

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPAC No. 16/2009
CMP No. : 17/2009

Date of Decision: 06.10-2009

National Insurance Co. Vs Jawahar Lal and ors.

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.
Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge.

Appearing counsel:

For Appellant(s) : Mr. Suneel Malhotra, Advocate.

For Respondent(s) : Mr. K. L. Bhat, Advocate.

i) Whether to be reported
in Press/Journal/Media : **Yes**

ii) Whether to be reported
in Digest/Journal : **Yes**

Rohit Bhat, a student of 3rd year MBBS, died in vehicular accident because of negligent driving of matador no.JK02J-4943 on 05.10.1998. A claim petition was filed by the parents of the deceased before the Motor Accidents Claims Tribunal Jammu, claiming an amount of Rs. 14,94,180.00 as also an amount of Rs. 50,000/- under No Fault Liability, with 24% interest from the date of death till payment. The learned Tribunal, after conducting an inquiry into the matter, vide its award dated 12.01.2002, held the claimants entitled to receive an amount of Rs. 2,72,000/- as compensation. National Insurance Company, the

appellant herein, was directed to satisfy the award. Interest at the rate of 9% was also awarded in favour of the claimants. It was further directed that out of total award amount, a sum of Rs. 1.25 lacs shall be kept in a fixed deposit in the name of the claimants in their joint account for a period of five years and the rest of the award amount was ordered to be paid to them through crossed cheque.

Claimants, being not satisfied with the award amount, filed Civil First Miscellaneous Appeal before this Court which was registered as CIMA no. 117/2002. The learned Single Judge vide judgment dated February 2, 2009 directed that notional income of the deceased would be deemed to be Rs. 4000/- per month. The learned Single Judge, however, reduced the multiplier from 17 to 13. The learned Single Judge, accordingly, ordered for payment of Rs. 4,70,000/- as compensation instead of Rs. 2,72,000/-, as awarded by the Tribunal. Learned Single Judge also awarded damages on account of pain and sufferings to the tune of Rs. 50,000/-.

Being aggrieved of the judgment of learned Single Judge, this letters patent appeal has been filed by the National Insurance Company.

We have heard learned counsel for the parties and considered the matter.

Learned counsel for the appellant has, in fairness, stated that enhancement of notional income of the deceased to Rs. 4000/- per month is just and proper and, accordingly, he submitted that he does not challenge this part of the impugned judgment. Learned counsel, however, submitted that the direction of the learned Single Judge for payment of an amount of Rs. 50,000/- on account of pain and sufferings, is illegal, as because, neither any claim has been made by the claimants on account of pain and sufferings in their claim petition nor had the Tribunal passed any award on this count. Learned counsel further submitted that in a death case, in terms of second schedule appended to the Motor Vehicles Act, 1988, the general damages in case of death allowed in favour of the claimants is restricted to funeral expenses, loss of consortium, if beneficiary is the spouse, loss of estate and medical expenses. Learned counsel thus submitted that amount of Rs. 50,000/- awarded on account of pain and sufferings, could not be awarded to the claimants.

Mr. Bhat, learned counsel appearing for respondent nos. 1 and 2 (Claimants) raised a

preliminary objection about the maintainability of the letters patent appeal. Learned counsel submitted that the rights of the Insurance Company to file an appeal are circumscribed and inhibited by the conditions contained in Section 149 (2) of the Motor Vehicles Act, 1988. Learned counsel would thus submit that appeal is being filed to challenge the quantum, which right, because of the statutory provisions, is not available to the Insurance Company. Learned counsel further submitted that the learned Single Judge has not committed any illegality in awarding Rs. 50,000/- on account of pain and sufferings.

It is true that right to file an appeal is a statutory right and appeal can be filed only when statute permits filing of same, that too strictly in accordance with the terms and conditions contained in the statute. Undoubtedly the Insurance Company, unless permission is given under Section 170 of the Motor Vehicles Act, 1988 by the Tribunal, cannot file an appeal to challenge the award on the ground of quantum. The objection raised by Mr. Bhat, in this case, however, pails into insignificance for twin reasons; viz. the claimants had not made any claim for award of damages on account of pain and sufferings in

their claim petition; and secondly the damages awarded on account of pain and sufferings do not form part of the compensation. Even otherwise, statutory appeal was filed by the claimants in which the learned Single Judge has ordered payment of damages on account of pain and sufferings. Therefore, non-filing of an application under Section 170 of the Motor Vehicles Act, 1988 by the appellant-Insurance Company before the Tribunal would not stand in its way. The letters patent appeal is thus competent and is held to be maintainable.

Admittedly the claimants had not made any claim for awarding the damages on account of pain and sufferings in their claim petition. There was no pleading, so no evidence has been lead by the claimants on this count. The tribunal has rightly not ordered for payment of damages on account of pain and sufferings. In the appeal filed by the claimants, no claim was made for awarding damages on account of pain and sufferings, therefore, without making such claim, damages thereof could not be awarded to the claimants.

The judgment impugned to the extent it directs for payment of Rs. 50,000/- as damages on account of

pain and sufferings, is held to be illegal and, accordingly, this part of the impugned judgment is set aside. The other part of the judgment is held to be legal and is maintained.

The appellant is directed to satisfy the award within a period of one month from today.

The impugned judgment is, accordingly, modified in terms of this judgment.

(Muzaffar Hussain Attar)	(Virender Singh)
Judge	Judge

JAMMU:
06.10.2009
Anil Raina, Secy