

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

Reserved on: 15.10.2024

Pronounced on: 29.11.2024

CCROS No. 5/2018

c/w

MA No. 219/2017

- 1. The New India Assurance Co.Appellant(s)/Petitioner(s)**
Ltd.TP-Legal Claim Hub
Gandhi Nagar, Jammu Th. Its
Dy. Manager Sandeep Kumar
Aged 51 years

Through: Mr. Rupinder Singh, Advocate
Ms. Damini Singh Chauhan, Advocate.
Mr. A. S. Azad, Advocate.

vs

- 1. Pardeep Kumar Respondent(s)**
S/O Sh. Radha Krishan, R/O Bhatera,
Tehsil Kalakote, District Rajouri Th.
His Father namely Radha Krishan
S/O Sain Dass.
- 2. Mahroof Ahmed**
S/O Sh. Khadam Hussain, R/O
Surankot, Poonch. (Owner of Tipper
No. JK12-6171)
- 3. Zulfigar Ali**
S/O Manir Hussain, R/O Kallar
Maharian, Mendhar, Poonch. (Driver
of Tipper No. JK12-6171)

Through: Mr. Kamal Gupta, Advocate
Mr. K. K. Abrol, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The appellant-Insurance Company has impugned the award dated 04.01.2017 passed by the Motor Accidents Claim Tribunal, Jammu (for short 'the Tribunal') in claim petition titled "*Pardeep Kumar Vs. The New*

India Assurance Co. Ltd. and others”, whereby an award for an amount of Rs. 49,76,415/- along with *pendent lite* and future interest at the rate of 7.5 percent per annum till realisation except on the head of loss of future income, future expenditure on medicine and expenditure for treatments, has been passed in favour of the respondent No. 1 and appellant-Insurance Company has been directed to satisfy the award within thirty days from the date of award.

2. The appellant-Insurance Company has impugned the award on three counts:

- i. That the driver of the offending vehicle was not holding an effective and valid driving licence as on 06.11.2012 when the accident took place, therefore, no liability could have been fastened upon the appellant-Insurance Company.
- ii. That the compensation for an amount of Rs. 25,92,000/- under the head of ‘Attendant’s Expenditure’ is exorbitant.
- iii. That the respondent No. 1/claimant was still in service and monthly salary for the month of November 2015 was Rs. 30,938/- and his pay was not reduced and during service period, the claimant did not suffer any financial loss, but the learned Tribunal has awarded Rs. 11,34,000/- on account of future loss of income, despite the fact that after retirement, the respondent No. 1 would still get pension, as such, compensation allowed under the head of future loss of income is totally misconceived.

3. The claimant-respondent No. 1 has also filed a cross-appeal against the award mentioned above on the ground that insufficient compensation has been awarded to him, as the learned Tribunal has not rightly determined the compensation payable to him under the heads of 'Pain and Suffering' and 'Loss of Amenities of Life'.
4. Mr. Rupinder Singh, learned counsel for the appellant-Insurance Company has argued that the appellant-Insurance Company was not at all liable to pay compensation, as the license of the driver of the offending vehicle i.e. the respondent No. 3, was not renewed as on date of accident. He has further argued that without there being any claim and any evidence in respect of loss of future earnings, the learned Tribunal has awarded an amount of Rs. 11,34,000/- under the head of loss of future earnings, despite the fact that the respondent No. 1 was a government employee and after retirement, he would get the retirement benefits also. He has also laid much stress on the fact that compensation could not have been awarded to the respondent No. 1 on account of attendant's expenditure by applying the multiplier method and if compensation was payable at all, then the same should have been paid in lump sum.
5. *Per contra*, Mr. Kamal Gupta, learned counsel for the respondent No. 1 has submitted that the appellant-Insurance Company cannot wriggle-out of its liability to satisfy the award as the license of the respondent No. 3 was having DHR endorsement having its validity from 06.01.2012 to 05.01.2013. He has further argued that the respondent No. 1 has been granted insufficient compensation under the heads of 'Pain and

Sufferings' and 'Loss of Amenities of Life', as the respondent No. 1 has to remain bedridden for whole of his life.

