

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

**(Through Video Conferencing)**

Reserved on: 24.06.2020

Pronounced on: 29 .06.2020.

**CMAM No. 91/2014**

Mohd. Afzal Beig and others.

.....Petitioner (s)

Through :- Mr. G.Q. Bhat, Advocate.

**V/s**

Kuldeep Kumar and others.

.....Respondent(s)

Through :- Mr. J.A. Kawoosa, Advocate.

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**ORDER**

1. The instant appeal has been filed by the appellants against the award dated 26.03.2014 passed by Motor Accidents Claims Tribunal, Anantnag, whereby the Tribunal has awarded a sum of Rs. 3, 64,000/- along with interest @ 6% p.a. as compensation in favour of the claimants (appellants herein) with a direction that the same shall be payable by the insurer, (respondent No. 3 herein).

2. As per the facts narrated by the claimants before the Tribunal, on 27.05.2010, deceased Abdul Aziz Beig was knocked down by a vehicle bearing Registration No. PBO2M-9945 that was being driven rashly and negligently by its driver, respondent No. 1 herein. The offending vehicle, at the relevant time, was owned by respondent No. 2 whereas respondent No. 3 is the insurance

company with whom the vehicle in question was insured at the time of the accident. The claimants happen to be widow and sons of the deceased.

3. It was pleaded in the claim petition that the deceased at the time of the accident was aged 56 years and that he was a government servant working as an Assistant Sub-Inspector in Jammu and Kashmir Police Department, drawing a monthly salary of Rs. 28,000/-. The claimants had sought compensation in the amount of Rs. 29.82 lacs from the respondents.

4. The learned Tribunal on the basis of the pleadings of the parties framed the following issues:-

1. Whether on 27.05.2010 the deceased was hit by the offending vehicle bearing registration No. PB02N-9945, as a result of which deceased has suffered multiple injuries and succumbed to his injuries on the way to the hospital? OPP.
2. Whether the accident occurred due to rash and negligent driving of the respondent No. 1-driver? OPP.
3. Whether the petitioners as legal representatives of the deceased are entitled to compensation, if so to what extent and from whom? OPP.
4. Whether the respondent No. 1 was not having valid and effective driving licence at the time of accident and as such there was violation of terms and conditions of the insurance policy, if so what is its effect upon the claim petition? OPR3
5. Relief.

6. After recording the evidence, the learned Tribunal came to the conclusion that death of the deceased had arisen out of a motor vehicular accident involving the offending vehicle that was being driven rashly and negligently by respondent No. 1 at the relevant time. The learned Tribunal also found that there was no breach of policy conditions and as such, insurer is liable to indemnify the insured. The compensation was assessed by the learned Tribunal by taking age of the deceased as 56 years and his notional monthly income as Rs. 4500/-. After applying multiplier of 9 and deducting 1/3<sup>rd</sup> of the income towards living and personal expenses of the deceased, the loss of dependency was calculated as Rs. 3,24,000/-. Besides, this amount, the learned Tribunal awarded a sum of Rs. 10,000/- as compensation on account of loss of estate, Rs. 10,000/- on account of transportation charges of dead body, Rs. 10,000/- as compensation on account of loss of consortium and Rs. 10,000/- on account of funeral expenses thereby taking total compensation to Rs 3,64,000.

7. The claimants feeling aggrieved of the quantum of compensation awarded in their favour, have filed the instant appeal mainly on the ground that though it was established that the deceased was working as Assistant Sub-Inspector in Jammu and Kashmir Police at the time of his death, yet the Tribunal, while assessing compensation in favour of the claimants, took the monthly income of the deceased as Rs. 45,000/- on notional basis. It is further contended that the claimants had specifically pleaded and deposed in their statements that the deceased was drawing a monthly salary of Rs.28,000, but the same has not been taken into account by the learned Tribunal while assessing the compensation.

8. I have heard the learned counsel for the appellants and the learned counsel for the respondent insurance company. I have also gone through the impugned award, the grounds of the appeal and record of the Tribunal.

