(2009) 07 J&K CK 0017

In the Jammu And Kashmir High Court

United India Insurance Co. Ltd. and Another APPELLANT

Vs

Om Prakash and Others RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2011) ACJ 316 : (2010) 1 JKJ 218 : (2011) 2 TAC 217

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Judgement

J.P. Singh, J.—Mohinder Paul alias Bintu, was travelling on November 27, 2005 with his brother Som Raj, on scooter No. PB35F-9718 as

pillion rider, when at 6 p.m., it was hit by a rash and negligently driven truck No. JK08-6764 near Barwal Morh, Kathua. He succumbed to the

injuries received in the accident on spot.

2. His 54 years old father, 46 years old mother and twin sisters aged 23 years, filed a Claim Petition with the Motor Accidents Claims Tribunal

Kathua, hereinafter to be referred as, 'the Tribunal', for short, seeking Rs. 23,30,000/- as compensation.

3. It is stated in the Claim Petition, that the monthly income of the deceased from a shop at village Sujanpur, Pathankot where he had installed a

grinder, for grinding spices, was Rs. 15,000/-. He is stated to have been contributing Rs. 12,000/- per month for the maintenance of the

petitioners.

4. The appellant-Insurance Company opposed their claim on the ground that it was not supported by any documentary evidence.

5. Parties to the Claim Petition were accordingly put to issues, by the Tribunal,

which, for facility of reference, are reproduced hereunder:

1. Whether the deceased Mohinder Paul alias Bintu died in the accident occurred on 27.11.05 when he was travelling as pillion rider on scooter

No. PB35F/9718 driven by his brother Som Raj from Lakhanpur to Hiranagar and when he reached at near Barwal Morh, the truck No.

JK08/6764, being driven by respondent No. 2 rashly, negligently and carelessly hit the scooter of the deceased from its back and caused the

accident? OPP.

2. In case issue No. I is proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom? OPP

3. Whether the owner, driver and insurer of the scooter No. PB35F/9718 has not been arrayed as respondent if so, what is its effect on the claim

petition? OPR-3.

4. Whether the driver of the offending truck No. JK08/6764 was not holding a valid/effective driving license at the time of accident, if so, what is

its effect on the claim petition? OPR-3.

5. Whether the offending truck was being plied in violation of terms and conditions of the Insurance Policy, if so, how and what is its effect on the

claim petition? OPR-3.

6. Relief.

6. The claimants-respondents examined the father and the brother of the deceased as their witnesses to support the claim, whereas the appellant-

Insurance Company opted not to lead any evidence.

7. The Tribunal, accordingly, decided issue Nos. 3 to 5 against the appellant and issue Nos. 1 and 2 in favour of the claimants.

8. Returning its finding on issue No. 2, it assessed the monthly income of the deceased at Rs. 9,000/- and deducting Rs. 5,000/, which the

deceased would have spent on himself and his family, when married, the claimants' dependency, on the income of the deceased, was worked out

at Rs. 4,000/- per month. Adopting 10 as the multiplier to assess the compensation, Rs. 5.00 lac along with interest @ 6% per annum, was

accordingly awarded, as compensation to the claimants.

9. Dissatisfied with the quantum of compensation, awarded by the Tribunal for the death of Mohinder Paul, the Insurer, as also the claimants, have

approached this Court by their respective Appeals, the Insurance Company seeking 'reduction, and the claimants, enhancement, of the amount of

compensation.

10. Referring to Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr 2009 (3) Supreme 487, U.P. State Road Transport

Corporation Vs. Shanti Devi and Others, , the learned Counsel for the appellant-Insurance Company submitted that the Tribunal had erred in

assessing the quantum of compensation, which according to him, was on the higher side. He submitted that in the absence of any documentary

evidence produced by the claimants to support their plea, that the deceased was a shopkeeper with monthly income of Rs. 15,000/- per month,

the Tribunal was not justified in taking the income of the deceased at Rs. 9,000/-, only on the basis of the statements of the interested witnesses.

According to him the evidence on the records may not suggest the income of the deceased beyond Rs. 5,000/- per month.

11. Seeking enhancement of the quantum of compensation awarded by the Tribunal, the claimants' learned Counsel submitted that the Tribunal has

not assigned any reason in adopting a, lower multiplier of 10 when the second Schedule issued u/s 163-A of the Motor Vehicles Act suggests the

multiplier of 13 for the age of the persons like the dependent mother of the deceased who was 46 years of age at the time of the death of his son.

Learned Counsel says that the Tribunal has erred in awarding interest @ 6% p.a. whereas in view of the inflation, interest was required to be

awarded at the rate of 7.5% p.a. Learned Counsel referred to the judgments where interest had been allowed by Hon'ble Supreme Court of India

on compensation amount at the rate of 7.5% p.a. to seek similar rate of interest on the amount of compensation awarded by the Tribunal.

12. I have considered the submissions of learned Counsel for the parties and gone through the judgments cited at the Bar.

13. Appellant's plea that in the absence of any documentary evidence on the records, the oral evidence led by the claimants that the deceased, was

a shopkeeper, cannot be believed, needs to be noticed only for its rejection, in view of the evasive response of the appellant to the claimants' plea

in this regard.

