

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

CIMA No. 180/2005

CMP No. :251/2005

&

CIMA No. :153/2005

CMP No. : 381/2006

Date of Decision: 30-06-2009

National Insurance Co. Vs Paras Ram and ors.

National Insurance Co. Vs Inderjit & ors.

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For Appellant(s) : Mr. C. S. Gupta, Advocate.

For Respondent(s) : Mr. A. S. Azad, Advocate.

i) Whether to be reported
in Press/Journal/Media : **Yes/No**

ii) Whether to be reported
in Digest/Journal : **Yes/No**

These two appeals, under Section 173 of the Motor Vehicles Act, 1988, of the National Insurance Company Ltd., are directed against the awards of June 2, 2005 of the Motor Accidents Claims Tribunal Rajouri, whereby, allowing Claim Petition nos. 110(c) and 113 (c), the Tribunal has awarded Rs.4,42,000/- and Rs.2,44,548/-, along with interest @ 6% per annum, as compensation for the death of Kamelsh Kumari and Simmy Sharma respectively, who had succumbed to the injuries received while travelling in Maruti Van

bearing registration no. JK02K/6230 which when driven rashly and negligently by Vinod Kumar, its driver, had rolled down into a stream at *Khatanu Morh* near Thanda Pani Bridge on May 11, 2003.

Appellant-Insurance Company had contested its liability to indemnify the owner of the Maruti Van of the compensation which it was adjudged liable, to pay to the dependents and legal heirs of Kamlesh Kumari and Simmy Sharma, deceased, by the Motor Accidents Claims Tribunal, Rajouri, on the ground that the driver of the Maruti Van was not holding valid driving license at the time of the accident and the Vehicle had been driven loaded with passengers beyond its seating capacity of 4 plus 1 at the time of the accident, and in this view of the matter, the appellant was not liable to satisfy the claim in terms of the Insurance policy. The quantum of compensation, too, had been objected to by the appellant-Insurance Company.

The Motor Accidents Claims Tribunal, after examining and appreciating the evidence which the claimants had produced to support their claims, allowed the Claim Petitions, as mentioned, at the threshold, rejecting appellant-Company's defence to indemnification, holding that it had failed to prove that

the driver of Maruti Van was not holding valid driving license and the vehicle was overloaded at the time of the accident.

Appellant's learned counsel, while making a feeble attempt to question the awards of the Tribunal on the ground that the appellant-Insurance Company was not liable to indemnify the owner who had allowed the vehicle in question to be driven against the terms and conditions of Insurance policy, strenuously urged that the quantum of compensation awarded by Tribunal to the claimants was excessive and against the law laid down by the Hon'ble Supreme Court of India in this behalf. Reliance is placed by the learned counsel on *Uttranchal Transport Corporation Ltd. Vs Vimla Devi and ors*, reported as (2009) 4 SCC 377.

Supporting the awards, the claimant's learned counsel submitted that the findings of the Tribunal on Issue no. 3 framed in this respect on appellant-Insurance Company's plea of avoiding indemnification, does not suffer from any error of law, because, in view of the failure of the Insurance Company to produce any evidence to support its plea that the owner of the vehicle had violated the terms and conditions of the Insurance Policy, there was no other course open for

the Tribunal but to decide the Issue against the appellant-Company for lack of evidence in support of the issue onus of proof whereof lay on it.

Learned counsel justifies the quantum of compensation awarded by Tribunal to the claimants urging that the award is in terms of the provisions of Section 178 of the Motor Vehicles Act and in the absence of any evidence produced by the Insurance Company to rebut the evidence produced by the claimants, the quantum of compensation awarded by the Tribunal cannot be faulted, because it has been so assessed on the basis of the law settled by the Hon'ble Supreme Court of India in this respect.

I have considered the submissions of learned counsel for the parties.

Appellant's first plea against the findings of the Tribunal on Issue no. 3 needs to be noticed only for its rejection, in that, in the absence of any evidence by the appellant- Insurance-Company to prove that the driver of the vehicle in question did not have valid driving license at the time of the accident and that the vehicle

had been driven with passengers beyond its sanctioned seating capacity, no other view could possibly be taken by the Tribunal than the one which it has taken in the case. Appellant- Company having failed to discharge the onus of proof of Issue no. 3, cannot, thus legitimately question the findings of the Tribunal on the issue.

First plea raised by the appellant's learned counsel, therefore, fails and is, accordingly, rejected.

While assessing compensation in Claim Petition no. 110/C, the Tribunal, relying on the evidence produced by the claimants, which had remained unrebutted, came to the conclusion, that the monthly income of the deceased needed to be assessed at Rs. 3000/-.

