

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 244/2013

MP No. 967/2013

Date of decision:- 30/03/2017

National Insurance Company Ltd. Vs. Farooq Ahmed Shah and ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Chief Justice (A)

Appearing counsel:

For the Appellant (s) : Mr. Baldev Singh, Advocate.
For the respondent(s) : Mr. Bari Abdullah, Advocate.

- | | | |
|-----|---|---------|
| i) | Whether approved for reporting in NET. | Yes/No. |
| ii) | Whether approved for reporting in Digest/Journal. | Yes/No. |
-

1. The appeal is of the year 2013.
2. It is a case of fatal accident.
3. Accident in this case happened on 08.05.2011. One Javaid Ahmad Shah S/o Farooq Ahmad Shah R/o Sopat Tangpora Tehsil Dewsar District Kulgam received serious injuries and died on spot while travelling in Truck bearing Registration No. JK05A/3846, insured with the appellant-Insurance Company when it met with an accident due to rash and negligent driving by its driver near Digdol, Ramban. Father and mother of the deceased –Javaid Ahmad Shah are the claimants.
4. Appellant-Insurance Company has filed this appeal on two issues. One is that Insurance Company should have been given a right to recover the compensation from the owner of the vehicle, since it is a case of death of a gratuitous passenger. The said issue was considered by this Court in CIMA No. 246/2013, which came to be disposed of on 16.03.2017. Following order has been passed:-

“3. Appellant-insurance Company has filed this appeal challenging the award primarily holding that the deceased was a gratuitous passenger and, therefore, while passing the award, the Tribunal relied upon the

decision of the Supreme Court in case *New India Assurance Company Ltd. V. Satpal Singh*, reported as 2000 ACJ 1. The said decision has been over-ruled in view of the amendment in the Act made on 8th May, 2011, by Hon'ble Supreme Court in case titled *New India Assurance Company Ltd. v. Asha Rani*, reported in AIR 2003 SC 607.

In view of the above, the appeal is allowed to the extent that the appellant Insurance Company will settle the claims first and have the right to recover the same from the owner. The claimants will be at liberty to withdraw the award amount.”

4. Therefore, on the question of liability, the aforesaid order will apply to the present appeal.

5. Insofar as compensation is concerned, the deceased was a bachelor aged about 19 years. His mother and father are the claimants. The Tribunal has fixed the income of the deceased at Rs. 5,000/- per month and annual income comes to Rs. 60,000/-, from which 1/3rd was deducted and the pecuniary loss to the dependent was taken as Rs. 40,000/-. Adopting multiplier as 18, the Tribunal has awarded the following compensation along with interest @7.5% per annum throughout till realization:-

1. Loss of Dependence	Rs. 7,20,000/-
2. Funeral Expenses	Rs. 10,000/-
3. Loss of Estate	Rs. 5,000/-
4. Loss of consortium	Rs. 10,000/-
Total	Rs. 7,45,000/-

6. In appeal, it is pleaded that since the deceased was a bachelor and, therefore, deduction should be One ½ instead of 1/3rd. This is not disputed by the claimant's counsel. Therefore, loss of income to the dependents will be Rs. 5,000/- less half, i.e., 25,00/- per month, which comes to Rs. 2500x12x18=Rs. 5,40,000/-.

7. The Tribunal has erroneously granted the compensation towards loss of consortium because in this case, the deceased was a bachelor, as such the same is deleted. The amount granted on account of loss of

consortium will be adjusted under the head ' loss of love and affection to the parents. All other amounts stands confirmed.

8. The award stands modified to the extent as follows:-

S.No.	Heading	Award of the Tribunal	Modified Award
1	Loss of Dependence	Rs. 7,20,000/-	Rs. 5,40,000/-
2.	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-
3.	Loss of Estate	Rs. 5,000/-	Rs. 5,000/-
4.	Loss of consortium	Rs. 10,000/-	deleted
5.	Loss of love and affection.	Nil	Rs.10,000/-
	Total	Rs. 7,45,000/-	Rs.5, 65,000/-

9. Interest @ 7.5% p.a. is confirmed.

10. Appeal is allowed accordingly.

11. Claimants are at liberty to withdraw the amount as modified above.

12. Excess amount be returned to the appellant-Insurance Company.

(Ramalingam Sudhakar)
Chief Justice (A)

Jammu,
30.03.2017
Tilak, Secy.

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.