

(2005) 04 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : CIMA No's. 30, 31, 32, 33 and 34 of 2004

National Insurance Company

APPELLANT

Vs

Abdul Qayoom Dar and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 324

Motor Vehicles Act, 1988 — Section 149, 149(2), 166, 170, 2(21)

Citation : (2006) 1 JKJ 7

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : J.A. Kawoosa, for the Appellant; M.A. Dar, N.A. Ronga, Manzoor Ali, Nayeem Kamili and A.M. Jan, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—These appeals are outcome of an award passed by learned Presiding officer, Motor Accident Claims Tribunal,

Srinagar in the claim petitioner titled as Abdul Qayoom Dar and Ors. v. National Insurance Co. and Ors., Safiya and Ors. v. National Insurance

Co. and Ors., Mst. Raja Begum and Ors. v. National Insurance Co. and Ors., Mst. Jawa and Ors. v. National Insurance Co. and Ors.,

Mohammad Ayub Bhat v. Mohammad Aslam Khan and Ors. dated 29th November 2003, hereinafter, shall be referred as impugned award.

2. The appellants have assailed the impugned award in all these appeals on the ground which can be aptly and precisely summarized as under:

That the claimants/respondents have failed to prove that driver has driven the offending vehicle Tata Sumo bearing registration No. 2166/JK04

rashly and negligently. That multiplier has been applied wrongly in all the claim petitions. The age of the petitioners/claimants should have been

taken into consideration and not the age of the deceased while applying the multiplier in order to assess the compensation. The compensation has been awarded on higher side.

The appellant has sought permission in terms of Section 170 of Motor Vehicles Act for defending the case on the grounds which are available to the driver and owner.

3. The learned Counsel for the claimants/respondents have argued that there is evidence on the files whereby the factum of rashness and negligence stands proved. The multiplier has been applied rightly in all the cases and just compensation has been awarded. The appellant can challenge the impugned award only on the grounds which are enumerated in Section 149 of the Motor Vehicles Act. The appellant has not led any evidence in support of his case. It was the duty of the appellant to have led evidence and contested the case after seeking permission in terms of Section 170 of Motor Vehicles Act.

4. Mr. Manzoor Ali, Advocate, appearing on behalf of respondent Mohammad Aslam Khan argued that Hon'ble Division Bench of this Court has passed a judgment in an appeal, which is outcome of the same accident, in which the owner/ respondent Mohammad Aslam Khan and the appellant were parties, whereby the appellant has been held liable and accordingly saddled with the liability.

5. Considered. Before dwelling upon all questions and answering the same, it is worthwhile to mention herein that the appellant has taken a ground in the memo of appeal that driver was not having valid driving licence to drive the offending vehicle i.e. Tata Sumo bearing registration No.

2166/JK04, but while addressing argument, Mr. Kawoosa has not argued on these lines and has virtually not pressed the said ground of attack.

Thus the finding returned by learned Presiding Officer on issue No. 4 merits to be upheld. The TATA Sumo is a light motor vehicle and in order to drive light motor vehicle, the driver must have the driving licence permitting him to drive the same and there is no need of having PSV endorsement.

6. The Apex Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., has observed as under:

14. Now the vehicle in the present case weighed 5,920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that,

therefore, that insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have specific authorization on the licence of the driver under Form 6 under the Rules. It had, therefore, to be held that Jadhav was holding effective valid licence on the date of accident to drive light motor vehicle bearing Registration No. KA-28-567.

7. There was a lis before the State Consumer Protection Forum, which was outcome of the same accident. The Hon'ble Division Bench of this Court has observed in the said case titled National Insurance Co. Ltd. v. Irfan Sidiq Bhat reported in 2004 2 SLJ 623 as under:

13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat

Ahmad and Zahoor Ahmad were competent in terms of Section 3 of the Motor Vehicles Act to drive a public service vehicle with out any PSV

endorsement and express authorization in terms of Rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood

satisfied. The said rule provided:

No person shall drive a public service vehicle unless an authorization in the form prescribed by the Central Government has been granted or

countersigned by a licensing authority in the State.