In assessing the income of the deceased, the Tribunal has relied upon a judgment of this Court as also the view which Hon'ble Supreme court of India has expressed in assessing the income of a house wife, in view of her contribution, as house wife, to the family.

Although, the claimants-respondents had produced evidence in the case to the effect that besides contributing to the household, Kamlesh Kumari had been working as a tailor and looking after poultry as well, earning an amount of Rs. 8000/- per month, yet

the Tribunal has assessed the monthly income of the deceased to Rs. 3000/- per month on the ground that the figure of income of the deceased projected in the evidence of the claimants was exaggerated. It, accordingly, assessed compensation of Rs. 4,42,500/- to the husband and four children of the deceased house-wife.

In assessing the compensation, the Tribunal has adopted 12 as the multiplier, as against the prescribed multiplier of 11 for the age group of persons above 50 years but not exceeding 55 years, and 16/17 for the age group of persons between 15 years and 25 years. This appears to have been done by the Tribunal taking into the consideration the age of the deceased house-wife's sons and daughters, when one of the sons and daughters were minors at the time of her death.

Looking to the loss of wife to the husband, and mother, to the children, besides the contribution of an earning house wife to the family, I do not find the compensation awarded to the husband and four children of the deceased house-wife, in any way excessive, as the Tribunal has adopted the appropriate multiplier in assessing compensation in terms of Section 178 of Motor Vehicles Act on the income of the

deceased which it had assessed on the basis of the law laid down by the Hon'ble Supreme Court of India in this behalf.

The compensation awarded to the claimants by the Tribunal, therefore, does not need interference in Appeal. Finding of the Tribunal on Issue no. 2 in Claim Petition no. 110/C is, accordingly, affirmed.

While assessing compensation to the parents of Simmy Sharma deceased, who had died in the Motor vehicular accident, at the age of 26 years, the Tribunal has taken her monthly income as Rs. 2500/- on the strength of the evidence that, though studying in BA Part-II, she had been working as a tutor, too, making a monthly income of about 3/4 thousand. Deducting 1/3rd which she would have spent on herself, had she remained alive, the monthly income of deceased, at the time of her death has been assessed at Rs. 1667/-. Adopting 12 as the appropriate multiplier and taking into consideration the age of the parents of the deceased, the Tribunal has assessed claimants' compensation at Rs. 2,44,548/-.

I have gone through the evidence led by the claimants in support of their case regarding the income of the deceased at the time of her death.

Even if one were not to agree with the claim of the parents, that the deceased was a private tutor too, the parents of the unmarried daughter studying in BA Part-II would still be entitled to near about the same amount which has been awarded by the Tribunal to them in view of the formula suggested in the Second Schedule of the Motor Vehicles Act for assessing compensation for the death of Non-earning persons, in terms of the provisions of the Section 163 -A of the Motor Vehicles Act, which mandates grant of compensation to the victims of the Motor vehicular accidents, on structured formula, without requiring pleading or proof that the accident had been caused due to any wrongful act or neglect or fault of the owner of the vehicle.

The Second Schedule aforementioned prescribes multiplier of 18 for the persons in the age group of 25 years but not exceeding 30 years.

Taking the prescribed income of Non-earning persons at Rs. 15,000/- per annum, in terms of the Schedule aforementioned, and multiplying it with 18, the multiplier prescribed as such for the age group of the persons like the deceased-victim, the compensation awardable under Section 163-A would come to Rs. 2,70,000/-.

The entitlement of the claimants-parents, to compensation, for the death of their unmarried educated girl child, based on the liability of the owner of the vehicle and the Insurance Company, because of the rash and negligent driving of the vehicle by its driver resulting in the death of Simmy Sharma, cannot, looked from any angle, be thus contemplated to be lesser than the one to which the parents would have been entitled to had they lodged claim under Section 163-A of the Motor Vehicles Act, 1988.

I, therefore, do not find the quantum of compensation awarded by the Tribunal to the parents of deceased Simmy Sharma, in any way excessive, on the basis of the Fault liability of the owner of the vehicle in allowing the vehicle to be driven rashly and negligently.

The Tribunal has assessed compensation for the death of Simmy Sharma on the lines indicated by Hon'ble Supreme Court of India for assessing compensation for the death of Non-earning persons.

For all what had been said above, I do not find the Tribunal to have erred in assessing compensation in Claim Petition Nos. 110/C and 113/C, for the death of Kamlesh Kumari and Simmy Sharma.

There is thus no merit in these appeals, which are, accordingly, dismissed.

The amount deposited by the appellants in the appeals shall be released in favour of the claimants in terms of the awards of the Tribunal.

Jammu:
30-06-2009
Sunita

(J. P. SINGH)
Judge