

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

MA No. 144/2018

Pronounced on : 3rd June, 2020

HDGC ERGO General Insurance
Company Ltd. & anr.

.... Appellant(s)

Through:- Mr. Baldev Singh, Advocate

V/s

Mohan Singh & ors.

.....Respondent(s)

Through:- Mr. Vikas Magotra, Advocate

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Appellants challenge the award dated 10.05.2018 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter to be referred to as 'the Tribunal') awarding a sum of Rs. 26,38,200/- alongwith 6.75% annual interest from the date of institution of the petition till payment.

02. The accident involving the offending vehicle took place at Abdullah Bridge near Raj Bagh, Srinagar on the morning of 25.09.2013. The facts which are not disputed by the parties are that, the injured Mohan Singh accompanied by his friend Suraj Mani were walking near Abdullah Bridge while coming from Raj Bagh, Srinagar. The offending vehicle while coming from the opposite direction, it appears brushed with the deceased causing serious injuries to him. He was immediately taken to Sher-i-Kashmir Institute of Medical Sciences, (SKIMS) Soura Srinagar. An FIR No. 76/2013 was registered in Police Station Raj Bagh Srinagar. The claimant-Mohan Singh remained admitted in the Sher-i-Kashmir Institute of Medical Sciences from 25.09.2013 to 10.10.2013. During this period, he

was operated in the department of Plastic Surgery. He was again admitted in the same institution on 17.05.2014 and discharged on 24.05.2014.

03. After hearing the appellant and the owner-cum-driver of the offending vehicle, the Tribunal by its order dated 19.10.2015 framed the issues which are reproduced below:-

- (i) Whether an accident took place on 25.09.2013 near Abdullah Bridge Raj Bagh Srinagar involving offending vehicle bearing registration No. JK021S-4976 (Load Carrier) as a result of which petitioner-Mohan Singh received grievous injuries and has been disabled ? OPP
- (ii) If issue No. 1 is proved in affirmative, whether petitioner is entitled to compensation? If so, to what amount and from whom ? OPP
- (iii) Whether there was any violation of terms and conditions of insurance policy with respect to the vehicle No. JK01S-4976 on the date of occurrence, if yes, what is its effect ? OPR-2
- (iv) Relief O.P.Parties.

04. Respondent No. 1 (hereinafter referred to as claimant) besides his own statement as witness examined Head Constable Suraj Kumar and Ram Dayal and Doctor Adil Hafiz as witnesses. The accident involving Vehicle No. JK01S-4976 (Load Carrier) is not disputed, it is also not disputed that the vehicle was insured with the appellant on the date of occurrence.

05. The appellant challenges the award dated 10.05.2018 passed by the Tribunal on the following grounds:-

- (a) That the vehicle was driven by the person who did not possess the valid driving license. The learned counsel for the appellant has also questioned the correctness of the judgment in **Mukund**

Dewangan vs Oriental Insurance Company Limited; AIR 2017 (SC) 3668.

- (b) That the award has been passed on the basis of assumption and presumption without any evidence;
- (c) That the Tribunal awarded loss of future income for which there was neither any evidence nor any ground because the injured has joined the post on which he was working at the time of accident.
- (d) That there is no justification for awarding future loss of earnings;
- (e) That the interest awarded is higher, moreover no interest could be awarded for loss of future income.

06. The Tribunal after deciding Issue no. 1 in favour of the claimant took up Issue No. 2 for decision and made a passing reference to judgment reported in **1995 (1) SCC 551** and in **AIR 1970 SC 376**. But reproduced Para-5, 10 and 13 of the judgment in **Raj Kumar vs. Ajay Kumar & anr., (2011) 1 SCC 343**. However, after reproducing Para-13, the Tribunal jumped to Para-21 of **Sarla Verma & ors. Vs. Delhi Transport Corporation & anr. (2009) 6 SCC 121**. Why the Tribunal did not reproduce Para-14 is quite unfortunate and intriguing.

07. It is this para which determines the compensation payable to person who has no permanent income but suffers permanent disability and government servant whose disability may be permanent but there is no future loss of income. Their lordships in fact have stated the law regarding physical disability of a public servant so clearly and the Tribunal has tried to evade from the observations by referring to the judgments of the Supreme court which are not applicable to the facts of the case, as is evident from the judgement in **National Insurance Company Limited Vs.**

Pranay Sethi & ors., 2017 (16) SCC 680 and V. Mekala Vs. M. Malathi & Anr.’ 2014 (11) SCC 178 which will be referred to at relevant para..

08. In Para-14 of the judgment in **Raj Kumar vs. Ajay Kumar & anr.,(supra)** their lordships categorically stated, “in fact there may not be any need to award any compensation under the head of loss of future earnings, if the claimant continued in government service though he may be awarded compensation under the head loss of amenities as a consequence of losing his hand....”.

