
National Insurance Co. Ltd Vs Jafar Shah And Others

Miscellaneous Appeal No. 237 Of 2014, IA No. 01 Of 2017, Caveat No. 6785 Of 2019

Court: Jammu And Kashmir High Court

Date of Decision: June 5, 2020

Hon'ble Judges: Sindhu Sharma, J

Bench: Single Bench

Advocate: Baldev Singh, Ajaz Choudhary, Wassim Bhukhari

Final Decision: Dismissed

Judgement

Sindhu Sharma, J

1. This appeal is against award dated 30.12.2013 passed by the Motor Accident Claims Tribunal, Poonch in case titled, *Shafakat Hussain Shah vs. Akhter*

Hussain Shah and others in which the Tribunal has awarded a sum of Rs. 5,71,600/- with interest @ 7.5%.

2. Briefly stated the facts which arise for consideration of this appeal are, one Shafakat Hussain Shah s/o Jafar Shah died in an accident which

occurred due to rash and negligent driving of the vehicle (Truck) No. JK02E-1577 at Seri Chowana Tehsil Surankote, Jammu-Poonch National

Highway on 29.10.2008. The deceased died due to injuries suffered by him on his way to Jammu for medical treatment.

3. The appellant-Insurer and owner appeared in the proceedings and filed their objections. However, respondent No. 3 i.e. driver did not appear

before the Motor Accident Claims Tribunal, Poonch (hereafter to be referred to as *the Tribunal*). Subsequently the owner also did not appear

before the Tribunal, as such, both owner and driver were set as ex-parte vide orders dated 07.04.2010 and 21.08.2009. Respondent No. 1 (hereinafter

referred to as claimant No. 1) beside himself produced Altaf Hussain (PW2), Afraz Shaw (PW3) and Talab Hussain (PW4) as witnesses in support

of his claim, however, no evidence to the contrary was produced by the respondents. The Tribunal after considering the pleadings and evidence

awarded an amount of Rs. 5,71,600/- as compensation to the claimants on account of death of the deceased-Shafakat Hussain.

4. The appellant has filed this appeal on the following grounds:

“a. That the learned tribunal is wrong in calculating the award of compensation by assessing the income of the respondent as Rs. 4,000/- per month

and further increase of the same by 30% without any pleadings and evidence,

b. That the tribunal has not applied proper multiplier and has applied the multiplier on the age of deceased bachelor,

c. That no issue with regard to defence of the appellant company has been framed by the learned tribunal,

d. That the interest on the award amount from the date of filing of the claim petition till realization when the delay in disposal of claim petition is

because of the respondents/claimants,

e. That the learned Tribunal has exceeded its jurisdiction in passing the award impugned.

f. That in any view of the case the award impugned is not sustainable.”

5. The claimants have pleaded in the claim petition, that the deceased was working as Conductor with the said Truck and was earning Rs. 8000/- per

month. Father of the deceased in his evidence has stated that the deceased was Conductor and was earning Rs. 4000/- per month. Altaf Hussain-PW

also in his evidence has stated that the deceased was earning Rs. 5,000/- per month. The Tribunal on the basis of evidence on record assessed the

income of the deceased as Rs. 4000/- per month. Thus, even if the income of the deceased was taken as that of labourer working on daily basis, he

would have earned at least Rs.300/- daily and his monthly income would in no case be less than Rs.9,000/- per month, but the Tribunal relying on the

evidence had assessed the income of the deceased at Rs.4,000/-per month.

6. The deceased at the time of his death was 20 years old as pleaded in the claim petition, and this was not denied by the respondents, therefore, the

Tribunal while determining his income was correct in applying multiplier of 18, in view of the judgment of the Apex Court in “Sarla Verma and

others. V. Delhi Transport Corporation and another.” (2009) 6 SCC 121.

7. The Tribunal while determining the income also made an addition of 30% towards future prospects of the established income in view of the

judgment of the Apex Court in Santosh Devi Vs. National Insurance Company Ltd. & ors., AIR 2012 SC 2185. Though the Constitution Bench in

National Insurance Company Limited Vs. Pranay Sethi & ors., 2017 (16) SCC 680, in Para 61 held as under:-

“60 (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where

the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the

income minus the tax component.”

Though the deceased was entitled to addition of 40% of the established income but the Tribunal, however, relying on the judgment of Apex Court in

Santosh Devi (supra) has only made an addition of 30% towards future prospects. Since the claimants are not aggrieved of the same, therefore, no

interference in the same at this stage is warranted.

8. The deceased was a bachelor, therefore, in terms of the judgment of Hon'ble the Supreme Court in case titled *Sarla Verma and others. V.*

Delhi Transport Corporation and another. 50% of the income was deducted by the Tribunal as personal and living expenses in case of bachelor.

9. The award of the Tribunal is also assailed on the ground, that no issue with regard to the defence of the Company has been framed. However, no

plea regarding this was raised by the appellant at the time of framing of issues. Neither any effort for framing of additional issue was made.

Moreover, no plea raised in the appeal that the appellant wanted to lead evidence which was not allowed. In case the appellant was not satisfied with

the same, it could have agitated the same before appellate forum.

10. This apart, perusal of the record reveals that the appellant in its objections has stated that the vehicle Tata Truck JK02E 1577 was insured with it

and Insurance Policy was valid from 07.04.2008 to 06.04.2009. The accident occurred on 29.10.2008, when the policy admittedly valid and subsisting.

Since the Policy which is on record was valid at the time of occurrence and no effort was made to prove contrary, therefore, the Insurance Company

was liable to compensate the claimants in terms of the award. The license of the driver-Akhter Hussain is also on record and there is nothing on

record to prove that he was not holding a valid and effective driving license on the date of accident, therefore, the claimants were held entitled to

compensation.

11. The Tribunal, therefore, rightly assessed the income of the deceased as Rs.4,000/- and made 30% addition towards future prospects and deducted

50% towards his personal and living expenses and assessed the monthly income of the deceased at Rs. 2,600/- and annual income of the deceased

was right taken at Rs.31,200/- applying multiplier of 18, the compensation of Rs. 5,61,600/- was awarded by the Tribunal. The claimants were also

awarded an amount of Rs.5,000/- as funeral expenses, Rs.5,000/- as loss of estate and awarded a sum of Rs.5,71,600/- to the claimants, though the

amount is not in terms of the judgment of the Apex Court in *Pranay Sethi's case (supra)* but as the claimants are not aggrieved of the same,

therefore, no interference in the same is made out at this stage.

12. In view of the above, there is no merit in this appeal and the same is dismissed. Interest awarded by the Tribunal requires no interference.

13. Record of the court below be remitted back with copy of this order/judgment.