

(2022) 08 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Miscellaneous Application No. 35 Of 2022

Nazir Hussain And Others

APPELLANT

Vs

Mohd. Fareid And Others

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Citation : (2022) 08 J&K CK 0032

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Raghu Mehta, Dewakar Sharma

Final Decision : Partly Allowed

Judgement

Sindhu Sharma, J

1. This appeal has been preferred against the award dated 28.04.2018 passed by the Motor Accident Claims Tribunal, Rajouri (for short 'the Tribunal') in File No. 40/Claim/2016 titled 'Nazir Hussain and others vs. Mohd. Fareid and others', awarding compensation for an amount of Rs. 18,20,320/- along with interest @ 7.5% p.a. in favour of the appellants (hereinafter referred to as 'Claimants') on account of the death of the deceased-Mohd Ashraf. The claimants seek enhancement of compensation awarded by the Tribunal.

2. A claim petition was filed by the parents, wife and children of late Mohd. Ashraf, who died in a vehicular accident which occurred on 29.04.2016 at about 06:15 A.M near Government High School Siot, within the jurisdiction of police Station Dharamsal. The deceased was going to attend his official duty at Police Station, Dharamsal when a vehicle bearing registration No. JK02-AM-1911, coming from Bhakar to Siot being driven by respondent No. 1 in rash and negligent manner lost control and hit motorcycle of the deceased resulting in his death on 29.04.2016. The respondent Nos. 1 and 2 did not contest the petition and were set ex-parte. The claim of the claimants was, however, resisted by the respondent No. 3-Insurance Company but the insurance company admitted that

the offending vehicle was insured with them at the time of accident.

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

1. Whether on 29.04.2016, the respondent No. 1 while driving vehicle No. JK02AM-1911 in a rash and negligent manner was coming from Bhakar to Siot and when it reached at Siot it caused an accident and hit the motorcycle of the deceased resulting into the death of deceased Mohd. Ashraf on spot? OPP.

2. If issue No. 1 is proved in affirmative, to what amount the petitioner is entitled to and from whom? OPP

3. Whether the terms and conditions of insurance policy have been violated, if so to what effect? OPR-3

4. Relief.

4. The claimants No. 1 and 3, besides themselves have examined Bishan Lal, Anwar Shah in their evidence. The respondents have not examined any witness in rebuttal. The Tribunal, after considering the pleading of the parties and evidence, decided all the issues in favour of the claimants by holding that the deceased-Mohd. Ashraf died as a result of grievous injuries sustained by him on account of accident that occurred on 29.04.2016 due to rash and negligent driving of the vehicle by its driver bearing registration No. JK02-AM-1911. The Tribunal while deciding issue No. 2 awarded compensation of Rs. 18,20,320/- along with interest @ 7.5% per annum from the date of institution till its realization.

5. The claimants are aggrieved of the amount awarded so far as it relates to the finding of issue Nos. 2 and 4 regarding quantum of compensation awarded and seek enhancement of the same on the grounds, that the finding of the Tribunal below on issue No. 2 and 4 are factually incorrect, as such, untenable and liable to be set aside. As per the evidence on record, deceased-Mohd. Ashraf, at the time of his death was of 30 years of age and working as Constable in J&K Police Department and drawing monthly salary was Rs. 22,878/- as per the salary certificate placed on record. Since the deceased was holding regular job, therefore, 50% income was to be added towards Future Prospects as per the settled law in "National Insurance Co. Ltd vs Pranay Sethi", 2017 ACJ 2700 (SC), the deduction towards the personal and living expenses would be 1/4th, as the number of family members dependent on the deceased were six. The Tribunal, though, observing that 50% of the actual salary of the deceased should be added towards the future prospects, as he was holding a permanent job. The Tribunal calculated the compensation by taking the annual income of the deceased as Rs. 34,317 erroneously and deducted 1/4th of the above income and erred in calculating and awarding compensation on that basis. The monthly income of the deceased admittedly was Rs. 22,878/- and the same was also accepted by the Tribunal. The deceased was a permanent employee, therefore, 50% of the income was required to be enhanced towards the future prospects for calculation

of compensation and on that basis, Rs. 11,439/- was required to be added on the monthly income of the deceased, therefore, the monthly income of the deceased would be (Rs. 22,878+Rs. 11,439) Rs. 34,317/-, thus annual income of the deceased would be (Rs. 34,317 x 12) Rs. 4,11,804/- after deducting income tax in relevant year that would be around Rs. 8,090/- and net annual income of the deceased comes to be at Rs. 4,03,714/-. There were six dependents on the deceased, therefore, 1/4th of the annual income is required to be deducted towards personal and living expenses of the deceased and on that basis the annual dependency comes to Rs. 4,03,714 - Rs. 1,00,928 = Rs. 3,02,786/-, applying the multiplier of 17 in view of the age of the deceased, the loss of dependency of the claimants come to Rs. 3,02,786 x17= Rs. 51,47,362/-.

6. The compensation on the conventional head was to be awarded Rs. 15000/- towards 'loss of estates' and Rs. 15,000/- for 'funeral expenses'. The claimants are also entitled to consortium in terms of the judgment of the Hon'ble Apex court in 'Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others', decided on 18.09.2018, relevant extract of which reads as under:

'The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of company, society, co-operation, affection, and aid of the other in every conjugal relation. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.' Rs. 40,000/- is to be awarded towards parental and filial consortium, thus, an amount of Rs. 2,40,000/- is to be awarded on the head of parental and filial consortium.

7. For the foregoing reasons and discussions made hereinabove, the award passed by the Tribunal is modified in the following manner:

Monthly income of the deceased

Rs. 22,878/-

After adding 50% increase in salary

Rs. 22,878 + 11,439/-

= Rs. 34,317/-

Annual Income

Rs. 34,317 x 12 = Rs. 4,11,804/-

Income Tax deducted for the year
2016-17

Rs. 8,090/-

Annual Income after deducting
Income Tax

Rs. 4,03,714

Income after deduction of 1/4th

Rs. 4,03,714 - 1,00,928/-

towards living and personal
expenses

= Rs. 3,02,786/-

Multiplier applicable

17

Loss of dependency

Rs. 3,02,786 x 17

= Rs. 51,47,362/-

Loss of spousal consortium

Rs. 40,000/-

Loss of parental and filial consortium to parents (2) and three
children (3)

Rs. 40,000/- x 5

= Rs. 2,00,000/-

Funeral expenses

Rs. 15,000/-

Loss of estate

Rs. 15,000/-

Total compensation

Rs. 54,17,362/-

8. The claimants are thus entitled to compensation of Rs. 54,17,362/-along with

interest as per the award. Thus Rs. 18,20,320/- is to be deducted from the award amount of Rs. 54,17,362/- and the claimants would be entitled to receive the balance amount of Rs. 35,97,042/- , as per their share and interest in terms of the award.

9. This appeal is partly allowed and the award is accordingly modified.