

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

**CIMA No. 115/2007
CMP No. 188/2007**

Date of Decision: 25.11.2011

**Oriental Insurance Company Limited
Vs.
Kuldeep Kumar & ors.**

Coram:

Mr. Justice J.P. Singh.

Appearing counsel:

For Appellant (s) : Mr. Amrit Sarin, Advocate.

For Respondent(s) : Mr. P.S. Parmar, Advocate.

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|-----|---|---|---------------|
| i) | Whether to be reported
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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The Motor Accidents Claims Tribunal, Jammu awarded Rs.2,55,500/- as compensation to respondent-Kuldeep Kumar for the death of Ram Chand, his father, who succumbed on 10.12.2004 to the injuries received while travelling in Jeep No. 9928-PCR on 08.12.2004, which was hit by Matador No. JK02F-8414.

The Oriental Insurance Company Limited has questioned the Tribunal's Award dated 08.05.2007 by this Appeal.

Appellant's learned counsel submitted that appellant-Company was not liable to indemnify the owner to satisfy the Award as a whole because the accident had taken place

because of the contributory negligence of the drivers of two Vehicles viz; Jeep No. PCR-9928 and Matador No. JK02F-8414, as a result whereof, the Claimant's father succumbed to the injuries received in the accident. He alternatively submitted that even otherwise, the Award was excessive as the Tribunal had erred in taking the monthly income of the deceased at Rs.6000/- without any documentary proof in support thereof and omitting to take age of the deceased as 68 years, which was so indicated, in the Post Mortem Examination Report.

The claimant's counsel, on the other hand, submitted that having omitted to lead evidence to rebut the evidence of the Claimant, the appellant cannot question the quantum of compensation awarded to the Claimant, which he was stated justified on the strength of the statements made by the claimant's witnesses, who had supported his Claim and whose evidence had stood the test of cross-examination. Learned counsel submitted that quality of claimant's evidence was such which did not require any further documentary proof.

Considered the submissions of learned counsel for the parties and perused the records.

The Claimant had indicated the age of deceased as 62 years at the time of the accident in the Claim Petition. His specific statement on oath testifying his father's age as indicated in the Claim Petition, was not challenged by the appellant during cross-examination.

The evidence led by the claimant about his father's running a Grocery Shop with investment of Rs.50/60 thousand, was not discredited by the appellant before the Tribunal.

In view of the above factual position and there being absolutely no evidence by the appellant to controvert the Claimant's evidence regarding income and age of the deceased, the finding of the Tribunal on Issue Nos. 2 & 3, may not, in the circumstances, warrant interference in the Appeal. The Multiplier adopted by the Tribunal too appears to be on the lower side as no justification comes forth from the Award of the Tribunal as to why the multiplier was reduced from 7 to 5 and in the circumstances, even if the monthly income of the deceased had to be reduced, the compensation calculated by taking 7 as the multiplier would be near about the same as was awarded by the Tribunal to the claimant.

Taking overall view of the facts and circumstances of the case, the compensation awarded by the Tribunal to the Claimant for his father's death, who died in the motor vehicular accident, is found just and reasonable.

Appellant's learned counsel's plea that the Appellant was not liable to indemnify the owner to pay whole of the awarded amount does not need any consideration, for, no evidence was led by the appellant to prove that the accident had taken place because of the contributory negligence of the driver of vehicle in which the deceased was travelling.

For all what has been said above, the appellant's Appeal is found without substance, hence dismissed.

The amount deposited by the appellant be released in favour of the Claimant.

(J.P.Singh)
Judge

Jammu:
25.11.2011
Pawan Chopra