

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**

**Mac App No. 96/2022 c/w
Mac App No.128/2022**

Reserved on: 02.05.2023
Pronounced on: 11 .05.2023

**National Insurance Co. Ltd.
Subash Chander**

...appellants

*Through: - Mr.Sanjay K. Dhar Advocate
Mr. Mohd Latief Malik Advocate.*

Vs.

Subash Chander and others.

National Insurance Company Ltd ...respondents

*Through: - Mr. Mohd Latief Malik Advocate
Mr. Sanjay K. Dhar Advocate*

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

JUDGMENT

1) By this common judgment, two appals, one filed by the insurer and the other filed by the claimant challenging the award dated 31.05.2021 passed by the Motor Accident Claims Tribunal, Jammu [‘for short’ the Tribunal] are proposed to be decided.

2) Before coming to the grounds of appeal, it would be apt to give a brief background of the facts leading to filing of these two appeals. On 01.12.2011 at about 5.15 pm, a Maruti Car bearing registration No. JK21-3393 that was being driven rashly and negligently by its

driver-respondent No.3, knocked down the claimant, as a result of which, he suffered multiple injuries.

3) The claimant filed a claim petition before the Tribunal claiming compensation on account of the injuries sustained by him. In the said claim petition, the insurer, the owner and the driver of the offending vehicle were impleaded as party respondents. In the claim petition, the claimant contended that he was earning monthly income of Rs.15000/- as electrical technician and due to the accident, he has suffered permanent disability resulting in loss of earning. A compensation in the amount of Rs.17,80,0002 was claimed by the claimant.

4) The claim petition was contested by the appellant-insurance company by filing its objections. In its objections, the insurance company denied the occurrence, but admitted the currency of insurance policy of the offending vehicle with it at the time of the accident. It was also contended by the insurance company that the compensation claimed by the claimant is highly exorbitant. The owner and driver of the offending vehicle, however, did not contest the claim petition.

5) From pleading of the parties, the following issues came to be framed by the Tribunal:

- (i). Whether on 01.12.2011, at about 05.15 pm near Seventeen Miles the petitioner received injuries on his head in the accident caused due to the rash and negligent driving of offending vehicle bearing registration No. JK21-3393 by respondent No.3 as a

result of which he suffered disablement of permanent nature ?
OPP

(ii) Whether petitioner is entitled to compensation, if yes, to what amount and from whom ? OPP

(iii) Relief OP Parties.

6) After recording the evidence, the Tribunal came to the conclusion that the claimant had suffered injuries due to the accident involving the offending vehicle which was insured with the appellant-insurance company. While assessing the compensation, the Tribunal, after taking the monthly income of the claimant as Rs. 8000/- and his loss of earning capacity at 30%, awarded a sum of Rs.12,48,979/- as compensation in favour of the claimant. The awarded sum was to carry interest at the rate of 7.5%.

7) The appellant-insurance company has challenged the impugned award primarily on the ground that the disability alleged to have been sustained by the claimant has not been proved, inasmuch as, neither the Doctor, who has treated the claimant, nor the Doctor who has examined the claimant at the time of issuance of disability certificate have been produced as witnesses. It has been further contended that the income of the claimant has not been proved by leading cogent and convincing evidence and, having regard to the occupation of the claimant, his income has been taken by the Tribunal on a higher side. It has been contended that the Tribunal, while awarding interest on whole of the compensation amount, has fallen into error because certain components

of the compensation relate to future expenditure on which no interest can be awarded.

8) In the cross-appeal, the claimant has contended that income of the claimant has been wrongly taken by the Tribunal as Rs.8000/-, though he had produced the document to show that his monthly income was Rs.15000/-. It has also been contended that, though the claimant had suffered disability only to the extent of 30%, yet, having regard to the nature of his disability, loss of earning capacity of the claimant was to the extent of 100%. On this ground, it is urged that that the Tribunal has fallen into error while assessing the loss of future income of the claimant.

9) I have heard learned counsel for the parties and perused the record of the case including record of the Tribunal.

10) So far as disability of the claimant is concerned, as per the certificate EXTP-RK which is on record of the Tribunal, the claimant is stated to be suffering from 30% disability. The claimant has examined Doctor Raj Kumar Bhagat, who was a member of the Medical Board, that has issued the disability certificate EXTP-RK. He has stated that the degree of disability of the claimant was assessed as 30% as per the report of Standing Medical Board GMC, Jammu dated 15.04.2014. The fact that the disability certificate has been issued on the basis of a certificate of the Standing Medical Board, is also indicated in the disability certificate EXTP-RK, meaning thereby that

the disability certificate is based upon the certificate issued by the Standing Medical Board GMC, and associated Hospitals, Jammu. A copy of the said certificate has also been placed on record of the Tribunal. The said certificate bears the signatures of Dr. Sanjeev Gupta, Dr. B.N.Bhogal and Dr. Ghanshyam Dev. The certificate of the Standing Medical Board also bears reference to the opinions of HoDs of Neuro-Surgeon and Neurologist. It seems that these opinions have been rendered by the Dr. Haroon Salaria, Incharge HoD, Neuro-Surgery SSH, GMC, Jammu and Dr. B.R.Kindal, Lecturer, Neurology, Department of Medicine, GMC, Jammu.

