

(2018) 05 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : MA NO.208 OF 2012

NEW INDIA ASSURANCE CO. LTD

APPELLANT

Vs

GHULAM MOHD. NAIK AND ORS

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Citation : (2018) 05 J&K CK 0026

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

On the strength of case set up in the appeal, appellant-Insurer has questioned the impugned award dated 27th of December, 2011 passed by learned

Presiding Officer, Motor Accident Claims Tribunal, Ramban, and prays for allowing the appeal on the following grounds:-

I. That the award impugned is bad on the facts and law of the case, the same is liable to be set aside.

II. That the award impugned has been passed on presumption that the son of the petitioners/claimants was travelling by the vehicle that

has fallen in the river. Two bodies only were recovered from the river, the police on the presumption of the third whose body remained untraced has

issued a certificate of death, there is no material on record from where it could be ascertained that the son of the claimants was also travelling by the

said vehicle, the presumption so drawn by the tribunal is bad and illegal, the award impugned thus is liable to be set aside.

III. That the alleged deceased was a bachelor, his income has been taken as that of Rs 3, 000/- PM and for computation of compensation the tribunal

has applied the multiplier against the age of the deceased where as it should have been against the age of younger of the parents. The alleged

deceased was 21 years of age, therefore, the age of the mother can not be presumed to be less than 50 years and the appropriate multiplier in this

case should have been 9 after scaling down from 11 in view of the uncertainties of life and the compensation thus should have been Rs. 1,62,000/-

only but not Rs. 3,34,000/- therefore, the award impugned is bad, very excessive and exorbitant, the same thus is liable to be set aside.

IV. That if it is presumed that the son of the claimants was travelling by the vehicle at the time of the accident and has died yet the same can not be

presumed that he was travelling by the said vehicle as a conductor with the said vehicle especially for the reason that the owner of the vehicle has not

been produced before the court to corroborate the pleadings of the claimants nor did the said owner himself appeared in the case when was served

with the notice of the claim petition, therefore, in this backdrops it can safely be presumed that the son of the claimants was travelling by the vehicle

as a gratuitous passenger like another person namely Shabir Malik whose dead body was recovered from the river along with the dead body of the

driver of the truck. The tribunal despite being apprised of these facts has not taken notice of the same and has passed an award under challenge

without the application of mind while holding the appellant insurance company liable to indemnify the insured despite the fact that the liability of the

insurance company is not attracted as the insured owner has violated the terms and conditions of the policy of insurance by allowing passengers to

travel by the said insured vehicle. The award impugned is bad and illegal; the same thus is liable to be set aside.

V. That the interest on the awarded amount can not be more than 6% yet the tribunal has awarded 7.5 % from the date of application till the award is

passed and 9% thereafter till the award amount is realized. The procedure adopted by the tribunal is very strange as the same has never been heard

of nor can be applied neither the Motor Vehicle Act any where has prescribed so. The award impugned is bad and is liable to be set aside.â??

2. It is contended in the appeal that Insurer has objected the claim petition before the Presiding Officer, MACT, Ramban by insisting that the driver of

the alleged offending vehicle did not possess a valid, effective and proper driving license at the time of accident, which is a violation of terms and

conditions of the policy and the same exonerates the appellant insurance company from its liability to indemnify the insured. Further contention of the insurer is that neither the Ajaz Ahmed (deceased) was conductor with the alleged offending vehicle at the time of accident nor he was employed by the insured owner of the vehicle. It is further contention of the appellant insurer that the dead body of the said deceased has not been traced so the presumption of his was being carried in the said vehicle cannot be drawn.

3. I have heard learned counsel for the parties, considered their submissions and gone through the records of the file.

4. It has come to the fore from the pleadings put-forth by the learned counsel for the parties as well as from the records of the file that

Insurerappellant has not lead any evidence before the Presiding Officer, MACT, Jammu to disprove the issues, particularly Issue No.1, i.e., Whether

deceased Ajaz Ahmed died as a result of injuries received in a road traffic accident on 3rd day of April, 2005 at a place near Ramsu Police Post,

involving vehicle No. JK02A/5647, driven by respondent no.1 rashly and negligently? Moreso, when the petitioner and his witnesses before the

Tribunal has proved the same to the entire satisfaction of the Court by way of oral as well as documentary evidence.

5. It is well settled law that proceedings before the Claims Tribunal are summary in nature and suffice to consider, whether there is any

preponderance of probability, as to the manner of accident detailed in the claim petition. Strict proof of evidence is not required. In the absence of any

rebuttal evidence, the findings of the Tribunal cannot be termed as perverse.

6. In case *Bimal Devi and others Vs. Himachal RTC*, reported as 2009 (13) SCC 530, the Supreme Court has held that it was necessary to be

borne in mind that strict proof of an accident caused by a particular bus in particular manner may not be possible to be done by the claimants and the

claimants were mere to establish their case on the touchstone of preponderance of probability and also the standard of proof being reasonable doubt

could not be applied. In case *Archit Saini Vs. Oriental Insurance Company Ltd and ors.*, decided on 9th of February, 2018, the Supreme Court

has observed that it is quite well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in

criminal cases.

7. Another ground of challenge to the impugned award raised by the insurer is that the appropriate multiplier in this case should have been taken on

the age of the younger of the parents i.e., mother of the deceased. Following *Sarla Verma*, (2009) 6 SCC 121, *Munna Lal Jain*, (2015) 6 SCC 347, the

Five-Judge Bench Judgment in *Pranay Sethi*, (2017) 16 SCC 680, reiterated, that legal position is that multiplier should depend on age of deceased and

not on the age of dependents. On this count also, the award cannot be interfered with by this Court.

8. On carefully analyzing the evidence both oral as well as documentary available on the record, considering the submissions advanced by learned

counsel for both the sides and keeping in view all the related facts/circumstances of the case, this Court is of the considered view that the conclusion

drawn by learned Presiding Officer, Motor Accident Claims Tribunal, Ramban, is unassailable. Thus, learned Presiding Officer, Motor Accident

Claims Tribunal, Ramban has not committed any error in its findings and the same cannot be considered as baseless and perverse. Therefore, no

interference is required by this Court in the award dated 27th of December, 2011 passed by Presiding Officer, Motor Accident Claims Tribunal,

Ramban. Accordingly, the present appeal is dismissed.

9. Registry is directed to release the awarded amount deposited before it minus the amount already released, strictly in terms of award dated 27th of

December, 2011 passed by Presiding Officer, Motor Accident Claims Tribunal, Ramban, in favour of the claimants after their proper identification and

verification.