

**HIGH COURT OF JAMMU & KASHMIR, JAMMU**

Dated:17.3.2010

CIMA No.87/2005 (c/w CIMA No.228/2005)

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Romesh Kumar	vs	Shamim Akhter & ors.
Shamim Akhter & ors.	vs	Oriental Insurance Co. & ors.

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**Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge.**

**Whether approved for reporting? Yes**

<b>For appellant</b>	:	Mr. R. P. Sharma, Advocate.
<b>For respondents</b>	:	Ms. Shivani Jalali, Advocate, for claimants/respondents 1 to 5. Mr. D. S. Chouhan, Advocate, for respondent No.6. Respondent No.7 set exparte.

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Civil Ist Miscellaneous Appeal No.87/2005 is directed against the judgment and award dated 30.3.2005 passed by the Motor Accidents Claims Tribunal, Jammu in a claim petition titled as Shamim Akhter and others vs Romesh Kumar & others, whereby and whereunder compensation to the tune of Rs.5,50,000/- with 6% interest from the date of presentation of claim petition till its realization came to be passed in favour of claimants-respondents 1 to 5 and against the appellant/owner/insured. The insurer-respondent No.6 came to be exonerated and appellant/owner/insured came to be directed to satisfy the award (for short hereinafter, the impugned award). Feeling aggrieved the

appellant-insured has questioned the impugned award on the grounds taken in the memo of appeal.

**CIMA No.228/2005**

Claimants have challenged the impugned award to the extent of adequacy of compensation. The main ground projected in the memo of appeal is that the compensation granted is on lower side and have prayed that the same be enhanced.

Respondents 1 to 6 have appeared and virtually respondent No.6 has contested the appeal, whereas respondents 1 to 5 have not and respondent No.7 has chosen not to appear.

The short question involved in CIMA No.87/2005 is whether the Tribunal has rightly exonerated insurer-respondent No.6 from its liability or otherwise.

A claim petition came to be filed before the Motor Accidents Claims Tribunal, Jammu on the ground that on 23.8.1999 offending Bus No.JKQ-3223 was being driven by one Sh. Harbhazan Singh rashly and negligently came in touch with live hanging electric wire at Village Harmota Gursai and the deceased Mohd. Arshad, traveling in the said bus, sustained injuries due to the electric shock and succumbed to the said injuries. Respondents 1 to 5 being the victims of vehicular accident filed the claim petition and claimed compensation to the tune of Rs.41,50,000/- on the grounds taken in

the claim petition. Precisely the case of claimants-respondents 1 to 5 is that the driver of the offending bus was driving the vehicle rashly and negligently and when it reached Village Harmota Gursai it came in touch with the live hanging electric wire and due to the electric shock the deceased-Mohd. Arshad sustained injuries and succumbed to the same.

Insured-appellant and driver-respondent No.7 have filed reply to the claim petition. Insured-respondent No.6 has also filed reply and contested the claim petition. Following issues came to be framed :

- “1. Whether deceased Mohd. Arshad Khan died in an accident on 23.08.1999 and that the accident occurred due to negligence of the driver of the vehicle bearing registration No.JKQ/3223? OPP
2. If issue No.1 is proved affirmative, what compensation petitioners are entitled to? OPP
3. Whether this petition is not maintainable in this Tribunal? OPR-3
4. Whether terms and conditions of the policy of insurance have been violated and, therefore, insurer is not liable to indemnify the owner? OPR-3
4. Relief? OP Parties”

Claimants-respondents 1 to 5 have examined Munshi Khan, Tariq Mehmood and Raj Kumar, Head Constable in BSC as witnesses. One of the claimants, namely, Shamim Akhtar also

appeared in the witness box and her statement came to be recorded. They have also filed certified copies of Challan/charge sheet in terms of Section 173 Cr.P.C, postmortem report and the certificate indicating the last pay drawn by the deceased. Insured-owner, driver and insurer-respondent No.6 were directed to lead evidence. They have not examined any witness in their defence. Thus, the evidence led by claimants-respondents 1 to 5 has remained un rebutted. It is profitable to give brief resume of evidence of respondents 1 to 5 herein.

PW Munshi Khan has deposed that deceased Mohd. Arshad died in a road accident on 23.8.1999. The deceased was traveling in the bus, the moment the offending vehicle reached at Village Harmota Gursai, Tehsil Mendhar, District Poonch, the luggage on the roof of the bus touched the live hanging electric wire and due to electric current/shock the passengers traveling in the bus sustained injuries, two of them died on spot, among them one was deceased-Mohd. Arshad. Thereafter both the dead bodies were taken away from the bus. The said accident was the outcome of rash and negligent driving of the driver.

PW Tariq Mehmood also deposed on the same lines. However, he has added that the deceased was a Government

employee and after his death the claimants are receiving the family pension.

PW Raj Kumar has proved that what was the salary of deceased at the time of death.

Claimant-Shamim Akhter has deposed that her husband Mohd. Arshad was serving as a Head Constable in the BSF. He died on 23.8.1999 leaving her and minor children, i.e., respondents 2 to 5, who were students at that particular point of time. The deceased was receiving Rs.7213/- per month as salary and was also performing agriculture vocation. She has further deposed that due to the electric shock the deceased received injuries and succumbed to the same on-spot. His untimely death has taken away everything from them, are virtually on the road side now and affected the education and future of claimants-respondents 2 to 5. She has further deposed that deceased was also entitled to promotion and there would have been increase in his pay.

