
(2008) 04 J&K CK 0039
In the Jammu And Kashmir High Court

Union of India (UOI) and Another	Vs	APPELLANT
Rasmuni Devi and Others		RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 2 JKJ 249

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Mr. K.S. Chib, Advocate for Respondents The appellants have challenged the judgment and award dated

31.8.2008 passed by the Motor Accidents Claims Tribunal, Jammu in Claim Petition No. 19/2003 (for short hereinafter impugned award),

whereby an amount Rs. 9,04,000/- with 6% interest came to be granted in favour of claimants-respondents.

2. In brief the facts are that on 27.11.2002 respondent No. 2, namely, Sukhvinder Singh dashed his 7 ton vehicle No. PB08S-9820 against a

standing Swara Majda of Frontier H.Q. BSF, Jammu and then against a Maruti Gypsy of S.H.Q BSF, Jammu. Thereafter, he could not control

the offending vehicle and drew the same out of the empty area and ran over a group of army personnel standing on the road near a wet canteen

and caused injuries to Constable K.S. Sundram Constable B. Bhuahan Sinha, Constable Babavali and Head Constable Jetinder Bahadur Singh.

Head Constable Jetinder Bahadur Singh was declared brought dead by the Doctors at Government Medical College, Jammu.

3. The claimants-respondents being the victims of the vehicular accident filed a

claim petition for grant of compensation on the ground that driver

Sukhvinder Singh drove the vehicle rashly and negligently and caused the accident and Head Constable Jetinder Bahadur Singh sustained injuries

and succumbed to the same. Virtually, appellant No. 1, Union of India through Director General, BSF, admitted in para-2 of the objections the

factum of accident and the cause of death of deceased. Thereafter, appellant No. 2 also admitted the cause of accident, but has pleaded that he

was suffering from mental/psychiatric disease.

4. Following four issues came to be framed by the learned Tribunal:

1. Whether the accident took place on 27.11.2002 at Paloura, Jammu due to rash and negligent driving of army offending vehicle No. PB-08-S-

9820 by its driver/respondent No. 1 in which deceased namely Jetinder Bahadur had died?

2. If issue No. 1 is proved in affirmative, whether petitioners are entitled to the compensation, if so to what amount and from whom? OPP

3. Whether the offending vehicle at the time of accident was on sovereign functions, if so what is its effect? OPR-1.

4. Relief ? O.P. Parties.

5. The respondents have examined two witnesses and also placed on record the certified copies of challan and salary certificate of the deceased.

The appellants have not examined any witness in rebuttal. Thus, the evidence of claimants-respondents has remained un-rebutted.

Issue No. 1.

6. The claimants-respondents were not supposed to discharge the onus for the simple reason that the appellant-Union of India and owner and

driver of the offending vehicle have admitted the cause of death of deceased, as discussed hereinabove. However, the claimants have led oral as

well as documentary evidence and I am of the considered view that they have discharged the onus. Therefore, the findings returned by the learned

Tribunal merits to be upheld.

7. Learned Counsel for appellants have not addressed the arguments viz-a-viz issues 3 and 4. However, I have gone through the record. The

appellants have not discharged the onus and, accordingly, the finding returned by the Tribunal on the said issues is perfectly right and needs no

interference.

Issue No. 2.

8. Learned Counsel for appellants argued that the Tribunal has fallen in error while taking into consideration the future prospects of the deceased

relating to promotion, change of grade and other service benefits and so it has wrongly assessed the loss of dependency to the tune of Rs. 7242/-.

The claimants have neither pleaded nor proved the future prospects of deceased.

9. I have gone through the claim petition and the evidence recorded. The claimants have not pleaded that what should have been the next rank of

deceased and what was the expected grade of promotion. The Apex Court in a case, entitled, *Bijoy Kumar Dugar v. Bidyadhar Dutta* 2006 (2)

SC 374 laid down the same principle. It is apt to reproduce the relevant portion of para-8 herein:

The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or

qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants

regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

Thus, in our view the MACT has awarded just and reasonable compensation to the claimants.

Applying the same test, the Tribunal has fallen in error.

Now the question is what is the just, reasonable and appropriate compensation, which could be granted/awarded in favour of claimants.

Admittedly, the deceased was a Head Constable and was drawing Rs. 7242/- as monthly salary on the relevant date of point, i.e., the date of

accident and was 36 years of age. It is also established that while applying the multiplier method for assessing the compensation, one third of the

amount is to be deducted out of the monthly salary of the deceased for his personal/pocket expenses. Thus the claimants have lost the source of

dependency to the tune of Rs. 4828/- per month.

10. Now what is the multiplier applicable?

Keeping in view the schedule appended with the Motor Vehicles Act, the age of deceased and the age of claimants; the multiplier of 16 was to be

applied. But, the amount of multiplicand is on the higher side. Therefore, the multiplier is to be used on lower side. The Apex Court in a case, entitled, United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., has held that when the amount of multiplicand is high, the multiplier be reduced and a lower/lesser multiplier may be applied. Applying the same test to the instant case, I am of the considered view that the multiplier of 14 is just and proper applicable to the instant case.

11. Thus, the claimants-respondents are entitled to Rs. 8,06,4000/- ($4828 \times 12 \times 14 = 8,06,400$). The claimants are also entitled to Rs. 2000/-,

Rs. 5000/-and Rs. 2500/- in equal share under the heads, funeral expenses, loss of consortium and loss of estate respectively. The claimants are

also entitled to 6% interest from the date of claim petition till its realization. Accordingly, the finding on Issue No. 1 is modified.

12. In view of the above, this appeal is allowed and the impugned award is modified to the extent, as indicated above.

13. Record of this case along with a copy of the judgment be sent back.