
(2008) 04 J&K CK 0012
In the Jammu And Kashmir High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Jala Banoo and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2010) ACJ 97

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—This appeal is directed against the judgment and award dated 14.11.2006 passed by Motor Accidents Claims

Tribunal, Srinagar in a claim petition titled Abdul Majid Bhat v. Mohd. Yousuf Khan file No. 17 of 2004, date of institution 16.2.2004; decided on

14.11.2006 (for short 'the impugned award').

Brief facts:

2. Claimants-respondent Nos. 1 to 8 filed a claim petition before the learned Motor Accidents Claims Tribunal, Srinagar for grant of compensation

on the ground that they are the heirs/legal representatives of Mohammad Yaqoob Bhat, who lost his life in a road accident, which was caused by

driver, namely, Mohammad Yousuf Khan, respondent No. 9 while driving the offending vehicle Matador Tata 407 bearing registration No. JK 01-

F 9547 rashly and negligently at Nowgam Chowk. The deceased was 30 years of age and was earning Rs. 15,000 per month. Further, it is

averred in the claim petition that he was sole source of income to the claimants-respondent Nos. 1 to 8 and they have been deprived of the said

income and have not only lost source of dependency but also hope and help in

the old age.

3. The respondents have filed written statement and resisted the claim petition. Following issues came to be framed on 22.12.2004:

(1) Whether on 6.1.2004 the deceased Mohd. Yaqoob Bhat was coming on the scooter from Natipora and on reaching near Nowgam Chowk, a

Matador Tata 407 bearing registration No. JK 01-F 9547 which was being driven rashly and negligently by the respondent No. 1, hit the scooter,

as a result of which the deceased on scooter received fatal injuries and succumbed to the same? OPP

(2) Whether the petitioners have no cause of action to file the instant claim against the respondents, as such, the same merits dismissal? OPRs

(3) Whether the driver of the offending vehicle was not holding valid driving licence at the time of the accident, as such the respondent insurance

company is not liable for any compensation? OPR3

(4) In case the issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what

proportion? OPP

(5) Relief.

4. The claimants-respondent Nos. 1 to 8 examined Ghulam Mohammad Ganai, Suhail Ahmad Lala, Shabir Ahmad Bhat as their witnesses and

statement of Dilshada, widow of the deceased also came to be recorded. Evidence of the petitioner came to be closed on 19.9.2005.

5. Respondent Nos. 9 and 10 have remained absent after framing of issues and ex parte proceedings were drawn against them.

6. It is profitable to give a brief resume of the evidence of claimants-respondent Nos. 1 to 8 herein.

7. All the witnesses examined by the claimants have deposed that Tata Matador bearing registration No. JK 01-F 9547 which was being driven

by its driver rashly and negligently overtook another vehicle near Nowgam Chowk and hit a scooter which was being driven by the scooterist-

deceased who sustained injuries and succumbed to the injuries on the spot. One of the witness, namely, Ghulam Mohammad Ganai, clearly

deposed that Mohammad Yousuf Khan, respondent No. 9 was driving the vehicle.

8. There is ample evidence on the file that deceased was running a printing press under the name and style Chinar Printing Press and was earning

Rs. 15,000 per month.

9. The non-applicants, driver, owner and insurer have not led any evidence in rebuttal, thus evidence of the claimants-respondent Nos. 1 to 8 remain un rebutted.

10. It is worthwhile to mention herein that appellant insurer moved an application in terms of Section 170 of the Motor Vehicles Act for permission to contest the claim petition on all those grounds which are available to driver and owner-came to be granted but despite of that it has failed to lead any evidence.

11. The factum of insurance is admitted.

ISSUEWISE FINDING:

Issue No. 1:

12. The claimants have proved by leading evidence that on 6.1.2004, Mohammad Yousuf Khan, driver, respondent No. 9 has driven Matador

Tata 407 bearing registration No. JK 01 -F 9547 rashly and negligently at Nowgam Chowk while taking over another vehicle and in the process

hit a scooter which was being driven by one Mohammad Yaqoob Bhat, deceased who sustained injuries and succumbed to the injuries on spot.

The finding recorded by the Tribunal is perfectly legal and correct, needs no interference.

Issue No. 2:

13. The respondents have failed to discharge onus. Even otherwise the claimants-respondent Nos. 1 to 8 have every right and cause of action to

file the claim petition for seeking compensation. In the given circumstances of the case, this issue also came to be rightly decided in favour of the

claimants against the appellant insurer.

Issue No. 3:

14. The appellant insurer has failed to discharge onus. There is nothing on the file in order to hold that driver was not having valid driving licence.

Finding returned is maintained.

Issue No. 4:

15. The witnesses of the claimants and Dilshada, one of the claimants in one voice deposed before the Tribunal that deceased was 33 years old

and was running a printing press under the name and style of Chinar Printing Press and was earning Rs. 15,000 to Rs. 16,000 per month at the

relevant point of time which he was spending for the claimants. The claimants were dependent on him and they have lost source of dependency.

The evidence has remained unrebutted. Claimants have given the age of the deceased as 38 years in the claim petition but post-mortem report

disclose age of the deceased as 42 years. There is nothing on the file in rebuttal that deceased was not earning Rs. 15,000 per month. In view of

the averments contained in the claim petition and evidence read with the fact that deceased was running a printing press, the Tribunal has rightly

come to the conclusion that the deceased would not have been earning less than Rs. 12,000.

16. By guesswork, it can be safely held that the deceased would have been at least spending one-third for his personal expenses meaning thereby

that claimant Nos. 1 to 8 have lost sources of dependency to the tune of Rs. 8,000 per month.

17. The moot question which needs determination is how compensation is to be assessed. Second Schedule appended to the Motor Vehicles Act,

prescribes the multiplier for assessing the compensation. Keeping in view the averments contained in the claim petition read with post-mortem

report, I am of the considered view that age of the deceased was 42 years at the relevant point of time. Thus multiplier 13 is applicable for

assessing the just compensation.

18. Claimant father has passed away during the pendency of the appeal and stands deleted from the array of respondents.

19. The question is who is to be saddled with the liability? Admittedly, the factum of insurance is admitted and the offending vehicle was insured at

the relevant point of time. Thus, insured is to be saddled with the liability.

20. I am of the considered view that finding returned by the Tribunal while applying different multipliers is unknown to law. The finding returned on

issue No. 4 is accordingly modified as indicated above.

Relief:

21. An award of Rs. 12,84,000 minus the interim award, if paid with 6 per cent interest from the date of claim petition till final realization is passed

in favour of the claimant-respondent Nos. 2 to 8. The share of the minors shall

remain in fixed deposit till they attain the age of majority, in Jammu

& Kashmir Bank, Branch High Court. However, the guardian, mother of the minors is at liberty to apply for release of any amount of genuine need

basis before the Tribunal and the Tribunal is at liberty to pass appropriate order(s) keeping in view the interests of the minors.

22. The impugned award is accordingly modified and appeal disposed of. Send down the record along with a copy of this judgment.