14. Perusal of various paragraphs of the Insurer's response to the Claim Petition

indicates that the specific plea set up by the claimants in their

Claim Petition that the deceased was a shopkeeper and had been running a grinder in his shop for grinding spices has not been controverted, and

all that may be inferred from its reply to the Claim Petition is that it had disputed only the income of the deceased as projected by the claimants,

saying that the monthly income of the deceased had been exaggerated. It would be profitable to refer to the reply of the appellant-Company in

response to paragraph No. 6 of the Claim Petition, which reads thus:

6. That para 6 of the Claim Petition is incorrect hence denied, the alleged monthly income (is not) shown in this para is not supported with any

documentary evidence/proof. The monthly income has been deliberately and intentionally (has been) raised without any documentary support with

a view to claim heavy compensation which has in fact no relevance, the monthly income is definitely appears to be exaggerated and excessive one.

However, the petitioner be put to strict documentary proof for the same. (Lifted from the Insurer's reply, as so exists, in the records.)

15. Perusal of the reply of the appellant, appearing in the above quoted paragraph, reveals that what had been specifically disputed by it was the

income of the deceased and not his status as a shopkeeper. Without specifically disputing that the deceased was not a shopkeeper, the claim had

been disputed only on the ground that it was not supported by any documentary evidence.

16. While cross-examining the two witnesses, which the claimants had produced to support their case, the Insurer has not disputed the statements

where the deceased is stated to be a shopkeeper, and all that appears from the trend of the cross-examination of the witnesses is that there was no

documentary evidence to support the claimants' version about the monthly income of the deceased.

17. Insurer's plea that absence of the documentary evidence in support of the claimants' plea about the income of the deceased amounts to

claimants failure to prove the income of the deceased, is found to be misconceived, in that, absence of documentary evidence in support of the

issue regarding income, may not, as a general rule, be taken as the party's failure to prove the issue of income, for oral evidence produced in a

case, if otherwise found acceptable, cogent and Certain may be taken into consideration in proof of the issue of income. Regardless of the absence

of any documentary proof in support thereof.

18. Perusal of the claimants' evidence, in the present case, however, indicates that the claimants' have not led any evidence, on the basis whereof, a

conclusive finding regarding the actual income of the deceased, at the time of his death, may be recorded.

19. In the circumstances, in view of the law laid down in U.P. State Road Transport Corporation v. Shanti Devi, some amount of guess work may

be employed to assess the income of the deceased. It should not, however, be totally detached from reality.

20. Assessment of Rs. 9,000/- as monthly income of the deceased by the Tribunal, in view of the evidence led in the case, appears to be on the

higher side.

21. I am, therefore, of the view that Rs. 7,000/- can be taken as the monthly income of the deceased at the time of his death, in view of the

unrebutted evidence of the claimants indicating the deceased to have installed a grinder at his shop for grinding spices wherefrom he was earning

his livelihood and supporting the petitioners.

22. The deceased was scheduled to marry after two months. Thus deducting 50% of his income which he would have spent on himself and his

family, in the event of his marriage, the monthly dependency of the claimants on the income of the deceased would come to Rs. 3,500/-.

23. The Tribunal has not assigned any reason in adopting 10 as the multiplier. Keeping in view the age of the dependent mother of the deceased,

his two unmarried sisters and the dependent father, the selection of the multiplier by the Tribunal cannot be justified.

24. In the circumstances, the multiplier of 11 needs to be adopted for assessing just compensation for the death of Mohinder Paul.

25. Accordingly multiplying the annual dependency of Rs. 42,000/-, taking the monthly dependency at Rs. 3,500/-, with 11 as the multiplier, the

total dependency of the petitioners on the income of the deceased would come to Rs. 4,62,000/-. Adding an amount of Rs. 30,000/-, for the loss

of love and affection, estate and for funeral expenses, the total compensation payable for the death of Mohinder Paul would come to Rs.

4,92,000/-.

26. This amount of compensation, if kept in a Fixed Deposit, would yield nearly the same amount, by way of interest, to the claimants, which the

deceased had been spending on them during his life time and would thus be just compensation for the death of Mohinder Paul.

27. Claimants' Counsel appears to be right in his submission that the Tribunal has erred in awarding lower rate of interest on the compensation

awarded by it for the death of Mohinder Paul. This is so because 6% interest on the compensation amount to which the claimants have been held

entitled to from the date of the Claim Petition, may not appropriately compensate the claimants for the delayed payment of compensation, in view

of the falling money value in the meanwhile. Keeping in view the trend noticed in various judgments of Hon'ble Supreme Court of India and other

courts of the Country, it would be just and proper to allow the petitioners' claim along with interest at the rate of 7.5% p.a.

28. These appeals are, accordingly, disposed of by modifying the Tribunal's finding on issue No. 2 and awarding Rs. 4,92,000/- as compensation

for the death of Mohinder Paul alias Bintu, to the claimants along with interest @ 7.5% p.a. from the date of filing of the Claim Petition till its

realization, in the ratio as indicated in the Tribunal's award.

29. Registrar Judicial to release the amount deposited in the Insurance Company's Appeal, in favour of the claimants in terms of the modified

Award along with proportional interest accrued thereon during the pendency of the Appeal. The excess amount, if any, shall be released in favour

of the Insurance Company.