11) From the above, it is clear that the disability certificate EXTP-RK is based upon the certificate dated 15.04.2014 issued by the Standing Medical Board which, in turn, has been issued on the basis of opinions of three Doctors from the fields of Psychiatry, Neuro-Surgery and Neurology. The witness Dr. Raj Kumar Bhagat examined by the claimant before the Tribunal has stated that he is only a consultant Surgeon and not a Neuro expert/Surgeon. He has also stated that the other two Members of the Medical Board are Physician Specialists and there was no Neuro expert/surgeon to assess the disability of the claimant. The said witness has gone on to state that the certificate of disability of the claimant is with respect to Neuro problems, as such, he cannot comment upon the Neuro related problem or disability. He has confirmed the fact that he has never examined the claimant.

12) It is an admitted fact that the disability of the claimant relates to Neuro problem. It is also an admitted case that Dr. Raj Kumar Bhagat, who was examined as a witness by the claimant, has neither treated, nor examined the claimant and he is not even associated with the field of Neurology. The question that arises for determination is, as to whether, on the basis of the statement made by a Doctor, who has neither examined the claimant, nor he is an expert in the relevant field, it can be stated that the claimant has suffered a particular type of disability simply on the basis of a certificate issued by the Medical Board.

13) The above question came up for consideration before the Supreme Court in the case of **Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343**. Para 12 of the said judgment is relevant to the context and the same is reproduced as under:

“The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with

reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability”.

14) From the aforesaid enunciation of law on the subject, it is clear that, in order to ascertain the nature of disability of an injured/claimant and its effect upon his earning capacity, the Tribunal has to make every effort to record the evidence of the Doctor who has treated the injured or who has assessed his permanent disability. Mere production of a disability certificate cannot be taken as proof of the extent of disability stated therein.

15) In the instant case, as already noted, Dr. Raj Kumar Bhagat has neither treated the claimant nor has he assessed his permanent disability. He has only relied upon the disability certificate issued by the Standing Medical Board. The Tribunal has not examined any member of the Standing Medical Board, nor has it examined any of the Doctors whose opinion has been made basis of the certificate issued by the Standing Medical Board. The claimant cannot rely upon the disability certificate issued by the Medical Board without examining the Doctor who has either treated him or who has assessed his disability at the time of issuing the disability certificate. The actual facts would come to the fore only when the evidence of the relevant Doctor would be recorded and he would be cross-examined. To this extent, the contention of the appellant- insurance appears to be well founded.

16) The other contention raised by both the leaned counsels is with regard to the assessment of monthly income of the claimant.

While the appellant-insurance company contends that, having regard to the fact that there was no cogent and convincing evidence on record as regards the income of the claimant, the same could not have been taken as Rs.8000/- per month, but the claimant contends that he had placed on record documentary evidence to show that he was earning Rs.15000/- per month.

17) If we have a look at the record of the Tribunal, the claimant has placed on record a salary certificate issued by the Hotel 17 Miles, according to which, he was earning Rs.15000/- per month. It also appears that the claimant had moved an application before the Tribunal praying for issuance of summons to Dr. Haroon Salaria, HoD Neurosurgery, GMC Jammu for proving the extent of disability. He has also applied for issuance of summons to his employer for proving the salary certificate. The record of the Tribunal further indicates that the diet expenses were deposited by the claimant and even summons were issued to the aforesaid witnesses, but, for the reasons best known to the Tribunal, the process has been abandoned midway without examining the aforesaid two important witnesses. The examination of these witnesses would have thrown light on the extent of disability and loss of earning capacity of the claimant and also on his actual income.

18) By omitting to examine the aforesaid two witnesses, the Tribunal has fallen into a grave error, as a result whereof, it seems that the Tribunal has not been able to assess the just compensation in the instant case. It was incumbent upon the Tribunal to record the

statement of the Doctor, who had actually treated the claimant or the Doctor, who had examined/assessed his disability. Without undertaking such an exercise, the Tribunal has proceeded to assess the loss of earning capacity as well as the disability of the claimant on the basis of guesswork. The Tribunal was duty bound to collect all the relevant material that would have enabled it to arrive at the figure of just compensation while assessing the compensation in favour of the injured. Duty of the Tribunal would not get absolved by waiting for the parties to produce the material before it and to decide the issue without the relevant material just because the same was not brought by the parties before it. The role of the Tribunal has to be proactive because the proceedings before it are in the nature of an enquiry. The Tribunal has to take all necessary steps to gather the relevant material for assessing the just compensation.

19) Once the claimant had brought it to the notice of the Tribunal that his disability has been assessed by a particular Doctor, or that he has been examined by a particular Doctor in respect of whom he had deposited the diet expenses also, it was incumbent upon the Tribunal to secure his presence before it and record his statement. Similarly, it was also incumbent upon the Tribunal to summon and examine the employer of the claimant for assessing his actual income. By not doing so, the Tribunal has abdicated its duty thereby rendering the impugned award unsustainable in law.

20) For the foregoing reasons, the impugned award is set aside and the case is remanded back to the Tribunal with a direction to it to summon either the Doctor(s) who is/are signatory(s) to the certificate issued by the Standing Medical Board or the Doctors on the basis of whose opinions, the said certificate has been issued. The Tribunal shall also summon the employer/accountant of the claimant for ascertaining his monthly income.

21) Having regard to the fact that the accident has taken place more than a decade back, the Tribunal will do well to complete the aforesaid exercise within a period of six (06) months from the date a copy of this judgment is brought to its notice and thereafter pass a fresh award in accordance with law. The amount that has already been received by the claimant during the pendency of these appeals shall be retained by him and the same be subject to the adjustment after passing of a fresh award by the Tribunal. The balance amount that stands deposited with the Registry shall be refunded to the appellant- insurance company.

22) Both the appeals stand disposed of in terms of the aforesaid directions.

Record of the Tribunal along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Jammu

11 .05.2023

“Sanjeev, PS” Whether the order is speaking:

Yes

Whether the order is reportable: Yes