
(2021) 02 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : CMAM No. 05 Of 2018

Mohammad Maqbool Lone And Others	APPELLANT
Vs	
Farhat Farooq Lone And Others	RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0006

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : B.A.Tak, N.A.Dendroo

Final Decision : Disposed Of

Judgement

1. A claim petition, bearing File no.16 of 2012, was filed by appellants before Motor Accident Claims Tribunal, Srinagar (Tribunal for short) on 30th January 2012, in view of death of one Nisar Ahmad Lone son of Mohammad Maqbool Lone resident of Kehnusa, Bandipora (for brevity deceased) in view of vehicular accident caused due to rash and negligent driving of TATA 207 Load Carrier bearing Registration no.JK09/3308. The said accident took place on 28th October 2011, when deceased sitting on back seat of motorcycle (Bajaj Pulsar) bearing Registration no.JK15-0715, being driven by respondent no.3 from Aloosa towards Malangam and on reaching near Malikpora Malangam, was hit by above-numbered offending vehicle (TATA 207 Load Carrier), coming from opposite direction, being driven by respondent no.1, rashly and negligently and as a consequence whereof, deceased and driver of motor cycle got serious injured and were immediately shifted to SDH, Bandipora, wherefrom deceased was referred to SKIMS, Soura, but deceased succumbed to injuries on

2nd November 2011. FIR no.227/2011 was registered in police

station Bandipora. Appellants 1&2, being parents and appellant no.3 being sister of deceased, moved claim petition before the Tribunal.

2. On presentation of claim petition by appellants, respondents were summoned. However, respondents 4&7 did not choose to contest proceedings

and were set ex parte on 9th May 2012 and 20th October 2012. Respondents 1, 2,3,5&6 filed their respective written statements before the Tribunal.

3. Given the case set up, the Tribunal vide order dated 6th December 2014, framed following Issues for adjudication:

1) Whether on 28.10.2011 a vehicle (Tata 207) load carrier bearing registration no.JK09/3308 being driven by respondent no.1 rashly and negligently

coming from Malangam Bandipora and on reaching near Malangam Bandipora hit the motorcycle bearing registration no.JK15/0715 coming from

Aloosa to Malangam, driven by Muneer Ahmad Bhat causing thereby serious injuries to Nisar Ahmad Lone who was sitting on back seat of the

motorcycle and later on succumbed to the injuries in the hospital on 02.11.2011?
OPP

2) Whether the respondent " driver was driving the offending vehicle with invalid and ineffective D/L and other vehicular documents on the fateful

day of accident, if yes, the respondent insured have committed breach of insurance contract absolving the respondent company from its liability on

account of petitioners claim? OPR-6

3) In case Issue no.1 is decided in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what proportion?

OPP

4) Relief?

4. Parties before Tribunal produced and examined witnesses in support of their respective stand. By impugned Award, the Tribunal found claimants /

appellants entitled to compensation of Rs.10,95,000/- along with interest @ 6.5%, to be paid by National Insurance Company. It is this award of which

appellants are aggrieved and seeks its setting-aside and subsequently enhancement of quantum of compensation.

5. Heard and considered.

6. According to learned counsel for appellants, Tribunal has failed to appreciate that at the time of accident, deceased was working as Assistant

Manager in River Edge Hotel and earning a salary of Rs.15,000/- per month and in this regard appellants produced sufficient and cogent evidence,

both oral witnesses and documentary evidence, before the Tribunal, to substantiate the contention that Tribunal randomly took salary of deceased as

Rs.10,000/- and did not consider salary of deceased as Rs.15,000/- for computation of compensation. Future prospects is said to have not been given

by the Tribunal. His further submission is that Tribunal has not given compensation on account of Loss of Estate and attendant and actual medical

expenses to the tune of Rs.52,000/- incurred during treatment of deceased before his death, i.e., from 28.10.2011 to 02.11.2011.

7. Insofar as submission of learned counsel for appellants as regards computation of loss of dependency is concerned, the Tribunal has in a lucid way

and manner assessed and computed the compensation on account of Loss of Dependency, while adjudicating upon and deciding Issue no.3. The

Tribunal discussed all aspects of the matter imperative and necessary for computation of loss of income/dependency. Thus impugned Award to the

extent of computation of loss of dependency need not be interfered with.

8. Insofar as computation of compensation on account of Loss of Estate, Loss of Consortium and Loss of Funeral Expenses/Last Rites are concerned,

the impugned Award qua Loss on account of performing last rites/Funeral Expenses, given by Tribunal to the tune of Rs.15,000/- need not be

interfered with. However, Loss of Consortium and Loss of Estate is to be given to claimants/appellants. Reference in this regard is made to National

Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157. So, petitioners are held entitled to compensation on account of Loss of

Estate to the tune of Rs.15,000/- and Loss of Consortium to the tune of Rs.40,000/- as well.

9. For the reasons discussed above, the Appeal is partly allowed in the following manner:

A. Loss of dependency = Rs.10,80,000.00

B. Last Rites/Funeral expenses = Rs. 15,000.00

C. Loss of Estate = Rs. 15,000.00

D. Loss of Consortium = Rs. 40,000.00

Total compensation = Rs.11,50,000.00

10. Appellants are entitled to compensation of Rs.11,50,000/- along with interest @ 6.5% per annum from the date of institution of claim petition till its final realisation.

11. Respondent (National Insurance Company Limited) is directed to pay the aforesaid amount of Rs.11,50,000/- along with interest @ 6.5% per annum from the date of institution of claim petition till its final realisation, to the appellants, less by the amount, if any, received by them.

12. Disposed of in terms of above.

13. Record of the Tribunal, if summoned/received, be sent down along with copy of this judgement.