
(2021) 02 J&K CK 0120
In the Jammu And Kashmir High Court
Case No : CMAM no.144 Of 2017

National Insurance Company Limited	Vs	APPELLANT
Abdul Ahad Najar And Others		RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2021) 02 J&K CK 0120

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : J.A.Kawoosa, Adil Asmi, Areeb Kawoosa

Final Decision : Dismissed

Judgement

1. Challenge in this Appeal is thrown to Award dated 29th November 2016, passed by Motor Accident Claims Tribunal (for short "Tribunal") on a claim petition bearing File no.121/2012, titled Abdul Ahad Najar and others v. Abdul Lateef Matt and others, on grounds enumerated therein.

2. Heard and considered.

3. Learned senior counsel appearing for appellant Insurance Company has stated that though contention that driver of offending vehicle was not

having valid and effective licence at the time of accident, was taken by appellant Insurance Company before the Tribunal, yet the Tribunal has not

taken into account the said contention of appellant while passing impugned Award. According to him Tribunal has wrongly relied upon judgement

passed in National Insurance Co. Ltd v. Rameez Ahmad Nanda, SLJ 2015 (1) 45, as in the said case it has been held that light motor vehicle (LMV)

will cover both Passenger Vehicle and Light Goods Vehicle and therefore, was not applicable to the facts of the present case. He has also averred

that Tribunal has wrongly taken income of deceased as Rs.6500/- and has also wrongly added 50% on account of future prospects, whereas in terms of law laid down by the Supreme Court in National Insurance Company Ltd v. Pranay Sethi and others, AIR 2017 SC 5157, an addition of 40% of established income should be added where deceased is below the age of 40 years. According to him Funeral Expenses of Rs.15,000/- ought to have been granted instead of Rs.25,000/-.

4. Given the submissions made by learned senior counsel for appellant Insurance Company, it would be apt to have glance of impugned Award.

Perusal thereof reveals that the Tribunal on subject of driving licence had framed an Issue, which is:

â??2. Whether the owner of the offending vehicle insured, has permitted the driver respondent no.2 to ply the said vehicle without valid, effective DL

for carrying passengers which is violation of policy conditions, if yes, the insured has committed breach of insurance contract, absolving respondent

no.3 Insurance Company from its liability on account of petitionersâ?? claim? OPR-3â??

5. It also comes to fore from the file that claimants produced six witnesses. Appellant Insurance Company produced one witness, namely, Owais

Nazir Wani, Legal Assistant, Senior Divisional Manager Office, NIC, Srinagar.

6. Onus of proving Issue no.2, as to whether owner of offending vehicle permitted the driver without valid and effective driving licence and other

vehicular documents and any special endorsement for carrying passengers which is violation of policy conditions and by that absolved Insurance

company from liability, was upon appellant Insurance Company. It recorded statement of its Legal Assistant before the Tribunal, who stated that

driver of offending vehicle was not having valid and effective driving licence at the time of accident. The Tribunal while deciding Issue no.2 in favour

of claimants and against appellant Insurance Company, relied upon Rameez Ahmad Nanda (supra) and National Insurance Co. Ltd v. Bakhta and

others, ACJ 2013 (III) 2155. These two judgements, relied upon by the Tribunal, have been rightly applied by Tribunal inasmuch as law laid down

therein squarely covers the case in hand as well. Thus, there are no basis and foundation in submission of learned senior counsel for appellant that

there was a breach of insurance contract on the part of owner of offending

vehicle, absolving Insurance Company from its liability. In that view of matter, impugned Award to that extent need not be interfered with.

7. Insofar as computation of compensation on account of Loss of Dependency is concerned, impugned Award need not be interfered with. It is

pertinent to mention here that the Supreme Court in *Sunita Tokas and another v. New India Insurance Co. Ltd and another*, 2019 SCC Online SC

1045 : 2019 (11) SCALE 24, has enhanced monthly income of deceased from Rs.7,500/- to Rs.12,000/- per month. In the case of *Sunita Tokas*

(supra) accident had taken place in the year of 2004, while in the present case, accident has taken place in the year 2012. So, monthly income of

deceased, taking into account facts and circumstances of the present case, has rightly been taken by Tribunal as Rs.6500/-.

