**(2020) 07 J&K CK 0012**

**In the Jammu And Kashmir High Court**

**Case No :** Miscellaneous Appeal No. 85 Of 2010, IA No. 110 Of 2010

National Insurance Company Ltd — APPELLANT

Vs

Saroj Bakshi And Others — RESPONDENT

**Date of Decision :** 27-07-2020

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (2020) 07 J&K CK 0012

**Hon'ble Judges :** Sanjeev Kumar, J

**Bench :** Single Bench

**Advocate :** C.S.Gupta

**Final Decision :** Dismissed

## Judgement

Sanjeev Kumar, J

1 The present appeal has been filed by the National Insurance Company (hereinafter referred to as the 'insurer') under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as, 'the Act') against the award dated 31st July, 2009 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') in file 424/Claim whereby the Tribunal has awarded a compensation of Rs.4,22,100/- along with interest @ 7.5% per annum in favour of respondent Nos.1 to 5/claimants.

2. Briefly stated the facts, relevant to the disposal of this appeal, are that on 06.03.2007, when the deceased was travelling in the Alto Car No. JK02AD-6311, a Truck No. JK02H-4987 which was being driven by respondent No.7 herein in a rash and negligent manner hit the Alto Car from the backside, as a result whereof, the deceased sustained grievous injuries to which he later succumbed.

3. Respondent Nos. 1 to 5 herein (claimants) filed a claim petition before the Tribunal seeking compensation of Rs.15,27,000/- from the respondents. It was claimed in the petition that the deceased was a retired teacher and was getting pension to the tune of Rs.5708/- per month. It was further claimed that the

deceased was also earning Rs.7000/- from the tuition work.

4. On the basis of pleadings of the parties, the Tribunal framed the following issues:

(i). Whether an accident occurred on 06.03.2007 near main stop, Gandhi Nagar, Jammu due to rash and negligent driving of offending vehicle No. JK02H-4987 in which deceased Pushkar Raj Bakshi sustained fatal injuries ?OPP

(ii). If issue No.1 is proved in affirmative whether petitioners are entitled to the compensation if so to what amount and from whom? OPP

(iii). Whether driver of offending vehicle at the time of accident was not holding valid and effective driving licence and drove the vehicle in contravention of terms and conditions of insurance policy if so how and what is its effect ? OPR-1

(iv). Whether the accident has occurred by the composite negligence of drivers of both vehicles i.e offending truck and the Alto in which deceased was travelling if so what is its effect ? OPR-1

(v). Whether driver owner and insurance company of the alto car are necessary parties to the petition, if so how and what is its effect ? OPR-1

(vi). Relief OP Parties

5. On the basis of evidence on record, the claimants were held entitled to compensation of Rs.4,22,100 along with interest @ 7.5% per annum from the date of filing of claim petition till its realization.

6. In the backdrop of aforesaid, the present appeal has been filed by the insurer. Though several grounds are raised in this appeal, the insurer restricted its challenge to the ground that the Tribunal has wrongly taken the income of the deceased as Rs.7000 per month.

7. Learned counsel for the insurer submits that the Tribunal has not correctly appreciated the evidence with regard to the income of the deceased and that in the absence of any evidence with regard to the income of the deceased, the Tribunal could not have fixed the income of the deceased as Rs.7000/- per month.

8. Heard learned counsel for the insurer and perused the record.

9. Admittedly, the deceased had retired as a Government teacher and it is not uncommon that normally teachers after retirement indulge in imparting tuitions to the children to supplement their income. Therefore, the Tribunal was justified in presuming that the deceased was earning some extra income from the tuition work. Otherwise also, it has come in the evidence that the deceased was getting Rs.5708/- as pension and, therefore, rightly took Rs.7000/- as his monthly income. In my view, the Tribunal has committed no illegality in taking the monthly income of the deceased as Rs.7000/- per month. Moreover, there was no rebuttal or dispute raised by the appellant with regard to the income of the deceased before the Tribunal.

 

10. The tribunal has taken the income of the deceased as Rs.56004/- per annum after deducting 1/3rd towards the personal expenses of the deceased. Taking the age of the deceased as 60 years, the tribunal adopted the multiplier of 7 and awarded compensation of Rs.3,92,028/-. In addition to this, the tribunal has awarded conventional damages of Rs.30,000/-(Rs.15,000/-towards loss of consortium and Rs.15,000/- towards funeral expenses. Thus, the tribunal has awarded total compensation of Rs.4,22,100/-The compensation awarded is, thus, just and fair and does not call for any interference.

11. In view of the above, this appeal filed by the insurer is found meritless and dismissed.

 