9. The main ground on which the appellant has challenged the impugned award and sought enhancement of compensation is that the Tribunal despite returning a finding that the deceased was serving as Assistant Sub-Inspector in Jammu and Kashmir Police, the assessment of the compensation was made on the basis of notional and not the actual income of the deceased. Learned counsel for the insurer has, on the other hand, contended that without there being any documentary record with regard to the salary of the deceased, the Tribunal was justified in awarding the compensation on the basis of notional income of the deceased.

10. It is not in dispute that the deceased in this case was a government employee. The learned Tribunal has clearly returned a finding in this regard. Therefore, there could be no manner of doubt that the deceased was working as Assistant Sub-Inspector in Jammu and Kashmir Police at the time of his death. It is also not in dispute that the claimants did not produce the salary certificate of the deceased before the Tribunal. The question arises as to what was the course open to the Tribunal for assessing "just compensation" in a case of this nature.

11. When an application for grant of compensation is made before a Claims Tribunal, it has to proceed in accordance with the provisions contained in Section 168 of Motor Vehicles Act, which enjoins upon the Tribunal to hold

an inquiry into the claim after giving an opportunity of being heard to the parties. In order to understand the procedure and powers of a Claims Tribunal relevant provisions of Motor Vehicles Act and the Rules framed thereunder are required to be noticed. Sub-section (1) of S.168 of the Act is relevant to the context and the same is reproduced as under:-

**“Award of the Claims Tribunal:** (1) *On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.”*

Provisions of Section 169 of the Act, which relate to the procedure and powers of the Claims Tribunal, read as under:-

***Procedure and powers of Claims Tribunals:***

*(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.*

*(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)*

*(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry”*

12. The provisions of Rules 321 and 322 of Jammu and Kashmir Motor Vehicles Rules 1991 are also required to be considered for

understanding the nature of procedure that a Claims Tribunal is required to adopt while accessing compensation in favour of the claimants. Rules 321 and 322 of the Rules read as under:-

**Rule 321.**

**Local Inspection.**(1) *The Claims Tribunal may, at any time during the course of an enquiry before it, visit the site at which the accident occurred for the purpose of making a local inspection or examining any person like to be able to give information relevant to the proceedings.*

(2) *Any party to a proceedings or the representative of any such party may accompany the Claims Tribunal for a local inspection.*

(3) *The Claims Tribunal after making a local inspection shall note briefly in a memorandum any facts observed, and such memorandum shall form part of the record of enquiry.*

(4) *The memorandum shall be made available to any party who desired the same and shall supply any party with copy if applied and shall pay the fee thereof calculated at the rate of rupees ten for the first page and rupees two for each additional page.”*

**Rule 322.**

**Power of summary examination:** (1) *The Claim Tribunal, during a local inspection or at any other time, save at a formal hearing of case pending before it, may examine summarily any person likely to be able to give information relating to such case or not, and whether any or all of the parties are present or not.*

(2) *Where an application is made to the Claims Tribunal in this behalf or otherwise, and it is satisfied that on account of neglect of the children or on the part of the parents or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the Tribunal, as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the Tribunal may make such orders for the variation of the former order as it thinks just in the circumstances of the case.”*

13. A careful reading of the afore quoted provisions of the Motor Vehicles Act and the Rules framed thereunder, as also the scheme of the Act

and the Rules make it abundantly clear that a claim petition is not to be treated as a civil suit by the Tribunal. The provisions of Civil Procedure Code and Evidence Act are not to be strictly applied to the proceedings before it. The expression “inquiry” used in the provisions of the Act as well as in the Rules clearly connotes that a Claims Tribunal has to look for any information which is relevant to the disposal of the claim petition by adopting a proactive role. A Claims Tribunal is expected to call for and examine any information which may be relevant to a case before it even in a case where the parties fail to produce such information or material before the Tribunal.

