

(2020) 08 J&K CK 0056

Jammu And Kashmir High Court**Case No:** Miscellaneous Appeal No. 147 Of 2018

Mool Raj And Others

APPELLANT

Vs

Divisional Manager, Bajaj Allianz
General Insurance Co. Ltd And
OthersRESPONDENT

Date of Decision: Aug. 14, 2020**Hon'ble Judges:** Sanjeev Kumar, J**Bench:** Single Bench**Advocate:** Rajnish Singh Pariha, Sunny Mahajan**Final Decision:** Disposed Off

Judgement

Sanjeev Kumar, J

1. This is an appeal for enhancement of compensation by the appellants i.e father and mother of the deceased Ajeet Kumar, who lost his life in the motor vehicle accident caused due to rash and negligent driving of the offending vehicle bearing Registration No. 2637/JK02AE by its driver. The appellants herein as also one Suresh Kumar, brother of the deceased, filed a claim petition before the Motor Accident Claims Tribunal, Doda (hereinafter referred to as the "Tribunal") seeking compensation to the tune of Rs. 19,20,000/-. It was claimed that the deceased, at the time of his death, was 18 years old bachelor and was working as conductor. The claimants claimed that by working as conductor and also as an agriculturist, the deceased was earning monthly income of Rs.10,000/-.

2. The claim petition was contested by respondent No.1 only, whereas the other respondents i.e driver and owner of the offending vehicle were

proceeded ex parte.

3. The Tribunal, on the basis of the pleadings of the contesting parties, framed the following issues:

(i) Whether the offending vehicle bearing registration No. JK02AE/2632 on 30.10.2011 on its way from Doda to Gandoh was being driven rashly and

negligently by respondent No.3 as a result of which it met with an accident enroute at Donadi causing death of its conductor deceased Ajeet Kumar on

spot ? OPP

(ii) Whether the offending vehicle was being driven in contravention of the terms and conditions of the insurance policy and R/P at the time of

accident, if so, what is its effect on the claim petition ? OPR-1.

(iii) Whether respondent No.3 was not holding a valid and effective driving licence at the time of accident, if so, what is its effect on the claim petition

? OPR-1

(iv) Whether the petitioners are entitled to claim compensation amount as prayed for in the petition, if so, from whom and in what proportion ? OPP

(v) Relief OPP

4. Issue No. 1 was held proved in favour of the claimants. It was held that the deceased Ajeet Kumar had died in a motor vehicle accident involving

the offending vehicle which was being driven rashly and negligently by its driver i.e respondent No.3. Issue Nos. 2 and 3 were held not proved by

respondent No.1.

5. The Tribunal, on the basis of evidence before it, held the claimants entitled to a compensation of Rs. 3,85,072/- along with simple interest at the rate

of 7.5% per annum.

6. Learned counsel for the appellants submits that the Tribunal despite there being overwhelming evidence with regard to the income of the deceased,

arbitrarily pegged the income of the deceased as Rs.2500/- per month. It is contended that the Tribunal also went wrong in awarding different sums

under the conventional heads ignoring the law laid down by the Honâ€™ble Supreme Court in the cases of Sarla Verma v. Delhi Transport

Corporation (2009) 6 SCC 121 and National Insurance Company Ltd vs. Pranay Sethi and ors, AIR 2017 SC 5157.

7. Per contra, learned counsel for respondent No.1 submits that the appellants have failed to prove the income of the deceased by leading any cogent evidence and it has come in the evidence of the employer of the deceased i.e RW Surinder Singh that the deceased Ajeet Kukmar, who was working as conductor with the offending vehicle, was getting a monthly wages of Rs. 2500/- from him. It is, thus, urged that the Tribunal has correctly took the monthly wages of the deceased as Rs.2500/- per month and, thus, committed no illegality in computing the compensation payable to the appellants.

8. Having heard learned counsel for the parties and perused the record, I am of the view that the Tribunal has committed no illegality in taking the income of the deceased as Rs.2500/- per month.

9. It is true that the appellants had claimed that deceased besides working as conductor with the offending vehicle was also doing agriculture pursuits, but no convincing evidence in this regard was brought on record. On the contrary, respondent No.1 produced RW Surinder Singh the owner of the offending vehicle and the employer of the deceased as its witness.

10. RW Surinder Singh in his deposition has clearly stated that the deceased was working with him as conductor and was being paid Rs.2500/-per month. This statement made in examination in chief was reiterated and confirmed by RW Surinder Singh in his cross-examination. In the face of aforesaid convincing evidence, the Tribunal had no option, but to accept the income of deceased as Rs.2500/- per month. However, what the Tribunal did wrong was not to add 40% income towards future prospects.

11. The deceased was a self employed person of 18 years and, therefore, in view of judgments rendered in the cases of Sarla Verma (supra) and Pranay Sethi (supra), his income was required to be enhanced by 40% by way of future prospects. That apart, the Tribunal also committed an error by not awarding sums under conventional heads in tune with the principles laid down by the Supreme Court in the case of Pranay Sethi (supra).

12. For the foregoing reasons and discussions made above, I find that the impugned award deserves to be sufficiently enhanced, so as to make it represent just and fair compensation. Ordered accordingly. The appellants herein and respondent No.4 shall now be entitled to the following amounts:

loss of dependency: Rs.503,928/-(2333x18x12)

Loss of funeral expenses: Rs.15000/-

Loss of estate: Rs.15000/-

Loss of filial consortium to the appellants @ 40,000/- Rs.80000/-

Total Rs.6,13,928/-

13. The amount shall be payable along with pendente lite and future interest at the rate of 7.5 per cent per annum. Respondent No.1 i.e Insurance

Company shall deposit the awarded amount in the Registry of this Court within four weeks from today. The awarded amount except the consortium

which shall be paid to the appellants @ 40,000/- each, shall be shared by the appellants and respondent No.4 equally.

14. The appeal is disposed of in the above terms.