(1997) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : C. Appeal No. 249 of 1996

United India Insurance APPELLANT

Vs

Bashir Ahmad Bhat and Others RESPONDENT

Date of Decision : 19-05-1997

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (1998) KashLJ 73

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : N.H.Khuroo, N.A.Ronga, Advocates appearing for the Parties

Judgement

1. By way of this appeal, the judgment and award passed by Motor Accidents Claims Tribunal, Srinagar dated 1871996, has been put to

challenge. The said Tribunal has awarded an amount of Rs.1 70lacs as compensation with 10% interest from the date of application till the final

liquidation of the award.

2. The facts in brief which have given rise to the present appeal are that a vehicular accident has taken place way back on 961993 at Nowhatta,

Srinagar when the vehicle bearing registration No, 6315 JK01, driven rashly and negligently by the driver of the vehicle had run over a school

going boy who was minor son of the petitioner, of the age of 13 years and reading in Mother Land English Medium School. The petitioners have

claimed an amount of Rs.10.00lacs as compensation.

3. After the registration of the claim, respondents were put on notice. They had appeared and only respondenty insurance Company had filed their

objections. There after the parties were put to number of issues, numbering about six, wherein besides the fact of occurrence was put in dispute,

the amount of compensation to be paid and the negligence of the driver, with which the accident has taken place was also put to issues.

4. The tribunal recorded evidence of about six witnesses in support of the issues framed in the matter and lead by the petitioners. On the other

hand, respondent/Insurance Company did not lead any evidence, but only raised their legal objection in the matter. They have not, however,

discharged the onus of the issues which were case upon them. The Tribunal after appreciating the evidence and understanding the plight which was

caused to the bereaved family after their son was run over by the vehicle who survived only for a day in the hospital and then breathed his lost. The

loss was not tolerated by the parents of the deceased son and infect the father of the deceased, one of the petitioners had sustained such a shock

that he was as per averments to undergo mental treatment for more than nine months. The mother of the deceased son had also suffered a shock

due to loss of her son. The petitioners had infected suffered mentally and physically due to the shock they had received by the accident of their son.

Though the son was not an earning hand, but nevertheless was having bright future as per evidence on record and was a ray of hope to the parents

who would have been served by this boy in their old age.

5. The Tribunal after assessing all these aspects, no doubt on surmises and conjectures had come to a conclusion that the loss which has been

sustained by the petitioners due to death of their son has assessed it to the tune of Rs.1.20 in lump sum as compensation and then assessed an

amount of Rs.20, 0007 as compensation for the treatment expenditure undergone by the petitonerNo.1 and Rs.20.000/for agony of their mental

and physical shock. The Tribunal had also awarded an amount of Rs.10.000/ as burial charges to the petitioner.

6. An issue has been joined by learned counsel for the appellant that compensation awarded by the Tribunal is not only on higher side, but also is

excessive. He has supported his submission by number of judgments of different High Courts, wherein their lordships are of the opinion that the

minor son cannot be fastened with dependency doctrine for the parents, as because the minor is yet to come up of age and then after attaining his

majority, he has to get himself married and then his family is to be maintained by him. Certain personal expenses are to be incurred by him and all

these things are not to be considered for the minor. So the courts have not evolved a uniform policy, but in the circumstances of each case, the

courts have evolved such a policy as was warranted in such eventualities.

7. The loss which has been suffered by the petitioners is not conceivable in terms of money. The shock which has been suffered by the parents of

the minor is not too commensurate with the money. The agony which has been suffered by them and the mental agony suffered by them though

cured by undergoing medical treatment or otherwise cannot be measured by money. But the aftermath of this mental shock and mental equilibrium

is a loss which is a life long and the fits of such mental shock are to be experienced by the person who has suffered mental agony and shock is

recurring. Whenever parents see a boy of his age coming or going on the road or going to school, they are reminded of their kid. It is a human

factor. The shock and agony which the petitioners have suffered cannot be measured in terms of money.

8. No doubt the claim under Motor Accidents are not meant to compensate the bereaved family but exercise is being done to see that the loss

which has been suffered is to some extend mitigated by awarding some compensation so that they are in a position to recoupe by the passage of

time. Time is the only healer for such agonies and pains. The custom which are prevalent in the valley, of which court can take judicial notice, that

at the time of death of a person, whether major or minor, people irrespective of their creed, caste or color do flock to such places and the custom

of the family has made it a burden for the shocked family to serve them with all the eatables whatever comes their way. So the nominal expenses

awarded by the, Tribunal is in no way on the higher side or excessive as argued by Mr. Khuroo, learned counsel for the appellant.

9. Now as regards medical expenses incurred by the person of the petitioners for their treatment of loss of mental equilibrium, evidence has been

lead on this score and which has been admitted by the Tribunal and has awarded an amount of Rs. 20.0007. This award is also in no way

excessive.

10. The loss and shock which has been suffered by the person of the petitioner due to loss of their only son to the tune of Rs.20.0007 is also in no

way excessive. The money is lossing its value day by day. Today expenses are so costly that it is very difficult to maintain a person or just to

maintain his soul.

11. Now as regards the compensation of Rs.1.20lacs fixed by the tribunal for the loss of the lone child is being argued by Mr. Khuroo to be also

excessive. He has vehemently argued and submitted certain situations where award to the tune of Rs.50.000 has been awarded by certain Tribunal

and upholds by the High Courts and that too in early nineties. By now inflation has gone to such an extent that those thousands have assumed the

value of millions.

12. Be that as it may, but the fact remains that even ordinarily if a man is hit by a bullet or boy of any age whether major or minor gets hit by a

bullet and dies due to that, in case he is a Government employee, he gets compensation in lacs plus his next kin gets Government employment on

compassionate grounds and in case of a private person, his legal heirs also get exgratia to the tune of Rs.1lac plus Government employment to one

of his family members. In case the son of the petitioner would have died by a bullet shot and not to accident, the petitioners could have got more

compensation. Money has lost its value and although by doubling the compensation which is said to have been awarded, even then, we will not be

in a position to redress the grievances which the parents have suffered due to loss of their beloved child. However, I do not want to reduce the

amount of compensation by any amount, but would like to reduce the rate of interest from 12% to 10%. This appeal is disposed of accordingly.

Now as regards the interim award which has already been paid to the petitioners, that amount is to be deducted from the total compensation and

the rate of interest is to be charged only on the amount which is still unpaid with the appellant/Insurance Company. 13. The amount already

deposited with the Additional Registrar is directed to be released in favor of the claimants after taking necessary steps in this regard.