(2011) 07 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : CMP No. 363 of 2011 In CIMA No. 178 of 2010

Alam Din APPELLANT

Vs

Shahnaz Akhter RESPONDENT

Date of Decision : 30-07-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 488

Citation : (2011) 3 JKJ 373

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, J.—The short controversy involved in the present Civil First Miscellaneous Appeal relates to apportionment of

compensation assessing by Motor Accidents Claims Tribunal, Jammu in claim petitions No. 276/2001 and 134/2002 amongst the dependents of

the victim of accident.

2. Shri Showket Ali alias Showkat S/o Alam Din, R/o Nakka Manjhari Tehsil Mendhar, District Poonch on 27th June, 2001 met a fatal accident

at Chowki Choura, Akhnoor. The widow of the deceased and his two children filed a claim petition registered as No. 276/2001 before Motor

Accidents Claims Tribunal, Jammu. The petitioners in all claimed a compensation of Rs. 69,10,000/- from Oriental Insurance Company with which

the offending vehicle was registered. The petitioners, however, did not implead parents and siblings of the deceased as co-claimants or proforma

respondents. The parents of petitioner filed a separate claim petition registered as 134/2002 and prayed for a (compensation of Rs. 69,15,000/-.

The petitioners in both the claim petitions pleaded that they were dependents on the deceased and had no source to fall back upon as the deceased working as Mason in Saudi Arabia was only bread earner for the family. The Tribunal took up both the claim petitions together and

disposed of two petitions vide award dated 26th December, 2009. The Tribunal awarded a total amount of Rs. 7,66,000/- out of Rs. 30,000/-

each to be paid to the parents and Rs. 25,000/- each to the siblings. The widow of the deceased was held entitled to receive Rs. 4,25,000/- and

two children of the deceased Rs. 1.00 lac each.

3. The parents and siblings of the deceased are aggrieved with the apportionment of the amount awarded by the Tribunal. The appellants 1 and 2

plead that they are in old age and were exclusively dependent on the amount remitted by the deceased from Saudi Arabia where he was working

as Mason. It is urged that the appellants have been virtually brought to the road side by untimely and tragic death of their son and have no source

of income to take care of their day to day expenses as also the expenses incurred on account of medical treatment. It is pleaded that untimely

death of their brother has also pushed sisters of the deceased to acute poverty and deprivation. The appellants insist that a amount of Rs. 25,000-

30,000/-is too meagre as against Rs. 4,25,000/- awarded to the widow of the deceased. The appellants pray for apportionment of award amount

in equal shares to appellants i.e. parents and siblings of the deceased and his widow and children. The appellants in other words pray that the

award amount of Rs. 7,60,000/- be equally divided and half bit i.e. Rs. 3,80,000/- directed to be paid to the appellants and rest of the amount i.e.

Rs. 3,80,000/- directed to be paid to widow and children of the deceased who have been awarded amount of Rs. 6,25,000/-.

4. Heard learned counsel for the parties.

5. The Tribunal while apportioning the award amount amongst various dependents of victim of a fatal vehicular accident is not to follow the rules of

inheritance governing the parties in the matter of inheritance. The dependents of the deceased may put forth their claim to the property both

movable and immovable left by the deceased on the basis of their respective shares delineated under the rules of inheritance that govern such a

matter, but cannot press into service such rules while claiming their share in the amount awarded by the Tribunal to compensate for death of

someone on whom they are dependent.

6. So viewed, the appellants cannot ask for shares out of the award amount on the basis of the shares fixed under personal law. The Tribunal in

such matters is expected to be alive to the fact that loss of dependency is primary factor in assessing just compensation. The Tribunal while

apportioning the compensation is to have due regard to the extent of loss suffered by the dependents, age of the dependents, the prospects of their

having any independent source of income immediately after the fatal accident and so on and so forth.

7. In the present case, the Tribunal has awarded 56% of the award amount to the widow of the deceased and 13% to each of the children and

only 4% to each of the parents and 3% to each of the siblings.

8. The appellants - Alam Din and Satara Bi - parents of the deceased are in old age and there is substance in their claim that they were dependent

on the deceased for their maintenance, day to day expenses and as also the expenses incurred on medical treatment. The deceased other was

under a statutory obligation in terms of Section 488 CrPC to maintain his parents. The appellants - Alam Din and Satara Bi, however, can be

expected to get some kind of support from their son - appellant No. 3 who was a major on the date of accident in question and is expected to

have started earning and in a position to add to the family income. The appellants 4 and 5 - sisters of deceased are also to be taken to have been

dependent on the earnings made by their deceased brother and to have expected him to extend a helping hand in making arrangements for their

marriage.

9. Mst. Shahnaz - widow of the deceased who was aged 22 years at the time of unfortunate accident, has no source to fall back upon though there

are chances of her making a fresh start in her life. The worst sufferers in this tragedy have been Shahzeb Ahmed and Shazia Kousar - minor

children of the deceased who have lost their father even when they had yet to enjoy warmth of love and affection of their father.

10. In the said analysis of the situation that surrounds the dependents of the deceased Showket Ali. I am of the opinion that the minor children of

the deceased have not been given fair deal and deserve to have their share in the amount awarded, enhanced. The part of the awarded amount

apportioned for Shahnaz Akhter-widow of the deceased is, however, disproportionate and higher than the amount that ought to have gone to her.

Similarly, the part of the award amount apportioned to parents of the deceased represents mere 4%, is too meagre and required to be given a

second look.

11. In the totality of the circumstances it would be in the interest of justice to apportion an amount of Rs. 2,50,000/- i.e. representing 33%

approximately, out of the awarded amount of Rs. 7,66,000/-, to Shahnaz Akhter. The share set apart for the minors in the award amount deserves

to be increased from Rs. 1.00 lac each to Rs. 1.50 lac each. The amounts set apart for each of the parents also deserves to be enhanced from Rs.

30,000/- to Rs. 62,500/- each together representing 16% of the awarded amount. The amount awarded to younger sisters of the deceased also

deserves to be increased from Rs. 25,000/- each to Rs. 33,000/- each. The amount awarded to the appellant No. 2-brother of the deceased,

does not deserve any modification.

12. For the reasons discussed above, the award dated 26.12.2009 is modified as:-

13. The parents of the deceased shall be paid an amount of Rs. 62,500/- each out of the awarded amount of Rs. 7,66,000/-. The sisters of the

deceased Ruksana Kousar and Qamar Begum shall be paid Rs. 33,000/- and Shri Ghulam Mustafa Rs. 25,000/- each. The widow of the

deceased shall be paid an amount of Rs. 2,50,000/-and children of the deceased Rs. 1.50 lacs each. The order of the Tribunal as regards deposit

share under FDR of the minor children of the deceased in the awarded amount and the interest payable on the award amount is left unaltered.

However, the amount apportioned in favour of widow of the deceased to the extent of 30% i.e. 75,000/- each shall be kept in FDR for a period

of five years and rest of the amount paid through account payees cheque to her. Allowed.

