

(2020) 07 J&K CK 0081

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 432 Of 2014, IA No. 623 Of 2014

Union Of India And Others

APPELLANT

Vs

Lajia Rani And Others

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0081

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vishal Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. Union of India is in appeal against the award dated 29.03.2014 passed by the Motor Accident Claims Tribunal, Rajouri (hereinafter referred to as the 'Tribunal') in file No. 14/166 titled "Lajia Rani and others vs Union of India and others whereby the Tribunal has awarded a sum of Rs.25,45,000.00 along with interest at the rate of 7% per annum in favour of the respondents (hereinafter referred to as the 'claimants') on account of death of deceased Gulshan Kumar in the motor vehicular accident involving the vehicle owned by the Union of India.

2. Without going into the details and the manner in which the accident occurred, for the occurrence of accident is not disputed, I would straightway deal with the argument of Mr. Vishal Sharma, learned ASGI, appearing for the appellants that the amount awarded in favour of the claimants is exorbitant and without there being any supporting/corroborating evidence on record.

3. Having heard learned counsel for the appellants and perused the record, it would be appropriate to first notice the issues that were framed by the Tribunal on the basis of pleadings of the parties.

1. Whether Gulshan Kumar (deceased) son of Petitioner No. 1, husband of

petitioner No. 2 and father of petitioner No. 3 & 4 lost his life due to the critical injuries sustained by him in a road traffic accident which took place near Lamberi Ashram on 08-07-2011, due to rash and negligent driving of C.R.P.F. vehicle No. PB/08BF/6229 by Respondent No. 3 which was coming behind motorcycle of deceased and caused accident near Lamberi Ashram ? OPP.

2. If issue No. 1 is proved in affirmative, whether petitioner is entitled to any compensation in terms of M.V.Act and if so, to what amount & from whom. ? OPP.

3. Whether Respondent No. 3 Avdesh Kumar was driving the unit vehicle in normal speed and when reached near Lamberi Ashram deceased who was rashly driving the Bike without registration No. (Bajaj XCD 125, DTS-SI) tried to overtake the unit vehicle No. PB-08- BF-6229 and lost control over the Bike and hit the tree on left side of the road and unit vehicle did not hit/collide the vehicle of the deceased as is evident from the inspection report(exhibit-C). moreover deceased met with an accident with the tree on left side due to rash driving and overtaking of the unit vehicle which untimely led to his death and the offending vehicle has nothing to do with the said accident. ? OPR.

4. There is no serious dispute raised by the appellants with regard to the findings of fact recorded by the Tribunal on issue Nos. 1 and 3. However, issue No.2 has been seriously disputed by the learned counsel for the appellants.

5. Learned ASGI appearing for the appellants vehemently submits that given the nature of evidence on record, the Tribunal was not correct in accepting the income of the deceased as Rs. 28065/-. He also disputes the rate of interest awarded.

6. It may be noted that so far as issues 1 and 3 are concerned, there is ample evidence on record to prove that the deceased died in a road traffic accident which took place near Lamberi Ashram on 08.07.2011 involving a CRPF vehicle bearing registration No. PB-08BF-6229 driven by appellant No.3 (driver of the CRPF vehicle).

7. The statements of witnesses of the claimants, particularly the statement of PW Pawan Kumar and the supporting documents like Post mortem Report, certified copy of the passport and challan on record, clearly indicate that it was appellant No.3 on account of whose rash and negligent driving, the motor vehicular accident occurred in which the deceased was seriously injured and later succumbed to injuries. Even appellant No.3 (driver) in his statement before the Tribunal has admitted that he was charge sheeted by the police for the accident.

8. Although, there are statements of two witnesses of appellant No.3 i.e, RW Parvez Hussain Shah and RW Ishtiaq Ahmed, who, in their testimonies, have stated that the accident had not occurred due to the negligence of the driver of the offending vehicle, rather it occurred because of the deceased, who had tried to overtake the CRPF vehicle, however, the aforesaid statements, in the face of registration of FIR and filing of charge sheet against the accused-driver, do not

inspire much confidence. It is because of this reason, the Tribunal has not relied upon the statements of aforesaid witnesses of appellant No.3.

9. In view of the categorical statement of Pawan Kumar and the documentary evidence on record in the shape of FIR and challan presented against the driver Avdesh Kumar, the Tribunal has correctly held that the claimants have sufficiently proved that the deceased had died in the vehicular accident involving the offending vehicle which was being driven at the relevant point of time by the appellant No.3 (the driver).

10. Regarding the quantum of compensation, learned counsel for the appellants could not point out any infirmity in the manner the compensation has been computed by the Tribunal.

11. As a matter of fact, there is slight error in computing the compensation like slashing down of the multiplier applicable as also the payment of compensation under the conventional heads. However, having regard to the fact that the claimants have accepted the compensation and have not filed any appeal or cross objections and also keeping in view the totality of circumstances, this Court is of the view that the total compensation awarded by the Tribunal, in essence, represents just and fair compensation, I am not, thus, inclined to interfere.

12. For the foregoing reasons, I find no infirmity in the impugned award. The appeal is, accordingly, dismissed.