### **Issue-wise Findings**

#### **Issue No.1.**

Claimants-respondents 1 to 5 have led oral evidence, as discussed hereinabove, and have proved that on 23.8.1999 the offending bus was being driven by its driver rashly and negligently

and due to his negligence the vehicle came in touch with the live hanging electric wire at Village Harmota Gursai, the passengers traveling in the bus sustained injuries and deceased succumbed to the injuries. The documents on the file also prima facie establish that driver-respondent No.7 was charge sheeted for driving the vehicle rashly and negligently and the cause of death of deceased was the electric shock occurred due to live hanging wire which came in touch with the luggage on the roof of the bus. Thus issue no.1 is, accordingly, decided in favour of claimants-respondents 1 to 5 and against the insurer, owner-appellant and driver-respondent No.7.

### **Issue No.2.**

I deem it proper to decide this issue after deciding issues 3 & 4.

### **Issue No.3.**

Insurer-respondent No.6 had to prove this issue. It has not led any evidence, thereby has failed to discharge the onus. Even otherwise Mr. Chouhan has failed to indicate that the claim petition was not maintainable. However, keeping in view the finding returned on issue No.1 it can be safely said and held that the claim petition is maintainable.

#### **Issue No.4.**

Insurer-respondent No.6 had to prove this issue, but it failed to lead evidence and discharge the onus. On this score alone this issue is to be decided against the insurer-respondent No.6 and in favour of claimants and insured-appellant. Even otherwise there is no proof on the file that the insured-appellant or driver-respondent No.7 has violated any terms and conditions of the policy. While going through the record of Tribunal one comes to an inescapable conclusion that the offending vehicle came in touch with the live hanging electric wire when it reached Village Harmota Gursai and due to the electric shock six passengers sustained injuries, two of them succumbed to the same on spot. There is clinching proof on the file that deceased was traveling inside the offending vehicle and his dead body was taken away from the said bus. There is evidence on the file that the luggage, which was on the roof of the bus, came in touch with the live hanging wire and due to the electric shock the accident occurred. It is also not proved that the load/weight of the luggage was more than the permissible by the insurance policy. There is nothing on the file to hold that the owner-insured had committed any fundamental breach which may be a ground for exonerating the insurer-respondent No.6. Thus this issue is, accordingly, decided.

**Now coming to Issue No.2.**

Raj Kumar, an employee of BSF, has deposed that gross pay of the deceased was Rs.5500/- at the time of his death, whereas the salary certificate discloses that his salary at the time of death was Rs.7213/-. Claimants-respondents 1 to 5 have proved by leading evidence that the salary of deceased was Rs.7213/- per month. The Tribunal has held that claimants-respondents 1 to 5 have lost the source of dependency to the tune of Rs.4000/- per month. It has taken the age of deceased at the time of his death between 45-50 years and applied the multiplier of 10. Claimants-respondents 1 to 5 have pleaded that the age of deceased was 39/40 years at the time of accident and have also proved the same. The postmortem report also recorded the age of deceased as 40 years. Thus, the multiplier of 10 applied by the Tribunal is on lower side, whereas the applicable multiplier is 15.

Keeping in view the amount of multiplicand, I deem it proper to apply the multiplier of 13 instead of 15. Thus the claimants-respondents 1 to 5 are entitled to compensation to the tune of Rs. 6,24,000/- ( $4000 \times 12 \times 13$ ). The Tribunal has wrongly awarded Rs.25,000/-, Rs.25,000/-, Rs.15,000/- and Rs.5000/- under the heads shock and agony, loss of love and affection, loss of consortium and funeral expenses respectively. After applying the



multiplier method for assessing the compensation, only Rs.2000/-, Rs.5000/- and Rs.2500/- can be awarded under the heads funeral expenses, loss of consortium and loss of estate respectively. Thus in total the claimants are entitled to Rs.6,33,500/- (Rs.6,24,000/- + Rs. 9500/-). They are also entitled to interest at the rate of 6% from the date of filing of the claim petition, i.e., 03.06.2000 till its final realization.

Now the question is who has to satisfy the award?

As discussed hereinabove, issue no.4 came to be decided against the insurer-respondent No.6. Even otherwise the claimants are third party. Thus, it is the insurer-respondent No.6 who is to be saddled with the liability and has to satisfy the award. Accordingly, insurer-respondent No.6 is saddled with the liability. Thus, the impugned award is, accordingly, modified.

Having glance of the above discussion, it is hereby held that the Tribunal has fallen in error while exonerating insurer-respondent No.6 and saddling the insured-owner with the liability. Accordingly, both the appeals are allowed and the impugned award is modified holding that the claimants-respondents 1 to 5 are held entitled to compensation to the tune of Rs.6,33,500/- along with interest at the rate of 6% from the date of presentation of claim petition till its final realization minus the amount already paid.

Both the appeals are disposed of along with all CMPs.

Jammu  
Dated:17.3.2010  
(Anil)

**(Mansoor Ahmad Mir)**  
**Judge**