14. The Hon’ble Supreme Court in the case of “***Rajesh and others Vs. Rajbir Singh and others***, reported as (2013) 9 SCC 54” had an occasion to discuss the underlying principle with regard to the duty of the Claims Tribunal to fix “just compensation”. While doing so, the Hon’ble Supreme Court noted the provisions contained in Sections 158 and 166 of the Motor Vehicles Act and observed as under:-

12. **“There is another reason why the court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the act by act 54 of 1994 with effect from 14-11-1994, the report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under sub-section (6) of Section 158 has to be treated as an application for compensation.**

13. **Section 158(6) of the Act reads as follows:**

**“158. Production of certain certificates, licence and permit in certain cases.—(1)-(5) \*\*\***

**(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion**



of such report to the Claims Tribunal having jurisdiction and a copy thereof to the insurer concerned, and, where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.”

14. Section 166(4) of the Act reads as follows:

“166. (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.”

15. Prior to the amendment in 1994, it was left to the discretion of the Tribunal as to whether the report be treated as an application or not. The pre-amended position under sub-section (4) of Section 166 of the Act, reads as under:

“166. (4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks it necessary so to do, treat the report as if it were an application for compensation under this Act.”

16. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.”

15. Similarly Hon’ble Supreme Court in the case of *Raj Kumar Vs. Ajay Kumar and another reported in 2011 (1) SCC 343* has observed that Section 168 and 169 of the Act make it evident that the Tribunal does not function as neutral umpire as in a civil suit but as an active explorer and seeker of truth which is required to hold an inquiry into claim for determining the just compensation. The Hon’ble Court further went on to observe that a Tribunal should taken active role to ascertain true and correct position so that it can assess the “just compensation.”



16. Thus, it is clear that a Tribunal cannot be a silent spectator and strict rules of evidence cannot be made applicable to the proceedings before it. The proceedings before the Tribunal are summary in nature and based on records and documents. The Tribunal has got powers to devise its own method of conducting the proceedings and has powers to look into the documents and satisfy itself about the bonafides of the claim. Sub section (2) of S.169 of the Act makes it abundantly clear that a Claims Tribunal has all the powers of a civil court, including the power to direct production of documents and material objects. Therefore, a Claims Tribunal can always seek production of any document or witness for ascertaining a fact which is relevant to an inquiry before it.

17. Coming to the instant case, it is abundantly clear that the Tribunal has, despite being convinced that the deceased was working as an Assistant Sub-Inspector of Police at the time of his death, not chosen to call for the relevant record pertaining to the salary of the deceased from his employer. It appears that the Tribunal has sit back and waited for the claimants to produce this record and when it did not come forth, the Tribunal by abdicating its duty to explore the truth, applied the shortcut method of assessing the compensation on the basis of notional income of the deceased. It is a fact of common knowledge that records relating to salary of government servants are readily available with the offices of their respective Drawing and Disbursing officers. The Tribunal could have easily summoned the record pertaining to the salary of the deceased from the office where he was working at the time of his death. The same has not been done by the Tribunal thereby landing itself into an error

that has resulted in failure of justice inasmuch as “just compensation” has eluded the claimants.

18. In view of the above, it becomes duty of this court to adopt a course whereby “just compensation” is determined and awarded to the claimants.

19. During the pendency of this appeal, the claimants filed an application bearing MP No. 01/2017 before this Court for producing on record documents, including last pay certificate of the deceased. The supplementary affidavit along with relevant documents filed by the appellants has been taken on record in terms of order dated 08.05.2017 passed by this Court. As per the last pay certificate placed on record by the appellants, the deceased was drawing gross monthly salary of Rs. 24,644/-.

20. Having held that the learned Tribunal landed itself into error by not making an effort to collect evidence with regard to the salary of the deceased, the question arises whether this error can be set right during these proceedings by relying on the last pay certificate placed on record by the appellants. The learned counsel for the respondent-insurer has vehemently contended that the case is required to be remanded back to the Tribunal with a direction to consider the documents placed on record by appellant during these proceedings so that the insurance company will have opportunity to rebut the said material. He has further elaborated that the appellate court cannot place reliance on these documents in these proceedings.

21. The course suggested by the learned counsel for the insurer can be one of the modes for disposal of this case but we have to take into account the fact that the tragic accident that has resulted in death of the deceased has taken place in the year 2010 i.e. about 10 years back. The claimants, particularly the widow of the deceased, must have suffered a lot mentally and financially. It will be adding insult to her injury if at this advanced stage of her age, she is again asked to go to the Tribunal and start from the scratch after 10 years.

