, as there is evidence on record in the shape of statement of the father of the injured, who has clearly stated that he is doing no other job except attending the injured round the clock. He has also stated that he was compelled to sell 04 Kanals of land for meeting the expenses of treatment and special diet for his injured son. He has also stated that he was earning ₹150/- per day. Thus, there is evidence on record to show that the injured was being attended to by his father round the clock during his treatment in the hospital and thereafter. The injured is, therefore, entitled to not only the attendant charges till the date of filing of the claim petition, but also the future attendant charges, as the evidence on record shows that the injured cannot even

feed himself and is dependent upon others for his daily chores. The Tribunal was, therefore, correct in calculating the attendant charges up to the date of filing of the claim petition equivalent to the loss of wages/income that has occurred to the father of the injured because he was looking after his injured son round the clock. Merely because no charges have actually been paid to the father of the injured for attending to his injured son, it cannot be said that the attendant charges cannot be denied to the injured. The father of the injured by attending to his injured son must have given up his normal vocation, from which he was earning about ₹150/- per day and this amount comes to about ₹90,000/- till the date of filing of the claim petition. Therefore, the Tribunal was justified in awarding this amount as the compensation for loss of income to the father of the injured or in other words, the attendant charges up to the date of filing of the claim petition.

14. So far as the future attendant charges are concerned, the Tribunal has awarded the sum by calculating it for the next 15 years only, which comes to ₹2,70,000/-.In my opinion, the amount of future attendant charges awarded by the Tribunal is on lower side. Instead of awarding the attendant charges for 15 years, the Tribunal should have followed the multiplier system by using the correct multiplier. This system has been recognized by the Hon'ble Supreme Court in ***"Gobald Motor Service Limited Vs. R.M.K. Veluswami and others***, *reported as AIR 1962 SCR (1) 929.* The multiplier system factors in inflation rate, rate of interest payable on lump sum award, the longevity of the claimants and also other issues such as uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognized as the

most realistic and reasonable method. It ensures better justice between the parties and, thus, results in awarding of just compensation within the meaning of the Motor Vehicles Act.

15. Keeping in view the claimant's age, the multiplier in this case should have been 18 as opposite to 15 taken by the Tribunal. Since the quantum of compensation awarded by the Tibunal has not been challenged by the claimant, as such, I leave it there and hold that the attendant charges awarded by the Tribunal in favour of the injured are neither exorbitant nor without basis.

16. It has also been contended by the appellant that the amount awarded by the Tribunal for treating infection of the claimant, special diet charges, cost of special mattress, compensation on account of pain and sufferings, loss of amenities, inconvenience and hardship to the family is exorbitant and without any basis.

17. In the above context, it may be noted that there is enough evidence on record in the shape of the statements of the doctor and the father of the injured that the injured needs treatment for rest of his life. He requires special mattress to avoid occurrence of bed sores, a feeding tube to feed him which is required to be changed frequently, the services of a trained nurse and frequent follow up treatment in the hospital. With this evidence on record, the compensation awarded by the Tribunal on account of cost of special mattress, cost of feeding tube, cost of treatment of infection and the expenses on account of special diet are absolutely justified. In fact, the Tribunal has taken into

account the cost of one special mattress and one feeding tube only and has not taken into consideration the fact that these equipments are required to be changed frequently. If future needs of the injured are taken into account, the amount awarded by the Tribunal appears to be on a lower side. Thus it cannot be stated that the amount awarded by the Tribunal on above counts is on a higher side or without any basis.

18. Coming to the non-pecuniary damages like compensation on account of pain and suffering and loss of amenities, the contention of the learned counsel for the appellant that the amount awarded is on higher side is without any basis. The Hon'ble Supreme Court in the case titled, "***Master Mallikarjun Vs. Divisional Manager, National Insurance Company Ltd. and another***, *reported as 2013 (sale) 668*, while dealing with the issue of award under this head has held that it should be at least ₹6,00,000/-, if the disability is more than 90%.

19. So far as the present case is concerned, in addition to 100% physical disability, the young boy is in coma and according the the doctor, such patients are kept in ICU or Rehabilitation Centres for years together. With this kind of condition, the injured should have been awarded more than what has been awarded by the Tribunal on account of compensation for pain and suffering and loss of amenities. Unfortunately the claimant has not challenged the quantum of compensation and as such he has to remain satisfied with whatever has been awarded by the Tribunal in his favour under these heads.

20. Another head of compensation, which is an essential component of compensation in injury cases, is the loss of future income and the same has not been taken into account by the Tribunal while passing the impugned award. Although the injured was a non-earning person as on date of the accident, yet it is a settled law that even in such cases, the compensation on account of loss of earning has to be awarded. The injured, a young boy, was studying at the relevant time. He could have worked and would have earned a reasonable sum of money in future, but the Tribunal has overlooked this aspect of the case and has not awarded any compensation in favour of the injured under this head. However, as already noted, the injured has not challenged the impugned award; hence this Court is helpless in awarding any enhanced compensation in his favour.

21. For the foregoing reasons, I have no doubt in my mind that the amount of compensation awarded by the Tribunal in favour of the injured is based on evidence on record and the same is not exorbitant. In fact, having regard to the nature of the injuries suffered by the injured, the compensation awarded by the Tribunal in favour of the injured is on a lower side.

22. Learned counsel for the appellant has also contended that during the pendency of the appeal, the injured has passed away and as such the award is required to be slashed down after taking into account the fact that the future needs of the injured are no longer available.

23. Firstly, there is nothing on record to show that the injured has died during the pendency of the appeal and secondly, even if the injured has

died during the pendency of the appeal, it will make no difference to the case, as admittedly at the time of passing of the impugned award by the Tribunal, the injured was surviving. The date of passing of the award is relevant for the purpose of assessment of compensation and not the events subsequent thereto.

24. Lastly, it has been argued by the learned counsel for the appellant that the Tribunal has not been justified in awarding interest at a higher rate on the awarded sum in case of default in payment of awarded sum within a particular period. According to the learned counsel, such direction amounts to awarding of penal interest, which is not statutorily envisaged and prescribed. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Keshav Bahadur*** reported in **AIR 2004 SC 1518.**

A persual of the impugned award reveals that the learned Tribunal has awarded interest at the rate of 6% per annum from the date of filing of the claim petition till the realization of the awarded amount with a further stipulation that in case the amount is not paid within a period of two months, the claimant shall be entitled to interest at the rate of 9% from the date of the default. This, is in my view, amounts to awarding of penal interest regarding which there is no scope under the law. In the case titled ***National Insurance Company Ltd. Vs. Keshav Bahadur (supra)*** the Hon'ble Supreme Court has, while dealing with this aspect, observed as under:-

> ***"Though Section 110-CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above***

> ***background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal"***

In view of the law on the subject as laid down by the Hon'ble Supreme Court, it is clear that the Tribunal has, while awarding enhanced rate of interest in case of default in payment of the awarded sum, exceeded its jurisdiction and to this extent, the award deserves to be modified.

25. For the foregoing reasons, the impugned award passed by the learned Tribunal, except to the extent of awarding of interest at the enhanced rate of 9% per annum, is upheld. The appeal stands **disposed of,** accordingly.

(SANJAY DHAR)
JUDGE

Srinagar
25.06.2020
(**Ram Krishan**)

Whether the order is speaking:- Yes/No
Whether the order is reportable: Yes/No