15. Undisputedly, both the drivers held driving licence which entitled them to drive light motor vehicles within the meaning of Section 2(21) of the

Motor Vehicles Act. Light motor vehicle includes a transport vehicle; transport vehicle includes a public service vehicle and public service vehicle

includes any motor vehicle used or adapted to be used for carriage of passengers for hire or reward. The question of authorization within the

meaning of Rule 4(1)(a) of the State Rules would arise only in cases where the driving licence does not relate to public service vehicle within the

meaning of Section 2(35) of the Act. Where the licence authorizes the person to drive a light motor vehicle and the vehicle conforms to the

description/definition of 'light motor vehicle' and 'public service vehicle', in Section 2 (21) and (35) of the Act, it would not be necessary to obtain

another authorization under Rule 4(1)(a) of the State Rules. Peerzada Noor-ud-

Din, as a matter of fact, in his statement categorically stated that

light motor vehicles include, among other vehicles, Tata Sumo; that the licence with respect to light motor vehicles did not require any PSV

endorsement; and that by virtue of the driving licence held by them, the driver could drive a taxi- to be precise, a Tata Sumo. The fact that Tata

Sumo by virtue of its weight being less than 7500 Kgs qualifies to be a 'light motor vehicle', is not in dispute.

16. It may not be out of place to state here that In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , a three-judge Bench of the

Supreme Court has pointed out the distinction between ""effective licence""- the term used in Section 3 of the Act, and ""duly licensed"" used in

Section 149(2), and held that absence of an effective licence u/s 3 may make the person liable to prosecution, but in order to avoid their liability (in

case of third party claim) the Insurance Company must not only establish the available defence(s) but also prove a conscious 'breach' on the part of

the owner of the vehicle.

8. Viewed thus the finding returned by the learned Presiding Officer on issue No. 4 is upheld.

Now, dwelling upon issue No. 1.

The petitioners have led evidence. The witnesses namely, Altaf Ahmad examined in claim petition No. 79/1999, Shabir Ahmad Akhoon examined

in claim petition No. 95/1999, Ghulam Mohammad Wani examined in claim petition No. 105/1999, Ghulam Qadir Ganaie examined in claim

petition No. 175/1999, Mushtaq Ahmad examined in claim petition No. 176/1999, have deposed that the driver has driven the offending vehicle at

high speed and over took a truck at Digdol and has caused accident due to rash and negligent driving.

9. The appellant or the respondent Mohammad Aslam Khan have not led any evidence in rebuttal. Thus the evidence of the claimants has

remained unrebutted. It is beaten law of the land that strict rules of Evidence Act are not applicable in the proceedings pending before Motor

Accident Claims Tribunal. The claim petition is to be decided summarily and the Tribunal is at liberty to adopt any procedure in terms of Section

166 of Motor Vehicles Act read with Rule 324 of Motor Vehicle Rules but that should not be against the principle of natural justice.

10. The Apex Court has observed in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, as under;

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system-affection of the people has

been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed

rather than taking recourse to the old conservative doctrine of civil Courts obligation in *D.K. Basu* has not only dealt with the issue in manner

apposite to the social need of the country but the learned judge with his usual felicity of expression firmly established the current trend of 'justice

oriented approach'. Law Court will lose its efficacy if it cannot possibly respond to the need of the society-technicalities there might be may but the

justice oriented approach ought not be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of

justice.

11. Keeping in view that the evidence led by the claimants has remained un rebutted, the inescapable conclusion is to be drawn that driver has

driven the offending vehicle rashly and negligently. Thus the finding returned by the learned Presiding Officer is upheld.

12. Whether the appellant/insurer can be challenge the award on the grounds available to driver and owner while keeping in view the mandate of

Section 149 coupled with the fact that the insurer/appellant has sought permission in terms of Section 170 of Motor Vehicles Act. It is admitted

that the insurer has sought permission but despite of that insurer has not led any evidence. Thus the purpose of granting the permission and the

mandate of Section 170 Motor Vehicles Act stands defeated by the conduct of the appellant.

13. Now the meat of the matter is, whether permission granted by the learned Presiding Officer can be held permission to assail the award on the

grounds which are otherwise not available to the insurer in terms of Section 149 of Motor Vehicles Act. It is proper to refrain from offering

comments but it is proper to return finding on all the issues.

