

(2005) 02 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : CIMA No. 78 of 2003

Ghulam Nabi Ganai

APPELLANT

Vs

Ghulam Mohd. Wani and Others

RESPONDENT

Date of Decision : 21-02-2005

Acts Referred:

Citation : (2006) ACJ 2422 : (2005) 2 JKJ 577

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : G.A. Lone, for the Appellant; Abdul Rehman, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Appellant has assailed the award passed by Learned Presiding Officer, MACT, Anantnag in the file titled as

Ghulam Nabi Ganai v. Ghulam Mohammad Wani on the ground that just compensation has not been awarded to the claimant.

2. It seems rather, it is admitted that the respondent have not challenged the award. Thus there is a dispute only about the quantum of

compensation. In order to appreciate and return finding, it is necessary to give a brief resume of the claim petition, the womb of which has given

birth to the present appeal.

3. The appellant Ghulam Nabi Ganai filed claim petition on 29.12.1989 before the Tribunal and claimed compensation to the tune of Rs. 3.50 lacs

for the death of his son, namely, Bilal Ahmad Ganai, aged 12 years. The claimant has claimed the said compensation by pleading that the deceased

was 12 years of age at the time of accident and had trained in carpet weaving and was earning at that time Rs. 500/- per month and with the lapse

of time, his earning would have been more than Rs. 10,000/- per month and the deceased was the lone son of the petitioner. The defendants 1 and

2 have been set exparte and respondent No. 3 has filed written statement and issues were framed and after framing issue, the award has been passed.

4. The meat of the matter is that, whether the compensation is just or otherwise. In order to thrash out this issue, it is to be seen how the learned

Presiding Officer has come to the conclusion that the claimant is entitled only to Rs. 67,000/- with 9% interest.

5. The Presiding Officer has taken the income of the deceased as Rs. 500/- per month and has applied multiplier 15 and has also deducted 1/3rd.

While going through the provisions of law and the file, I am of the considered view that the finding of the learned Presiding Officer is not tenable for

the following reasons;-

The claimant has pleaded in claim petition that the deceased was 12 years of age and was earning Rs. 500/- at that time being trained carpet

weaver and has further pleaded that by lapse of time the deceased would have earned Rs. 10,000/- per month. This aspect has not been taken

into consideration by the Presiding Officer. More so, it was the duty of the Presiding Officer to take note of the fact that the deceased at the time

of death was minor and after attaining the age of majority, he would have been in a position to earn more and the learned Presiding Officer has also

made deduction of the income of the minor which is not warranted. The minor is not supposed to earn during minority but can earn after he attains

age of majority. Only on this count, the learned Presiding Officer has not awarded just compensation. The witnesses have deposed that deceased

was 12/13 years of age and he was student of 6th class and was also carpet weaver and was doing that job i.e., weaving of carpet at home and

was earning Rs. 800/900 per month. This aspect has not been considered by the learned Presiding Officer.

6. It was the duty of the learned Presiding Officer that he should have exercised guess work that what would have been the income of the

deceased after attaining the age of majority. The factum that the deceased was earning Rs. 500/- or 800/900 at the time of death has not been

assailed or challenged by the respondents. The respondent No. 3 has already

deposited the compensation amount and even the respondents have not challenged the award. Thus it is admitted that deceased was earning Rs. 500/- at least per month when he was a minor and by guess work it can be held that he would have been earning not less than Rs. 3000/- while taking him as a labourer after he would have attained the age of majority. It was the duty of the Presiding Officer to award compensation while taking in view the income of major person and not of the minor.

7. The learned presiding officer has also wrongly deducted 1/3rd from the income of minor. By guess work it can be held that deceased would have been earning not less than Rs. 3000/- per month while treating him as a labourer. Thus the claimant has lost Rs. 1000/- per month as a labourer.

Thus the claimant has lost Rs. 1000/- per month as a source of dependency after deducting 2/3 from the income of the deceased. The court has also to consider that what the income of labourer was in the year 1989. By guess work it can be held that labourer would have been earning Rs.

1800/- or 2100/- per month in the year 1989.

8. The Apex court in decisions reported in AIR 2001 SC 366, State of Haryana and Another Vs. Jasbir Kaur and Others, , The Divisional

Controller, KSRTC Vs. Mahadeva Shetty and Another, has awarded not less than Rs. 3 lacs to the claimants as compensation, despite of the fact

that the age of the deceased were less than 12 years and were student, in each case.

9. Now applying the said test laid in the said judgments, the presiding officer should have taken all facts into consideration but the learned presiding officer has passed an award in hot haste while ignoring the facts of the case.

10. Keeping in view all the circumstances and the concept of granting compensation, it is the duty of the judge to award just compensation. The just compensation means, what is the compensation payable to the claimant in the circumstances of the case and while keeping in view the status of the claimants and the deceased.

11. Keeping in view the entire circumstances of the case and while exercising guess work Rs. 1 lac will be just compensation payable to the claimant. Accordingly, the appeal is allowed. Impugned award is modified to the extent that petitioner is entitled compensation to the tune of Rs. 1

lac with 9% interest from the date of presentation of the claim petition i.e. 9th

December, 1999, till its final realization. Appeal is accordingly allowed and the respondent No. 3 is directed to satisfy the award within one month. Send down the record.