
(2003) 08 J&K CK 0005
In the Jammu And Kashmir High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Gh. Mohd. Wani and Others		RESPONDENT

Date of Decision : 30-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 163A

Citation : (2005) 2 ACC 588

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Judgement

Syed Bashir-ud-Din, J.—In Claim Petition No. 32 of 2000, the M.A.C.T. (District Judge, Pulwama) has by order dated 8th August, 2002

awarded compensation in the sum of Rs. 4,00,000/- to the claimant parents of one Sheeraz Ahmed Wani with 6 per cent simple interest from the

date of filing of the petition (15th March, 2000) till realization. This award is impugned in this appeal by National Insurance Co. Ltd.

2. The Counsel for the appellant Insurance Company has made two-fold submissions. First that the award is on higher side and second, that the

owner and driver of the vehicle are to be saddled with liability to pay the award amount as the driver respondent No. 1, is found by the Tribunal

driving the offending vehicle on the material date without driving licence. Counsel for the claimants in reply has defended the award on the ground

that the compensation has been awarded in terms of law as assessed on evidence on record. It is conceded that driver respondent No. 1 is without

a valid licence. But even so the Counsel contends that this amount is to be paid by the Insurance Company and the amount can be recovered by

the Insurance Company from the owner, respondent No. 2.

3. It is not in dispute that Sheeraz Ahmed Wani who died as a result of fatal injuries sustained by him in the vehicular accident in question when

respondent No. 1 was on the steering was of 22 years of age, the claimants are his father and mother and the rash/negligent driving is the cause of

accident. The vehicle so far as third party is concerned was duly covered by insurance cover and the policy on the material date is also admitted.

The impugned judgment is perused.

4. The learned Counsel for the parties do agree that on evidence recorded and appreciated deceased's per month income is assessed at Rs.

3,000/- and after applying reckoner of 15 and deducting 1/3rd as the personal expenses of the deceased the compensation is assessed at Rs.

3,60,000/- (Rs. 2,000 x 12 x 15). The M.A.C.T. has specifically referred while arriving at the figure of compensation to Second Schedule read

with Section 163A of Motor Vehicles Act. The provision provides that in case of death due to accident arising out of motor vehicle compensation

as indicated in the Second Schedule shall be paid to the legal heirs of the deceased by the owner of the vehicle. This Second Schedule structured

formula for assessing the compensation provides in a case like the present one a multiplier of 17 after the annual income is treated as Rs. 36,000/-.

The figure arrived at is to be reduced by 1/3rd for consideration of the expenses which the victim may have incurred to maintain himself had he

been alive. Seen thus on appreciation of evidence M.A.C.T. has correctly assessed the compensation and awarded Rs. 3,60,000/- as the

compensation for the fatal accident in question. However, the learned Counsel for the appellant has taken an exception to award of Rs. 10,000/-

as funeral expenses and Rs. 10,000/- for loss of love and affection and Rs. 20,000/- on expectation of life. Added thus is Rs. 40,000/- to the

above awarded compensation.

5. The Counsel is right in submitting that the general damages which are payable in addition to the above compensation under the head funeral

expenses as given by the structured formula is Rs. 2,000/- and other expenses as applicable to the facts and circumstances of this case are not

provided by the Schedule. The Counsel is not denying this legal proposition as applicable to this case but goes on to contend that the claimants are

entitled to this amount in addition to the compensation awarded. Even if the

contention of Counsel is taken at face value then there has to be some evidence to show that the general damages awarded on account of love and affection and on account of expectation of life has actually occasioned. This is not the case here. No evidence is available on either count. It cannot be ipse dixit of the M.A.C.T. even given the fact that Second Schedule serves as a guide notwithstanding the mistakes which may be detected in calculation of the income and figure arrived at in the Schedule. The instruction to this predetermined structured formula qua the award of compensation and the multiplier, are there for consistency and uniformity as far as possible in the matter of award of compensation and to supply firm basis on long catena of cases to the award of speedy compensation to the victims of accident. After all the structured formula cannot be said to be surplusage when it has statutory backing. If the M.A.C.T. has taken recourse to the structured formula and the multiplier, then the M.A.C.T. has to abide by its terms and cannot award general damages on other counts for which there is no evidence or basis.

6. Thus there is no legal justification for awarding compensation of Rs. 10,000/- and Rs. 20,000/- under the head 'loss of love and affection' and 'loss of expectation of life' and inflated sum of Rs. 10,000/- for 'funeral expenses', The prescribed slab for funeral expenses is just Rs. 2,000/-. The total compensation is, therefore, assessed at Rs. 3,82,000/- and interest shall be paid as assessed and awarded by the Tribunal. The Tribunal has recorded a positive finding that the driver, respondent No. 1, who was driving the vehicle at the time of accident was not in possession of valid driving licence. Neither party disputes this proposition.

7. Even so the contention of the learned Counsel for the appellant is that Insurance Company is not liable to pay the compensation and compensation is to be paid by the owner. The invalidity of the driving licence cannot stand as bar to the claimants getting compensation from Insurance Company and the Insurance Company has right to recover the amount from the owner on account of breach of policy condition of the vehicle being driven without a valid driving licence.

8. In *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, the Supreme Court in the context of liability of the insurer and the owner of the insured vehicle in respect of liability to pay compensation to a third party

observed after examining the matter in the context of provisions of p, Section 149 of the Motor Vehicles Act as under:

The position can be summed up thus the insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to be

insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to the third parties on account

of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of

policy conditions on account of the vehicle being driven without a valid driving licence. The learned Counsel for the insured contended that it is

enough if he establishes that he made all due inquiries and believed bona fide that the driver employed by him had a valid driving licence, in which

case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims

Tribunal. In the present v case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, Claims Tribunal

shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed

to pay to the claimant-third parties), from the insured person.

9. In result with the above modification as to the quantum of compensation and liability of owner to pay the amount to insurer appellant Company,

the appeal is dismissed.