14. Now, dwelling upon the question, whether the compensation awarded in all the claim petitions is just or otherwise. Before the facts of all the

claim petitions are noticed, it is profitable to reproduce the relevant paras of the

judgments of the Apex court in case Lata Wadhwa and Others

Vs. State of Bihar and Others, and in case M.S. Grewal and Another Vs. Deep Chand Sood and Others, .

11...At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable

expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the

guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any

materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in

the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety

child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive

at just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for the TISCO on his

own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made

is grossly inadequate. Loss of a child to the parents is irrecoupable and no amount of money could compensate the parents. Having regard to the

environment from which these children were brought, their parents being reasonably well placed officials of the Tata Iron and Steel Company, and

on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10

years should be three times. In other words, it should be Rs. 1.5 lakhs, to which the conventional figure of Rs. 50,000/- should be added and thus

the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of

Class VI to class X and are children of employees of TISCO. The TISCO itself has a tradition that every employee can get one of his child

employed in the Company. Having regard to these facts, in their case, the contribution of Rs. 12,000/-per annum appear to us to be on the lower

side and in our considered opinion, the contribution should be Rs. 24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15.

Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs. 3.60 lakhs, to which an additional sum of Rs.

50,000/- has to be added, thus making the total amount payable at Rs. 4.10 lakhs for each of the claimants of the aforesaid deceased children.

M.S. Grewal and Another Vs. Deep Chand Sood and Others,

29. The only other issue, thus left outstanding in the matter under consideration pertains to the quantum of compensation. It is at this juncture that

we record our appreciation for the gesture of Mr. Bahuguna who at the very commencement of the hearing submitted that while the figure of Rs. 5

lacs compensation per child seem to be strangely absurd but he recommended a figure of Rs. 2 lacs per child as monetary compensation for the

events that had taken place, compensation there cannot be any, far less monetary compensation, for the unfortunate death of one's own child -- it

cannot be termed to be a solatium. Unfortunately the situation in the facts of the matter does not warrant us to accept the same as a result of which

we wish to deal with the matter in slightly more greater detail.

34. In Lata Wadhwa's case, however, this Court came to a conclusion that upon acceptability of the multiplier method and depending upon the

facts situation namely the involvement of TISCO in its tradition that every employee can get one of his child employed in the company and having

regard to multiplier 15 the compensation was calculated at Rs. 3.60 lacs with an additional sum of Rs. 50,000/- as conventional figure making the

total amount payable at Rs. 4.10 lacs for each of the claimants of the deceased children.

35. The decision in Lata Wadhwa, thus, is definitely a guiding factor in the matter of award of compensation wherein children died under an

unfortunate incident as noticed more fully hereinbefore in this judgment.

15. In claim petition No. 79/1999, the deceased was an Engineer Graduate of 27 years of age at the time of accident and was receiving Rs.

2000/- per month as apprenticeship from Jammu and Kashmir Cements Limited and was also working a part time Consultant Engineer and was

earning an amount of Rs. 5000/- per month. The deceased would have got regular appointment and would have been in the regular pay scale of

Rs. 8300-13700/- and his income would have been more than Rs. 15000/- per month. The age of the deceased is not in dispute. The age of the

deceased has been given in the death certificate issued by Block Medical Officer Ramban and in postmortem report as 29 and 28 years

respectively. The evidence led by the claimants has remained unrebutted. The learned Presiding Officer has rightly held that the age of the

deceased was 28 years at the time of accident.

16. There is evidence on the file that the deceased was Engineer by profession and was receiving Rs. 2000/- per month as apprenticeship and was

also a partner in Dar Builders. The evidence has remained un-rebutted. The Tribunal after considering all circumstances has held that income of the

deceased would not have been less than Rs. 5400/- per month.

17. Mr. Kawoosa argued that the income of the Engineer should not have been taken more than Rs. 3000/- and one third should have been

deducted and loss of dependency should have been assessed at Rs. 2000/-.

18. There is evidence on the file that deceased was receiving Rs. 2000/- as apprenticeship and was a partner in Dar Builders. By lapse of time, the

deceased would have been appointed and his pay would have been not be less than Rs. 15000/- per month. The deceased was a partner of Dar

Builders and has filed income tax returns and has deposited Rs. 3000/- as tax in his individual capacity.