8. The Supreme Court in *Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.*, (2014) 2 SCC 735, while taking note of earlier decision

in *Ramachandrappa's* case (supra), reckoned monthly income of a vegetable vendor, who met with a road accident in the year 2008, at the age of

24 years, notionally as Rs.6,500/-. In the said decision, the Supreme Court held that a labourer in an unorganized sector doing his own business could

not be expected to produce documents to prove his monthly income. Therefore, there was no reason for Tribunal and High Court to ask for evidence

to prove his monthly income. Going by the state of economy, prevailing at that time and rising prices in agricultural products, the Supreme Court

accepted his case that a vegetable vendor was reasonably capable of earning 6,500/- per month.

9. A Constitution Bench of the Supreme Court in *Pranay Sethi*, (supra) has held that Section 168 of Motor Vehicles Act, 1988, deals with concept of

“just compensation” and same has to be determined on foundation of fairness, reasonableness and equitability on acceptable legal standard

because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity

to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be

viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the

claimants cannot expect a windfall. Simultaneously, the compensation granted

cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the Tribunal is quite wide, yet it is obligatory on the part of the Tribunal to be guided by the expression, i.e., just compensation.

Having said that, submission of learned senior counsel appearing for appellant Insurance Company, that claimants could not prove income of deceased before the Tribunal, is specious.

10. The Tribunal after deciding Issues 1&2 in favour of claimants, discussed and decided Issue no.3 as to what amount of compensation claimants were entitled to. The Tribunal has rightly calculated Rs.6500/- as monthly income of deceased. The Tribunal, however, added 50% as future prospects to Loss of Dependency that needs to be modified in view of law laid down in Pranay Sethi (supra). The future prospects is, thus, reduced to 40% from 50%.

Therefore, loss of monthly income of deceased shall be Rs.6500/- plus 40% future prospects, which comes to Rs.9100/- (Rs. 6500 + Rs.2600). The said amount of Rs.9100/- is deducted by 50% towards personal expenses, which comes out to Rs.4550/-. So, annual income comes to Rs.54,600/- (Rs.4550x12).

11. Insofar as application of multiplier by the Tribunal is concerned, the same need not be interfered with. In that view of matter, the total Loss of Dependency as well as Future Prospects comes to Rs.9,28,200/- (Rs.54,600 x 17).

12. Submission of learned senior counsel for appellant Insurance Company as regards compensation on account of Burial/Funeral Expenses, given by the Tribunal, has sum and substance. The same is reduced to Rs.15,000/- from Rs.25,000/- However, claimants are entitled to Loss of Consortium in the amount of Rs.40,000/-. Reference in this regard is made to Pranay Sethi (supra).

13. For the reasons discussed above, the Appeal qua driving licence of driver of offending vehicle is dismissed. However, impugned Award as regards compensation, given by the Tribunal, is modified in the following manner:

A. Loss of dependency as well as loss of future prospects = Rs.9,28,200.00

B. Burial/Funeral expenses = Rs. 15,000.00

C. Loss of Consortium = Rs. 40,000.00

Total compensation = Rs.9,83,200.00

14. Claimants/respondents 1 to 3 are entitled to compensation of Rs.9,83,200/- along with interest @ 6% per annum from the date of institution of

claim petition till its final realisation.

15. Appellant Insurance Company is directed to pay the aforesaid amount of Rs.9,83,200/- along with interest @ 6% per annum from the date of

institution of claim petition till its final realisation. Amount, if any, received by claimants/respondents 1 to 3 shall be deducted from the amount as

awarded finally. Claimants shall share award amount, as directed by the Tribunal, in equal shares.

16. Copy of this judgement be sent down.