

(2017) 01 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : 52 of 2009 MP No 1 of 2016

National Insurance Co.

APPELLANT

Vs

Gulzara and ors.

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Citation : (2017) 01 J&K CK 0013

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : C.S.Gupta, Bari Abdullah

Final Decision : Dismissed

Judgement

1. The appeal is of the year 2009.
2. It is a case of fatal accident.
3. The Insurance Company has filed the appeal challenging the award dated 26.07.2008 passed by the Motor Accidents Claims Tribunal, Ramban.
4. Accident in this case has happened on 24.04.2003. Khan Bashir alias Bashir Ahmed, a labourer, was travelling in a Truck bearing registration No. JKE-8022 from Ramban to Qazigund insured with the appellant, along with his livestock. The said Truck met with an accident due to rash and negligent driving of the driver. In that accident, Bashir Ahmed received head injuries which ultimately led to his death on 01.05.2003.
5. On his death, wife, minor children aged 13,10, 04 years and major children aged 18 and 20 years, living with their mother but not married, filed the claim petition seeking compensation. The Tribunal based on the oral and documentary evidence, fixed the liability on the owner and the insurer

of the Truck, the appellant herein and awarded Rs. 4.90,060/- (Rupees Four Lakh Ninety thousand sixty only) along with interest @ 7% from the date of petition till payment by insurer.

6. A plea taken by the Appellant-Insurance Company is that the deceased was a gratuitous passenger in the Truck. The evidence of widow is that her husband was maintaining livestock and was getting the livestock back to his residence on the Truck when the accident occurred. This is supported by other evidence that is not disputed.

7. The Tribunal held that it is not a case of gratuitous passenger, based on evidence. This Court is not inclined to take a different view on liability in the absence of specific material to contradict the above finding by the Tribunal.

8. Accordingly, findings of the Tribunal stand confirmed.

9. On quantum, there appears to be no serious dispute. In any event, the Tribunal has granted a meager amount of Rs. 5000/- on account of loss

of consortium and no amount has been granted for loss of love and affection to the minor children on the death of their father. Even for burial

expenses, a meager amount has been granted. The quantum therefore is not excessive. No merits in the appeal.

10. The appeal is dismissed.