09. However, in case the claimant is continuing in service but may not found suitable for discharging the duties attached to the post which he was earlier holding on account of his disability and, therefore, to be shifted to some other suitable, but lesser post with a lesser emoluments, in which case, there should be limited award under the head loss of earning capacity taking note of reduced earning capacity. The respondent-Mohan Singh does not qualify even under this head because he was Head constable at the time of accident drawing Rs.38,693/- as monthly salary, but he is now drawing Rs.46,000/- as per his own statement. The learned Tribunal started Issue No. 2 from Para-13 and continued the discussion upto the last page of the award.

10. The Tribunal has awarded Rs.22,93,200/- on account of future loss of earning capacity by applying multiplier of 13 relying on the judgment of Constitution Bench in **Pranay Sethi’s case (Supra) Para 59 (3)** which applies in case where deceased is having permanent job and is below the age of 40 years. This para does not contemplate future income of a government servant who continues in service on the same post and is getting increment, as well as D.A.

11. The reliance placed by the Tribunal on the case of **Reshma Kumari & ors vs. Madan Mohan & anr., (2013) 9 SCC 65** is also misplaced because it was also a case of fatal accident, where Reshma Kumari was widow of the deceased who had three minor children at the time of his death, so this case cannot be considered by the learned Tribunal for calculating the loss of future income.

12. Another aspect is that, the Tribunal should have looked to Police Rules before holding that his promotion has been stopped without knowing, who has stopped it. It is Rule-389 of the Police Rules which regulates the promotion of Head Constable to the rank of Assistant Sub-Inspector. This Rule provides that the IGP prepares list of the Head Constables due for promotion in the District, no such evidence has been produced that the claimant figured in the approved promotion list. It is not the case of the petitioner that he was in the approved list but has been denied promotion due to injury. Moreover, it is not his plea that he has been reduced in rank which alone could justify loss of future income as per Para-14 of the judgment in Raj Kumar's case (supra). So on no account, future loss of earnings could be awarded to the claimant and therefore, an amount of Rs. 22,93,200/- has been wrongly awarded.

13. So far the question of awarding compensation for medical expenses, the Tribunal has awarded Rs.75,000/- as medical expenses. It is admitted by the petitioner that he has received from the department expenses during the period of admission. Although he should have been categorical about the same but because the amount received was definite, yet the Tribunal allowed Rs.75,000/- on the said head.

14. Similarly, reliance placed by the Tribunal on **Mekala Vs. M. Malathi & Anr.’ 2014 (11) SCC 178** is also not applicable to the facts of the case as is a case of a brilliant student holding 1st rank in school aged 16 years suffering 70% permanent disability. In this case, there was evidence of the Doctor that she will suffer lifelong pain moreover, her one leg was also amputated. She was awarded compensation on the ground of permanent disability but also for loss of prospects of marriage income, future prospects of income, pain & suffering, loss of amenities, loss of marriage prospectus, loss of medical care etc. and attendant etc. so this case had no comparison with the complainant whose salary from Rs. 38,693/- has increased to Rs. 46,000/- nearly Rs.10,000/- from the date of accident to the date of his examination on 10.03.2016 by the Tribunal.

15. The finding of the Tribunal that the claimant has been denied promotion is based on no evidence because even the claimant does not say that this statement is that, “the deponent would not get any promotion in future due to unfortunate accident although his next promotion was very near but due to this accident, his promotion has been stopped. There is no evidence that this promotion has been stopped even his witness Suraj Mani only says that his future promotional prospects have diminished.

16. The Tribunal awarded Rs.75,000/- as medical expenses on the ground that Dr. Abid Hafiz has proved the medical expenses, however Doctor says bills on the file were shown to him in Court which pertain to the injuries to the petitioner. However, he clarified in the cross-examination that bills are not signed by any Doctor or medical practitioner. Mere producing purchase voucher do not justify medical expenses, however, since the petitioner has suffered fatal injuries, an amount of Rs.25,000/- in

addition to amount already received is justified. Although the amount awarded on account of the pain & suffering and loss of amenities of life is on higher side but no interference in the same is being made. Thus, the claimant is entitled to Rs.25,000/- for medical treatment and Rs. 20,000/- for hospitalization, Rs.30,000/- for transport charges, Rs.20,000/- for extra nourishing diet, Rs.20,000/- for care taker, Rs.1,00,000/- for pain & sufferings and Rs.1,00,000/- for amenities of life with interest as awarded by the Tribunal. So far as the judgment of Hon'ble the Supreme Court in case titled, '**Mukund Dewangan v. Oriental Insurance Company reported**', as (2017) 14 SCC 663 is concerned, the same is law of land and cannot be questioned in these proceedings.

17. Appeal is, thus, partly allowed and award is modified in aforesaid terms.



(Sindhu Sharma)
Judge

JAMMU
3rd June.2020
Ram Murti

Whether the order is speaking : Yes
Whether the order is reportable : Yes