

(2021) 05 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : CMAM No. 242 Of 2013, IA No. 01 Of 2013

Shagufta And Others

APPELLANT

Vs

Nazir Ahmad Lone And Others

RESPONDENT

Date of Decision : 06-05-2021

Acts Referred:

Citation : (2021) 05 J&K CK 0009

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Mohammad Altaf Khan, T.A.Malik

Final Decision : Dismissed

Judgement

1. This Appeal is preferred by the appellants for setting aside the Award dated 1st July 2013, passed by Motor Accident Claims Tribunal (for brevity

â??Tribunalâ?) on a claim petition, being File no.180/10, titled Mst. Shagufta and others v. Nazir Ahmad Lone and others, granting compensation of

Rs.23,96,064/- along with 6% interest from the date of institution of claim petition till final realization, and respondent no.3 â?" Insurance Company

may be directed to pay an amount of Rs.45.00 Lakhs along with interest @ 12%, to appellants, on the grounds made mention of therein.

2. A claim petition, as is discernible from perusal of the record on file, was filed by appellants before the Tribunal on 24th July 2010, stating therein

that due to vehicular accident, which took place on 5th May 2010, at Bemina, Parimpora one Abdul Majeed Nakati (for short â??deceasedâ?)

sustained fatal injuries and succumbed to injuries on 18th May 2010. FIR no.107/2010 at police station Parimpora in this regard was registered.

Claimants/appellants moved before Tribunal and filed claim petition, praying for

grant of compensation in the amount of Rs.45.00 Lakhs.

3. Respondent no.3 â?" Reliance General Insurance Company, resisted the claim petition before the Tribunal on the ground that driver was not having

valid and effective driving licence at the time of accident and vehicle involved in accident, i.e., truck bearing no.HR-38-J-2736 was being driven in

contravention of the terms and conditions of the policy.

4. The Tribunal, upon perusal of pleadings of parties, settled following Issues for adjudication:

1. Whether on 05.05.2010, a truck bearing no.HR-38-J-2736, being driven by respondent no.1 rashly and negligently from Bemina towards Parimpora

on reaching near Fruit Mandi Gate Bye-pass (NHW) lost control over the same and struck against Maruti Zen going in the same direction from

Bemina towards Parimpora being driven by the deceased namely Ab. Majid Nakati, causing thereby multiple fatal injuries to the deceased and he

succumbed to the same after 13 days on 18.05.2020 in the SKIMS Soura? OPP

2. Whether the respondent no.2 owner permitted the respondent no.1 driver to drive the vehicle in question with invalid/ineffective driving licence and

other vehicular documents, like RC, RP, fitness at the time of accident, if yes, the respondent insured has committed the breach of policy stipulate on

absolved the respondent company from its liability? OPR-Company

3. In case the Issue no.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what proportion?

OPP

4. Claimants/appellants produced and examined four witnesses before the Tribunal; besides claimant/appellant no.1. Respondent no.3 â?" Insurance

Company did not produce any witness. By impugned Award, the Tribunal found claimant/appellant entitled to receive compensation of Rs.23,96,064/-

along with 6% interest per annum.

5. Heard and considered.

6. Learned counsel for appellants has stated that the Tribunal has not considered the claim petition of appellants on the basis of law laid down by the

Supreme Court for awarding compensation inasmuch as the victim had remained hospitalized for about 13 days and succumbed to injuries on 5th May

2010. It is contended that during hospitalization of deceased, appellants incurred

huge amount of money on medicines and other items for victim, but the Tribunal has not touched this head of compensation and has not awarded any amount of compensation under this head. It is submission of counsel for appellants that monthly salary of deceased was Rs.37,280/-as he was working as Senior Stenographer in State Motor Garages, but the Tribunal took monthly income of deceased as Rs.29,211/-

7. Taking into consideration submissions made by learned counsel for appellant, I deem it appropriate to go through the record on the file including impugned Award, particularly Issue no.3, by virtue whereof the Tribunal has assessed and computed the amount of compensation, to which appellants were found entitled to.

8. Perusal of file reveals that the deceased at the time of accident was of the age of 57 years. His gross salary was Rs.37280/- and Rs.8069/- was

being deducted from his salary for subscription towards G.P. Fund, State Life Insurance, Income Tax, etc. and, therefore, his net salary was

Rs.29,211/-. The income/salary certificate, to this extent produced by claimants/appellants before the Tribunal, was corroborated by witnesses. How

to and on which basis compensation was to be computed, has been undertaken by the Tribunal in detail and comprehensively. The Tribunal relied upon

judgement of the Supreme Court rendered in the case of Sarla Verma v. Delhi Transport Corporation and another, to assess the loss of dependency

took into consideration the actual salary of deceased with no further addition for any future prospects. Thereafter the Tribunal made correctly

deduction towards personal expenses. The multiplier of 9 applied by Tribunal also need not be disturbed as it has been appropriately applied by

it. After calculating loss of dependency, the Tribunal has correctly given Rs.10,000/-on account funeral expenses; Rs.10,000/- on account of loss of

estate; and Rs.10,000/- on account of loss of consortium to widow of deceased. In total the Tribunal has correctly given compensation in the amount

of Rs.23,96,064/. There is nothing on record to show or suggest that the Tribunal has erred in passing the impugned Award, which, therefore, need not

be interfered with and as a corollary thereof appeal is liable to be dismissed.

9. For the reasons discussed above, Appeal on hand is dismissed.

10. Record of the Tribunal be sent down along with copy of this judgement.