(2011) 04 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : CIMA No. 413 of 2010 and CMP No. 107 of 2011

Bajaj Allianz General Insurance Company Ltd. APPELLANT

Vs

Zarina and Others RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 2 JKJ 141

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—Claiming Rs. 18,00,000/- as Compensation for the death of Abdul Jalil, who died on May 02, 2007 as a result of the injuries

received because of the rash and negligent driving of Truck No. JK02T-7111 near Toll Post, Nagrota, impleading the driver and owner of the

vehicle, besides Bajaj Allianz Insurance Company with which the vehicle stood insured, as party Respondents, the Claimants filed a Petition before

the Motor Accident Claims Tribunal, Jammu.

2. Abdul Jalil was stated earning Rs. 10,000/- per month from his occupation of rearing Sheep and Goats for production of meat and wool. He

was survived by Mrs. Zarina, his widow, Miss Shama, his unmarried daughter besides Miss Rukhsana, minor daughter and Master Najakat

Hussain, the dependent son.

3. The Claim was contested only by the Insurer.

4. To adjudicate upon the Claim, the Motor Accidents Claims Tribunal, Jammu put the parties to the following issues:

1. Whether the accident occurred on 2.5.2007 near Toll Post National Highway

Nagrota Jammu by the rash and negligent driving of offending

vehicle No. JK02T/7111 being driven rashly and negligently in the hands of erring driver in which deceased Abdul Jalil sustained fatal injuries?

OPP

2. If issue No. 1 is proved in affirmative whether Petitioners are entitled to the compensation, if so to what amount and from whom ? OPP

3. Whether driver of offending vehicle at the time of accident was not holding valid and effective driving license and plied the vehicle in violation of

insurance policy? OPR-3

4. Relief.

5. Besides, appearing as her own witness, Mrs. Zarina examined Mohd. Qasim to support her Claim. The Bajaj Allianz General Insurance

Company Limited, the insurer, however, opted not to lead any evidence.

6. In the absence of any evidence by the Insurance Company, issue No. 3 was decided against the Insurer negating its plea that the driver of the

offending vehicle was not holding a valid and effective Driving License at the time of accident.

7. Issue No. 1 was also proved on the basis of the evidence and material produced by the claimants.

8. While dealing with issue No. 2, the Tribunal came to the conclusion that the monthly income of the deceased could be fixed at Rs. 5000/- per

month as no conclusive proof of the income of the deceased was brought on records, on the basis whereof, the income of the deceased could be

taken as Rs. 10,000/-.

9. Adopting 11 as the suitable multiplier taking the age of the deceased at 48 years, the loss of dependency was assessed at Rs. 4,95,000/- after

deducting l/4th of the income of the deceased towards his personal expenses which he would spend on him had he remained alive.

10. Aggrieved by the Tribunal's Award for Rs. 5,25,000/- which included compensation on account of funeral expenses and loss of consortium,

M/S Bajaj Allianz General Insurance Company Limited has filed this Appeal questioning the Award of the Tribunal.

11. Learned Counsel for the Appellant, S. Baldev Singh, submitted that the Tribunal had committed an error of law in assessing the compensation

taking the monthly income of the deceased at Rs. 5,000/-, in that, in the absence of any conclusive proof of the fixed income of the deceased and

the compensation being excessive, the Award was liable to be modified assessing the compensation adopting annual notional income of the

deceased at Rs. 15,000/-.

12. Appearing for the claimants, their learned Counsel Mr. Sundan, on the other hand, justified the Award saying that the compensation awarded

by the Tribunal was just compensation and in view of the failure of the Appellant-Company to produce any evidence to rebut the evidence led by

the claimants, it cannot question the quantum of compensation awarded to the claimants, which, in the circumstances and in view of the evidence

led by the claimants cannot, by any stretch of reasoning, be said to be unjust.

13. I have considered the submissions of learned Counsel for the parties and gone through the judgments referred to by the Appellant's learned

Counsel to buttress his submissions.

14. The claimants had projected a specific case before the Tribunal that the occupation of the deceased was keeping Sheep and Goats for

production of meat and wool and his monthly income was Rs. 10,000/-. To support the fact pleaded, the claimants had relied upon the statement

of the widow of the deceased, besides Mohd. Qasim, her witness.

15. The statements of Zarina and Mohd. Qasim to the effect that the deceased was keeping Sheep and Goats has not been questioned in their

cross-examination by the Insurance Company.

16. It is true that the claimants have not led any such evidence, on the basis whereof it may be said with certainty as to what was the actual income

of the deceased at the time of his death. At the same time, it cannot be lost sight of that the deceased was in the trade of selling Sheep and Goats

and it was only from this income that he was feeding his dependent family of four persons, besides himself.

17. Therefore, in the circumstances, when the factum of deceased being a member of the Tribe, whose main occupation is rearing and dealing in

animals such as Sheep, Goats and Buffalos and that he was taking care of his family, which consisted of five persons, the income of the deceased is

required to be assessed in the background of the above factors.

18. Regardless of the fact that the claimants had not specifically proved as to what was the exact income of the deceased at the time of his death,

Rs. 5000/- per month cannot, looked from any angle, be considered excessive as the deceased in the ordinary course of thing would certainly

require minimum five thousand rupees to feed himself and his family of five persons. The dependency of the family on the income of the deceased,

which has been taken at Rs. 3750/- per month cannot, therefore, be faulted.

19. Appellant's learned Counsel's plea that the age of the deceased was required to be taken as 60 years as indicated in the Post Mortem

Examination Report and the multiplier needed to be reduced does not appear appealing. This is so because the statement of the widow that the age

of the deceased was 48 years has not been assailed in the cross-examination and the other documents produced on records in the police report

too do not hint at the deceased's age as 60 years.

20. Appellant's learned Counsel's submission regarding assessment of compensation taking the annual income of the deceased at Rs. 15,000/- may

not be applicable to the facts of the present case, in that, notional income can be taken only in those cases where the deceased was a non-earning

person and not in those cases where there may not be any evidence of actual income of the deceased. As in the present case, the fact of the

deceased's earning livelihood from his business of selling Sheep and Goats has not been disputed, so the Schedule will have no application for

considering him to be a non-earning person.

21. For all what has been said above, I do not find any merit in the Appeal and the submissions made by the Appellant's learned Counsel.

22. This appeal, therefore, fails and is, accordingly, dismissed.

23. Registrar Judicial to release the amount deposited by the Appellant-Insurance company in favour of the claimants, in terms of the Award,

minus the amount already received by them.