22. In the instant case, the documents sought to be relied upon by the claimants is the last pay certificate issued by the drawing and disbursing officer of the deceased, who was an employee of the Jammu and Kashmir Police. The document is signed by a public officer and there is nothing in the objections filed by the insurance company to even remotely suggest that the said document is not authentic. The only stand taken by the respondent insurance company, in its objections to the application for placing on record the said document, is that the petitioner has no right to produce these documents in appeal as they cannot do so unless they establish that the said evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them before the Tribunal where the case was pending.

23. As already noted, the claim proceedings under Motor Vehicles Act are summary in nature and are not subject to technical rules of evidence and code of civil procedure. Therefore, there is no legal impediment in taking on record and considering the last pay certificate produced by the appellants during the course of these proceedings, particularly when no dispute has been

raised with regard to the authenticity of the document. The documents indicating salary and allowances payable to a government employee at the time of his death in the accident duly issued by department where the deceased was working does not require corroboration or any evidence to prove them unless their genuineness or authenticity is in dispute. In **Rajbir Singh's case** (supra), the Hon'ble Supreme Court considered the salary certificate of the deceased even though the same had not been produced before the Tribunal or the High Court. Thus, it is held that the last pay certificate of the deceased placed on record by the appellants is eligible to be considered as proof of income of the deceased.

24. Let us now proceed to assess the compensation by taking income of the deceased as the one depicted in the last pay certificate of the deceased. As per the certificate, the deceased was drawing a monthly salary of Rs. 24,664/-. The annual salary of the deceased comes to Rs. 2,95,968/-. The deceased, as per evidence on record, was aged 56 years at the time of his death. As per the law laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others reported as 2017 (16) SCC 680*, where the deceased is aged between 55 to 60 years a sum equal to 15% of the salary is to be added to his income towards the future prospects. The annual income of the deceased, therefore, comes to Rs.2,95,968+ Rs.44,395= Rs.3,40,363/-

25. The deceased has left behind three dependants, two sons and one widow and as per the law laid down by the Hon'ble Supreme Court in *Sarla Verma's case (2009) 6 SCC 121*, where the number of family members is 2-3,

1/3<sup>rd</sup> of the income is required to be deducted towards personal and living expenses of the deceased. Accordingly, after deducting 1/3<sup>rd</sup> income of the deceased, annual loss of dependency to the claimants comes to Rs. 2,26,909/-. The multiplier applicable to the age group of the deceased, as per *Sarla Verma's case (supra)* is, 9. Therefore, loss of dependency to the deceased comes to Rs. 20,42,181/-. Besides this, the claimants, as per the law laid down by the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported as 2017 (16) SCC 680* are also entitled to compensation under notional heads of loss of estate, loss of consortium and funeral expenses at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

26. The compensation in favour of the claimants is, therefore, assessed as under:-

1. Loss of dependency	:	Rs. 20,42,181/-
2. Loss of estate	:	Rs. 15,000/-
3. Loss of consortium	:	Rs. 40,000/-
4. Funeral expenses	:	Rs. 15,000/-
<b>Total</b>	:	<b>Rs.21,12,181/-</b>

26. For the foregoing reasons, the impugned award passed by the learned Motor Accident Claims Tribunal, Anantnag is modified and a sum of Rs. 21,12,181/-(Rupees twenty one lacs, twelve thousand, one hundred and eighty one only) along with interest at the rate of 6% from the date of filing of the claim petition till its realization, is awarded as compensation in favour of the claimants and against the respondents to be paid by the respondent-insurer. Out of the awarded sum, an amount of Rs.5.00 lacs each shall be paid to the

appellants No.1 and 2, the sons of the deceased whereas the balance amount along with the interest shall be paid to the appellant No.3, the widow of the deceased. The appeal stands **disposed of** accordingly.

**(SANJAY DHAR)**  
**JUDGE**

Srinagar  
29.06.2020  
(Neha)

**Whether the order is speaking : Yes/No**  
**Whether the order is reportable: Yes/No**