19. The appellant has not led any evidence in rebuttal. The learned Presiding Officer has rightly deducted one third of his income and has

accordingly held that Rs. 3600/- is the loss of dependency to the claimants-respondents.

20. The age of father and mother has been given as 40 and 50 years. There is nothing on the file suggesting the fact that age of the parents of the

deceased was less or more as has been given.

21. Keeping in view the age of the deceased and age of the parents/claimants, the multiplier 13 is just and appropriate multiplier in the instant case

and has been applied rightly.

22. Now coming to petition No. 95/99 titled Safiya and Ors. v. National Insurance Co. and Ors.. The petitioners have pleaded that the deceased

was a shopkeeper of 30 years age. The death certificate, post mortem report and the oral evidence disclose that age of the deceased was 30

years. The appellant has not led any evidence. Thus the finding returned by learned Presiding Officer while holding that age of the deceased was 30

years is correct.

23. Despite of the fact that deceased was a shopkeeper which stand proved by leading evidence, the learned Presiding Officer has held that the

income of the deceased was Rs. 3000/- per month which appears to be on lower side but has not been assailed by the claimants/respondents

merits to be upheld while keeping in view the fact that appellant has not led any evidence in rebuttal. The multiplier 12 has also been applied

correctly while keeping in view the circumstances of the case and the law applicable.

24. Petition 105 titled Mst. Raja Begum and Ors. v. National Insurance Co. and Ors.. In this claim petition, it has been pleaded by the claimants

that the deceased was 26 years of age and was working as Peon cum Watchman in Jammu & Kashmir Bank and was drawing salary of Rs.

5106/-. The pay certificate of the deceased is on the file. The postmortem report, medical certificate, death certificate issued by Block Medical

Officer and other evidence disclose that age of the deceased was 32 to 35 years of age and learned Presiding Officer has held age of the deceased

as 33 years. There is no evidence in rebuttal on the file. The salary slip on the file is also not in dispute. The learned Presiding Officer has assessed

the income of the deceased at Rs. 3000/- P.M. though it appears to be on lower side, but the claimants have not assailed the same. Accordingly,

the same needs to be upheld.

25. The multiplier 16 has been applied keeping in view the age, schedule appended to Motor Vehicles Act and other circumstances. The multiplier

has been applied rightly by the learned Presiding Officer.

26. Petition No. 175/99 titled Mst. Jawa and Ors v. National Insurance Co. and Ors.. The claimants have averred in the claim petition that

deceased was an employee of Telecommunication Department as RM (Regular Mazdoor) and was drawing monthly salary of Rs. 4208/- and the

deceased was also earning Rs. 3000/- per month being an artisan while doing the job of crewlery and chain stitching. The Accounts Officer,

BSNL has issued certificate which disclose the date of birth of the deceased as 06.06.1959. There is no evidence on file in rebuttal, thus it can be

safely held that age of the deceased at the time of accident was 40 years approximately. The death certificate and the postmortem report disclose

that age of the deceased at the time of accident was 40 years.

27. Ghulam Rasool Dar Chief Accounts Officer, Anantnag has deposed that the gross pay of the deceased was Rs. 4600/- and while going

through the evidence and the pay certificate, the Tribunal has rightly held that the gross pay of the deceased was Rs. 4600/-. The multiplier 14 has

been applied rightly while keeping in view the facts of the case.

28. Petition No. 176/99 titled Mohammad Ayub Bhat and Ors. v. Mohammad Aslam Khan and Ors. The claimants have averred that deceased

was working as Sales Representative in ""Ambrosia Pharma"" and was earning Rs. 5000/- per month and in addition to that was also earning Rs.

5000/- by imparting tuition to the students. The evidence of the claimants has remained un-rebutted. The learned Presiding Officer has assessed the

income of the deceased at Rs. 3000/- per month though on lower side.

29. The multiplier 16 has been applied rightly while keeping in view the age of the deceased and circumstances of the case.

30. Keeping in view the above discussion, the findings returned by the learned Presiding Officer are legal and correct need no interference. The

multiplier has been applied rightly in all the cases and the just compensation has been awarded in all the cases.

31. Viewed thus the award is upheld and appeals are dismissed.