(2014) 06 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : CIMA Nos. 183 and 195 of 2009 & CMP No. 647 of 2009

Haja APPELLANT

Vs

Rozi RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Citation : (2015) 1 JKJ 39

Hon'ble Judges : Ali Mohd. Magrey, J

Bench : Single Bench

Advocate : A.M. Dar, Advocate in CIMA No. 183 of 2009 and Mr. M.A. Dar, Advocate in CIMA No. 195 of 2009, Advocate for the Appellant; A.A. Teli, Advocate for 1 to 5 in CIMA No. 183 of 2009 and for Respondents to 7 in CIMA No. 195 of 2009, Mr. M.A. Dar, Advocate for No. 6 in CIMA No. 183 of 2009 and Mr. A.M. Dar, Advocate for Nos. 1 and 2 in CIMA No. 195 of 2009, Advocate for the Respondent

Judgement

Ali Mohd. Magrey, J.—These appeals have been preferred against the judgment and order dated 12.08.2009 passed by the Motor

Accidents Claims Tribunal, Srinagar, (hereafter, the Tribunal) awarding a total compensation of Rs. 12,22,856 with 6% interest thereon from the

date of institution of the claim petition till its final realization in favour of the claimants (respondents 1 to 5 in CIMA No. 183 and respondents 3 to

7 in CIMA No. 195/2009 herein) and against respondents 1 and 2 in the two appeals, to be paid by the Insurance Company with liberty to

recover the same from respondents 1 and 2, i.e., the insured and the driver.

2. The brief facts of the case are that on 21.8.2003, the deceased, Mehraj-ud-Din Gabroo was traveling in an Auto load carrier owned by the

husband of respondent No. 1 herein and driven by respondent No. 2, as a gratuitous passenger. Due to rash and negligent driving of respondent

No. 2, the load carrier turned turtle at Barthana and Mehraj-ud-Din sustained serious injuries to which he later succumbed in SKIMS, Soura,

Srinagar on 30.08.2003. The claim petition was filed on behalf of widow of the deceased, her two minor children and parents of the deceased.

3. Both, the owner and driver of the load carrier as well as the Insurance Company contested the claim petition. The Tribunal framed the following

four issues in the case:

I. Whether on 21.8.2003 the deceased at the request of the respondent No. 2 was traveling as a gratuitous passenger in load carrier which was

being driven by the respondent No. 2 rashly and negligently, as a result of which due to the negligent driving of the respondent, it turned turtle near

Bismillah Workshop and the deceased received fatal injuries and succumbed to the same? OPP

II. Whether the respondent/driver of the offending scooter was not having a valid license on the date of accident, as such the respondent/company

cannot be saddled with liability ? OPR

III. In case the issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what

proportion? OPP

IV. Relief?

4. The Tribunal decided issue No. 1 in favour of the claimants that the death of the deceased was the out come of road accident caused by

rashness, negligent and carelessness of respondent No. 2 who was plying the offending vehicle at the time of accident. As regards issue No. 2, the

Tribunal came to the conclusion that the driver of the load carrier, Shabir Ahmad, was not holding a valid Driving License and, accordingly,

decided the issue against the driver and owner. As regards issue nos. 3 and 4, the Tribunal came to the conclusion that the deceased was of only

27 years of age at the time of his death and was earning about Rs. 7,000/- per month. The Tribunal, applying the multiplier 18, assessed the total

loss of dependency to Rs. 4666 x 12 x 18 = Rs. 10,07,857. Besides, the Tribunal also awarded Rs. 1,00,000 under the head of loss of

companionship, love, affection etc. in favour of the widow of the deceased. In so far as the minor children of the deceased are concerned, the

Tribunal awarded Rs. 60,000/- under the head loss of security of father. The

Tribunal also awarded Rs. 5,000/- as funeral expenses and Rs.

50,000/- as loss to estate of the family. In all the Tribunal awarded an amount of Rs. 12,22,858/- together with 6% interest from the date of

institution of the claim petition. However, the Tribunal directed the Insurance Company to deposit the awarded amount within three months and

gave it liberty to recover the same from the insured and the driver.

5. The Insured and driver of the load carrier have come in appeal against the aforesaid Award and the only specific ground taken in the appeal is

that the Tribunal has failed to appreciate the fact that the load carrier at the time of accident was being driven by the deceased.

6. The Insurance Company has challenged the award on the ground that in view of the positive finding recorded by the Tribunal that the Insurance

Company would not be saddled with liability, it was not open for the Tribunal to have directed payment of compensation by the Company which is

otherwise, on the face of it very excessive and not proportionate to justice compensation as envisaged under the Motor Vehicles Act.

7. I have heard learned counsel for the parties, perused the record and considered the matter.

8. In so far as the appeal filed by the insured and the driver is concerned, learned counsel for the respondents-claimants has taken a preliminary

objection to its maintainability, in as much as the appeal has been filed without any statutory deposit. Mr. A.M. Dar, learned counsel for the

appellants submitted that since the Tribunal has passed a decree rather than an award, therefore, he has filed this appeal as first appeal in terms of

the provisions of the CPC and not an appeal u/s 173 of the Motor Vehicles Act, and, therefore, he was not required to deposit any amount in the

High Court for entertainment of the appeal.

9. The argument advanced at the Bar by the learned counsel for the appellant on the face of it is totally misconceived and untenable. The claim and

liability of the nature involved in motor accidents arises out of the provisions of the Motor Vehicles Act, 1988. It is this Statute which gives a right

of appeal to the aggrieved person against the award made by a Tribunal. The statute itself, in terms of Section 173 thereof, provides for appeals

against the awards passed by the Claims Tribunal. The proviso to Section 173 of the Act prescribes that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or

fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court. Therefore, it is mandatory for entertainment

of an appeal by this Court that the amount so prescribed is deposited by the appellant.

10. The contention that the Tribunal has passed a decree, not an award, and, therefore, the proviso to Section 173 of the Act would not be

attracted, ex facie, is misconceived and not tenable. The award passed by a Claims Tribunal is fictionally a decree to which provisions of order

XXI CPC apply mutatis mutandis. Reference in this regard may be made to the decision of the Supreme Court in Rajasthan State Road Transport

Corporation, Jaipur Vs. Smt. Poonam Pahwa and others, .

11. In light of the above, the appeal filed by the Insured and the driver is held to be not maintainable and is, accordingly, dismissed.

12. In so far as the appeal filed by the Insurance Company is concerned, it hardly needs a reiteration that the Tribunal has given the requisite liberty

to the Company to recover the amount of award, including interest paid thereon, from the insured and the driver. Law in this regard is settled by

numerous decision of the Supreme Court. Reference in this connection may be made to the decision of the Supreme Court in Sri Pramod Kumar

Agrawal and Another Vs. Smt. Mushtari Begum and Others, , and Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Another, .

13. As to the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant Company has not been able to show that

the Company had tendered any evidence to demonstrate that the claimants were not entitled to such compensation. In fact, the Insurance

Company or even the insured and the driver have not produced any evidence to controvert the claim of the claimants in that regard.

14. In light of the above, there is no scope for interference with the judgment and award passed by the Tribunal. It is, accordingly, upheld.

15. Registry is directed to release the part of the award money that has remained unpaid to them, of course, after due verification.