6. Heard learned counsel for the parties and perused the record.
7. The record depicts that the respondent No. 1, who was a Constable in the Police Department suffered injuries in a motor vehicle accident on 06.11.2012 at Sunderbani near Service Station at Kathanu Morh due to rash and negligent driving of Tipper bearing No. JK12-6171 by the respondent No. 3. The claimant-respondent No.1 filed a petition for grant of compensation through his father and the appellant-Insurance Company filed its response whereas the respondent Nos. 2 and 3 were set ex-parte. On the basis of pleadings of the parties, the following issues were framed:

- i. Whether an accident took place on 06.11.2012 at Sunderbani near Service Station at Kathanu Morh by rash and negligent driving of the vehicle bearing registration No. JK12-6171 (Tipper) by its driver as a result of which petitioner 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 the offending vehicle was being driven at the time of accident in violation of terms and conditions of policy of insurance and respondent insurance company is not liable? OPR-1*
- iv. Relief? O. P. Parties*

8. The respondent No. 1 examined his father, namely, Radha Krishan, through whom he had filed the claim petition, eye witness-Koul Chand, brother-Vijay Kumar, Constable Vinod Kumar Bhat, Dr. Shalinder

Sharma and Dr. Hanish Bansal in support of his claim, whereas the appellant-Insurance Company did not examine any witness in its support, rather placed on record the verification report of the driving license of the driver of the offending vehicle.

9. The learned Tribunal after examining the evidence allowed the claim petition filed by the claimant-respondent No. 1 and awarded compensation for an amount of Rs. 49,76,415/- in the following manner:

a) For medical expenses till date	=	Rs. 5,40,415/-
b) For future medical expenses	=	Rs. 1,00,000/-
c) Transport charges	=	Rs. 1,00,000/-
d) Expenses for Fowler and Alfa Bed till date	=	Rs. 30,000/-
e) Future expenses for Fowler and Alfa Bed	=	Rs. 30,000/-
f) Expenses on special diet	=	Rs. 50,000/-
g) For pain and suffering	=	Rs. 2,00,000/-
h) For loss of amenities of life	=	Rs. 2,00,000/-
i) Expenses of two attendants	=	Rs. 25,92,000/-
j) Future loss of earnings	=	Rs. 11,34,000/-
Total	=	Rs. 49,76,415/-

10. The first contention raised by the appellant-Insurance Company is that the driver of the offending vehicle was not holding a valid and effective driving license as the license was renewed only till 03.08.2012. A perusal of the record reveals that the license of the respondent No. 3 was issued on 07.12.1999 and was valid up to 06.12.2002. The license was renewed upto 03.08.2012 for HGV vehicles vide No. 3784/MVD/RTO w.e.f. 04.08.2009 and was endorsed for DHR vide No. 2043/DHR/MVD/J w.e.f. 06.01.2012 to 05.01.2013. Admittedly, the accident took place on 06.11.2012, as such, when the accident took place, driver of the offending vehicle was competent to drive vehicle. The contention of the appellant-Insurance Company that the owner of the vehicle did not appear in the witness box

becomes irrelevant, particularly when the appellant-Insurance Company has itself brought on record the verification report of the license of the driver of the offending vehicle. The Hon'ble Supreme Court of India in case titled '**IFFCO TOKIO General Insurance Co. Ltd. vs. Geeta Devi and others**' reported in **2023 SCC Online SC 1398** has held as under:

“12. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of wilful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in **United India Insurance Co. Ltd. vs. Lehu and others**, (2003) 3 SCC 338 was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehu (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:

‘(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. **To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles**

by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.’

(emphasis added)

11. So far as the present case is concerned, the driver of the offending vehicle was possessing a license having a valid DHR endorsement and that was sufficient for the owner of the offending vehicle to satisfy himself with regard to the validity of the license of the driver. Therefore, there is no force in the contention raised by the appellant-Insurance Company, as such, the same is rejected.
12. The second contention raised by the appellant-Insurance Company is that the compensation awarded to the respondent No. 1 on account of expenses for two attendants is exorbitant and multiplier method could not have been resorted to by the learned Tribunal. The Hon’ble Supreme Court of India

in case titled '**Kajal Chib vs. Jagdish Chand and others**' reported in **2020 (4) SCC 413**, awarded compensation under the head of attendant's expenses by adopting the multiplier method and expenses for two attendants were granted. The judgment of the co-ordinate bench relied upon by the learned counsel for the appellant in case titled '**United India Insurance Co. Ltd. Vs. Inderjeet & ors.**' bearing Mac App. No. 159/2020, decided on 02.04.2024 is distinguishable on facts, as in the said case the claimant had suffered 90% disability and was wheelchair bound, though remained bed ridden almost, whereas in the present case, the claimant in this case has suffered 100% disability. Dr. Hanish Bansal has stated that at least two to three attendants are required to take care of such a patient and the patient is bedridden. Though, in some judgments i.e. in case titled '**Parminder vs. NIA and others**' reported in **2019 ACJ 2401** and '**Lalan D. @ Lal and Anr. Vs. OIC Co. Ltd. and Ors**' reported in **2020 ACJ 2517**, Hon'ble the Supreme Court of India has awarded lump sum compensation under the head of attendant charges and medical expenses, but the Hon'ble Supreme Court of India has not held that award of compensation under the head of attendant's expenses cannot be awarded by application of multiplier method. This court finds that the respondent No. 1 had placed on record numerous receipts of Rs. 6,000/- per month as wages being given to caretakers. Learned Tribunal has considered Rs. 4,500/- each as monthly expenses for both the attendants and by enhancing the same by 50 percent, awarded an amount of Rs. 25,92,000/- as compensation under the head of attendant's expenses. In

Kajal's case (supra), no enhancement was made while granting compensation for two attendants, as such, this Court is of the considered view that the compensation awarded under the head of attendant's expenses is required to be reduced and by applying multiplier method, the total compensation for two attendants is assessed as Rs. 17,28,000/.

