
(2023) 06 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 225 Of 2013, IA No. 470 Of 2014

Oriental Insurance Company Ltd

APPELLANT

Vs

Sakhi Mohd. And Ors

RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Citation : (2023) 06 J&K CK 0034

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Vishnu Gupta, M.P. Gupta, Neha Abrol, O.P. Thakur

Final Decision : Dismissed

Judgement

Javed Iqbal Wani, J

1. In the instant appeal filed under the provisions of Motor Vehicles Act 1988 (hereinafter referred to as the "Act"), award dated 15.02.2013 passed in Claim Petition titled as, "Sakhi Mohd. and ors. vs. Oriental Insurance Co. and ors." by the Motor Accident Claims Tribunal, Ramban (hereinafter referred to as the "Tribunal") is being challenged.

2. The facts giving rise to the filing of the instant appeal would reveal that one-Mohd. Afzal Rather S/o Sakhi Mohd. R/o Batote, Tehsil and District Ramban (hereinafter referred to as the "deceased") died in a vehicular accident on 05.10.2011 at Bhaderwah Morh, Batote, involving vehicle (Tipper) bearing Registration No. JK02A-9581.

3. Consequent to the filing of the Claim Petition (supra) and issuance of notice by the Tribunal to the respondents, objections came to be filed to the Claim Petition. The Tribunal on the pleadings of the parties, framed the following issues:-

"(I) Whether the deceased-Mohd. Afzal Rather son of petitioners No. 1 and 2 and father of petitioners No. 3 and 4 died as a result of injuries received in a Road Traffic Accident on 05.10.2011 at Bhaderwah Morh, Batote involving vehicle No.

JK02A/9581 (Tipper) owned by respondent No. 2 and insured with respondent No. 1 driven rashly and negligently by respondent No. 3? (OPP)

(II) Whether the petitioners are entitled to receive any compensation under MV Act from the respondents? (OPR)

(III) Whether the respondents are not liable to pay any compensation to the petitioners? (OPP)

(IV) Relief?"

4. The claimant 1-Sakhi Mohd. besides appearing as his own witness examined the witnesses, namely, Wajahat Hussain and Mohd. Iqbal, whereas the respondents did not lead any evidence.

5. The appellant-Insurance Company being respondent 1 in the Claim Petition has questioned the impugned award on the grounds urged therein.

Heard learned counsel for the parties and perused the record.

6. Perusal of the record tends to show that the Tribunal upon the pleadings of the parties, framed the aforesaid issues and while putting onus to prove the Issues (I) and (II) upon the claimants, put the onus to prove Issue (III) on the respondents.

In discharge of the onus to prove the Issue (I) (supra), the claimant-Sakhi Mohd., as noticed above, has appeared as his own witness besides abovenamed Wajahat Hussain and Mohd. Iqbal. All the witnesses have deposed in the witness box that the deceased died while travelling in the offending vehicle after receiving injuries on 05.10.2011. The death of the deceased has also been proved to have been caused on account of severe head injury. The Tribunal on the basis of the evidence produced by the claimants, concluded that the deceased died on account of vehicular accident, involving offending vehicle bearing Registration No. JK02A-9581 on 05.10.2011 owing to the negligence of the driver-respondent 3. Admittedly, no evidence came to be led in rebuttal thereto by the respondents including appellant herein. The Tribunal having held the deceased having died in the vehicular accident as aforesaid, has proceeded to work out the amount of compensation, the claimants would be entitled to receive and in this regard, while adverting to Issue (II) has relied upon the evidence led by the claimants that the deceased was a driver by profession, earning a monthly income of Rs. 15,000/- and consequently, on the basis of "Doctrine of Probability" took and accepted the monthly income of the deceased at Rs. 9,000/- while rightly placing reliance upon the judgment of the Apex Court passed in case titled as, "Sarla Verma and ors. vs. Delhi Transport Corporation and Another, reported in 2009 (3) Supreme 487" and consequently held the claimants/respondents herein entitled to the amount of compensation of Rs. 12,40,000/- (Rupees Twelve Lac and Forty Thousand only), payable by the Insurance Company herein on the admitted set of facts that the offending vehicle was insured with the Insurance Company/appellant herein at the time of accident.

7. Insofar as Issue (III) is concerned, indisputably onus to prove the said issue was put on the respondent 1/appellant herein and, admittedly, no evidence was led by the respondent 1/appellant herein to discharge the said onus, as a consequence whereof, the Tribunal decided the said issue against the respondent 1/Insurance Company (appellant herein).

8. For what has been considered, observed and analyzed hereinabove, the impugned award does not call for any interference. Resultantly, the appeal fails and is, accordingly, dismissed alongwith connected application.