

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA no. 47/2008

Date of order: 09.12.2009

Union of India & ors.

v.

Zareena Begum and ors.

Coram:

Hon'ble Mr. Justice Barin Ghosh, Chief Justice

Appearing counsel:

For appellant(s) : Mr. K. K. Pangotra, ASGI.

For respondent(s) : Mr. R. P. Sapolia, Advocate.

i) Whether approved for reporting in
Law journals etc.:

Yes.

ii) Whether approved for publication
in press:

Optional

This appeal is against an award made and published by Motor Accident Claims Tribunal, Ramban, whereby and under the liability for payment of compensation was assessed at Rs. 18, 07,000.

Before the Tribunal, it was contended by the appellants that in respect of the accident, which resulted in the claim being lodged, vehicle no. 95-D/103987K had no connection. In order to support the

said defence, the driver of the said vehicle deposed on behalf of the appellants. He stated that he had taken the said vehicle from Udhampur to Srinagar on March 29, 2001 and while doing so, reached Banihal at 1 p.m. He stated that the vehicle was not involved in any accident. This evidence has not been accepted by the Tribunal, in view of the fact that in the First Information Report lodged at 4 p.m. on March 31, 2001, it was reported that the said vehicle was involved in the accident and the said accident took place at Banihal at 1 p.m. on March 29, 2001 and that witnesses appearing in support of the claimants orally deposed that the said vehicle was involved in the accident. The state of evidence suggests, while cross examining the claimants' witnesses, it was not suggested that the number of said vehicle was deliberately inserted in the First Information Report. On the other hand, the witnesses for the claimant gave evidence that the driver of the vehicle fled away from the spot of accident with the vehicle.

In such circumstances, it would not be appropriate on the part of this Court to interfere with

the finding of the Tribunal that the said vehicle was involved with the accident.

The next point urged in the present appeal is that income of the deceased has not been properly ascertained. Income of the deceased was sought to be established on oral evidence. The witnesses for the claimants deposed that income of the deceased ranged between Rs.20,000 to Rs.30,000 per month. The Tribunal took income of the deceased at Rs.15,000 per month. It was contended that if the deceased was having such income, he would have filed income tax returns, but income tax returns of deceased were not placed on the records of the Tribunal. While the witnesses of the claimants were cross-examined, they were not put to notice that income of the deceased, as deposed by them, would make the income taxable and for that the deceased was required to file income tax returns.

In the circumstances, the witnesses of the claimants, having not been put to such notice, and, thereby, they having been prevented from bringing on record the income tax returns, it is now not permissible

on the part of appellants to contend that, since income tax returns were not on the records of the Tribunal, the Tribunal ought not to have had accepted depositions of the witnesses of the claimants pertaining to income of the deceased.

There being no other ground in the appeal, the same fails and stands dismissed.

(Barin Ghosh)
Chief Justice

Jammu,
09.12.2009
Tilak, Secy.