13. Lastly, it was submitted by the learned counsel for the appellant-Insurance Company that the respondent No. 1 could not have been awarded any compensation under the head of loss of future earnings. There appears to be a substance in the submission made by learned counsel for the appellant-Insurance Company, as no compensation could have been awarded to the respondent No. 1 for the future loss of earnings as there was no loss of income to the respondent No.1 because he continued to be in service and after retirement, he would get his retiral benefits including pension. Otherwise also, there was neither any claim by the respondent No. 1 nor any evidence with regard to loss of future earnings, as such, the learned Tribunal could not have awarded any compensation under the head of future loss of earnings. In the case of '*Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343, the Hon'ble Supreme Court of India has held as under:

"14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. **In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of**

loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

(emphasis added)

Therefore, the compensation awarded to the respondent No. 1 under the head of Loss of Future earnings for an amount of Rs. 11,34,000/- is not sustainable in the eyes of law.

14. Now, it is to be seen as to whether the respondent No. 1 has been granted sufficient compensation under the heads of “pains and sufferings” and “loss of amenities of life”. It has come in the evidence of the Dr. Shalinder Sharma that the respondent No. 1 has suffered 100 percent disability, which is permanent in nature, the injured would not improve and would require attendant for personal care for whole of his life. PW Dr. Hanish Bansal has stated that such patients usually do not recover from such a condition and at least two to three attendants are required to take care of such a patient and the respondent No. 1 would require Ryle’s tube feeding (feeding through a pipe through nose) for rest of his life. He has further stated that the patient is bedridden and special beds with air mattress are required to prevent bed sores and subsequent sepsis. In view of the evidence brought on record, it is established that the respondent No. 1 would remain bedridden for whole of his life. The compensation awarded to the respondent No. 1 under both the heads is Rs. 2,00,000/- each, which in the opinion of this Court is not just compensation. The Hon’ble Supreme Court of India in case titled ‘**Benson George vs. Reliance**

General Insurance Co. Ltd. and another’ reported in **2022 Legal Eagle (SC) 209** has awarded Rs. 10,00,000/-each as compensation under the heads of ‘Pain and Suffering’ and ‘Loss of Amenities of Life.

15. In ‘K.S. Muralidhar v. R. Subbulakshmi’, 2024 SCC OnLine SC 3385, the Hon’ble Supreme Court of India enhanced the compensation under the head of ‘Pain and Suffering’ to Rs. 15,00,000/ lacs by observing as under:

15. Keeping in view the above-referred judgments, the injuries suffered, the ‘pain and suffering’ caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, award Rs. 15,00,000/- under the head ‘pain and suffering’, fully conscious of the fact that the prayer of the claimant-appellant for enhancement of compensation was by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded.

16. In view of the above, this court is of the considered view that compensation payable to the respondent No. 1 under both these heads is required to be enhanced to Rs. 10,00,000/- each.

17. Accordingly, the respondent No. 1 is held entitled to compensation as under:

a) For medical expenses till date	=	Rs. 5,40,415/-
b) For future medical expenses	=	Rs. 1,00,000/-
c) Transport charges	=	Rs. 1,00,000/-
d) Expenses for Fowler and Alfa Bed till date	=	Rs. 30,000/-
e) Future expenses for Fowler and Alfa Bed	=	Rs. 30,000/-
f) Expenses on special diet	=	Rs. 50,000/-
g) For pain and suffering	=	Rs. 10,00,000/-
h) For loss of amenities of life	=	Rs. 10,00,000/-
i) Expenses of two attendants	=	Rs. 18,27,000/-
Total	=	Rs.46,77,415/-

(Rupees Forty-Six Lacs Seventy-Seven Thousand Four Hundred Fifteen Only)

18. In view of what has been considered, discussed and analysed hereinabove, award passed by the learned Tribunal is modified accordingly and the Registry is directed to release the compensation as modified by this court along with interest, in favour of the respondent No. 1 after proper verification by his counsel and the balance amount alongwith interest accrued be released in favour of the appellant-Insurance Company. The interest shall be payable in terms of the award passed by the learned Tribunal.
19. Both the appeals are accordingly **disposed of**.

Jammu
29.11.2024
Sahil Padha

