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**(2021) 02 J&K CK 0113**

**In the Jammu And Kashmir High Court**

**Case No : MA No. 05 Of 2019, Mac App. 05 Of 2019**

Shaheena Begum And Others

APPELLANT

Vs

Ghulam Nabi Dar And Others

RESPONDENT

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**Date of Decision : 03-02-2021**

**Acts Referred:**

**Citation : (2021) 02 J&K CK 0113**

**Hon'ble Judges : Vinod Chatterji Koul, J**

**Bench : Single Bench**

**Advocate : B. A. Tak**

**Final Decision : Dismissed**

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## **Judgement**

1. Appellants seek modification of Award (order/judgment) dated 03.11.2018, passed by Motor Accident Claims Tribunal, Srinagar (for brevity

â??Tribunalâ?) on a claim petition titled Shaheena Begum & others v. Ghulam Nabi Dar and others, whereby total award of compensation of

Rs.9,73,000/- along with simple interest @ 6.5% per annum, from the date of institution of claim petition till its realization, has been given and

enhancement of quantum of compensation is sought.

2. A claim petition was filed by appellants before the Tribunal, stating therein that deceased, namely, Tasleem Arif Mir, was coming from Bandipora

to Srinagar on his New Motor Cycle (Avenger Bajaj) and when he reached at Maloora (NHW), he was hit by offending vehicle (Tipper) bearing

registration No. JKO1Q/8180, which was driven by its driver, i.e. respondent no.1, rashly and negligently from Shalteng towards Mujgund, with the

result deceased received multiple fatal injuries on various parts of his body including head and died on spot. This was followed by lodgement of case

FIR no.207/2015 in police station Parimpora. Appellants, on the basis of case set up in claim petition, sought Rs.1,03,40,000/- as compensation.

3. Respondents caused their appearance before the Tribunal and filed their respective written statements. According to driver of vehicle (respondent no.1), he was driving vehicle on correct side of the said, following all traffic norms and was not driving the same rashly and negligently, but deceased was coming in opposite direction on a very high speed and was driving on wrong side; as a result whereof, he collided with vehicle being driven by him. It was also stated that offending vehicle was duly insured with respondent-Insurance Company. Owner of offending vehicle (respondent no.2), in his written statement averred that he was registered owner of vehicle and had engaged respondent no.1 as its driver, after full verification of driving licence and experience. Respondent no.3 (Insurance Company) insisted that driver of offending vehicle was not having driving licence at the time of accident and there were no valid documents, such as R/P & F/C on the date of accident.

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

1) Whether on 08.08.2015, deceased namely Tasleem Arif Mir was coming from Bandipora to Srinagar on his new motorcycle and when he reached

at Maloora and in opposite direction a Tipper bearing regd. No. JK)1Q/8180 was coming from Shalteng towards Mujgund driven by its driver namely

Gh. Nabi Dar rashly and negligently, hit the deceased Tasleem Arif Mir, as a result of which, the deceased sustained multiple fatal injuries on various

parts of his body, including head injuries resulting in his death.? (OPP)

2) Whether the driver of the offending vehicle was not holding a valid and effective D/L at the time of accident and further was not qualified for

holding or obtaining such D/L, insured this having committed breach of policy terms and conditions, as such the respondent company is not liable to

indemnify the insured? (OPR-3).

3) In case issue No. 1 is proved in affirmative, to what amount extent and from whom and in what proportion the petitioners are entitled to receive

compensation.? (OPP). d) Relief-At last parties are entitled to what relief? (OP Parties).

5. Claimants/appellants, in support of their claim, produced and examined three

witnesses, besides claimants 1&2. On 25.09.2018 evidence of claimants was closed and respondents directed to lead their evidence. However, respondents, before the Tribunal, did not produce even a single witness in support of their contention and, accordingly, on 01.11.2018 evidence of respondents was closed, and the impugned Award was given on 03.11.2018.

6. I have gone through the file and considered the matter.

7. Learned counsel for appellants has stated that deceased, Tasleem Arif Mir, was working as Carpenter and earning Rs.30,000/- per month as he

was an expert carpenter/highly skilled in this trade and in this regard, appellants produced sufficient and cogent evidence to establish and prove income

of deceased before the Tribunal. He has contended that the Tribunal has committed grave error of law while assessing income of deceased as Rs.

200/- only per day, i.e., total Rs. 6000/- per month, in view of revision of minimum rates of wages vide Notification, bearing SRO 460 of 2017 dated

26.10.2017, which shows that wages of a skilled labour / carpenter is to be taken as Rs.350/- per day, i.e., Rs.10,500/- per month. He avers that

deceased was a skilled worker/Carpenter, which fact was proved by way of evidence before the Tribunal and the same remained unrebutted. The

Tribunal had no option but to take the income of deceased as a skilled worker/carpenter, i.e., 350/- per day. The Tribunal was supposed to take a

judicial notice of the notification and accordingly award the compensation. Learned counsel also states that it has been established/proved by way of

evidence that deceased was skilled worker/carpenter and he could not be treated as unskilled (Labour), as such, income of deceased has to be taken

as Rs. 10,500/-per month and the Tribunal has without any substance and legal justification taken income of deceased of Rs. 6000/- per month. His

next submission is that compensation on account of Loss of Estate has not been awarded by Tribunal. The interest has not been awarded as per the

scheduled bank rate @ 9.5%. It is further contended Tribunal has escaped notice for grant of compensation on account of Future Prospects. In

support of his submission, learned counsel has placed reliance on National Insurance Co. Ltd. v. Pranay Sethi and others, AIR 2017 SC 5157.

8. Taking into account grounds raised in the Appeal and submissions made by learned counsel for parties, I have gone through the record of the

Tribunal and considered the matter.

9. Computation of compensation has been deliberated upon and decided by Tribunal while adjudicating upon Issue no.3, viz. in case issue No. 1 is

proved in affirmative, to what amount extent and from whom and in what proportion the petitioners are entitled to receive compensation. Appellants

claimed before Tribunal that deceased was earning Rs.30,000/- per month and on the basis thereof sought compensation. The Tribunal hashed out in

detail claim of appellants. The Tribunal found that claimants/appellants could not support with reference the income of deceased, i.e., PAN Card and

Income Tax Returns. Accordingly, Tribunal took, and rightly so, Rs.6000/- per month as income of deceased and computed Loss of

Dependency/Income. The interest @ 6.5% given by the Tribunal also need not to be modified, or for that matter enhanced. Having said that,

impugned Award to the extent of computation of loss of dependency need not be interfered with.

10. Insofar as computation of compensation on account of Loss of Consortium and Loss of Burial Expenses are concerned, the impugned Award does

not need any interference inasmuch as the Tribunal has rightly given Rs.40,000/- on account of Loss of Consortium and Rs.15,000/- on account of

Burial Expenses. Reference in this regard has also been made by the Tribunal to National Insurance Company Limited v. Pranay Sethi and others,

AIR 2017 SC 5157. In that view of matter, Appeal on hand is liable to be dismissed.

11. For the reasons discussed above, instant Appeal is dismissed. Interim direction, if any, shall stand vacated.

12. Record of the Tribunal, if summoned/received, be sent down along with copy of this judgement.