

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

Mac App No. 113/2019  
CM No. 9367/2019

**Pronounced on:- 1 .06.2020**

Oriental Insurance Co. Ltd. ....Appellant(s)

Through: Mr. Baldev Singh, Advocate

**vs.**

Kanta Devi and others ...Respondent(s)

Through: Mr. Sudershan Kumar, Advocate.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

1. This appeal is against the award dated 26.04.2019 passed by the Motor Accident Claims Tribunal, Reasi (herein after referred as Tribunal) had awarded an amount of Rs. 17,57,800 alongwith interest @ 7.5% per annum to the claimant Nos. 1 to 3.
2. Briefly stated facts arising for consideration in the appeal are that one Rakesh Kumar died as a result of a vehicular accident which occurred on 26.04.2017, when vehicle Truck LPT bearing registration No. JK14B-5835 on its way from Sabzi Mandi Gate to Narwal Chowk, Jammu being driven in rash and negligent manner hit the deceased- Rakesh Kumar near HDFC Bank, Narwal, Jammu. The injuries caused were so severe that same led to his death on spot.
3. Respondent Nos. 1 to 3 (hereinafter referred to as claimants) are mother and two sisters of the deceased, they filed a claim petition

before the MACT, Reasi and sought compensation on account of the untimely death of the deceased who was the sole earning member of the family. The claimants, widowed mother, two sisters were dependent on the deceased for survival as one sister was physically challenged due to which could not get married and other was a student. On completion of the pleading of the parties, the following issues were framed:

“1. Whether on 26.04.2017 the offending vehicle-Truck LPT bearing registration No. JK14B-5835 was being driven rashly and negligently by respondent no.2 as a result of which hit the deceased Rakesh Kumar who was walking on the road side as pedestrian near HDFC Bank Narwal Jammu causing fatal injuries to the deceased and leading to his death on spot ?                      OPP

2. Whether the respondent No. 2 was not holding a valid and effective Driving License on the date of accident?                      OPR-1

3. Whether the offending vehicle on the date of accident was being driven in contravention of the conditions of the Insurance Policy, if so, what is its effect on the outcome of the petition?                      OPR-1

4. Whether the petitioner is entitled to any compensation, if so to what extend and from whom ?                      OPP

5. Relief;”

4. The Tribunal held that the accident occurred due to rash and negligent driving of respondent No. 4, driver of the offending vehicle and awarded a sum of Rs.17,57,800/- alongwith 7.5% interest.
5. Appellant aggrieved of the same has challenged the impugned award on the following grounds:

“I. That the assessment of income of the deceased while calculating the amount of compensation is based on no record;

II. That the deduction of 1/3<sup>rd</sup> from the alleged income is also bad in law;

III. That the learned tribunal has exceeded its power while deciding the award and order impugned and

ignored the guidelines laid down by Apex Court.”

6. The Tribunal, while considering the issue whether the accident occurred due to rash and negligent driving of the respondent/driver relied on the evidence of PW-Som Raj. In his evidence, PW-Som Raj has stated that he was at a distance of 100 meters from the accident, when the offending vehicle came from the wrong side and hit the deceased who had gone to the wholesale vegetable market in Jammu for brining vegetables, as a result of accident, the deceased died on spot. His statement was recorded by the Police, FIR No. 88/2017 was also registered with Police Station, Bahu Fort Jammu and challan was also presented under Sections 279/304-A RPC against the driver of the offending vehicle. Thus, the Tribunal after considering the evidence rightly decided the issue in favour of the claimants.
7. No evidence was led by the respondents-Insurance company on Issue Nos. 2 & 3, even though the onus to prove the same was on them. Thus, both these issues were decided by the Tribunal in favour of the claimants.
8. The deceased-Rakesh Kumar was a wholesale vegetable vendor who was supplying vegetable to retail vendors in Reasi and other adjoining areas of Reasi town. As per the claim petition, income of the deceased was Rs. 20,000/- per month. He was also contributing Rs. 6000 to Rs. 5000/- towards self help group per month. PW-Som Raj and Kushal Kumar in their evidence have both stated that deceased was supplying vegetable to retailers in Reasi and nearby areas. It was in connection with the purchases of vegetable from wholesale market at

Narwal that the deceased met with a fatal accident on 26.04.2017. As per the evidence of PW-Sham Lal, the deceased was earning Rs. 1500 to 2000 per day. He was contributing Rs.5000/- for Committee which was run on no profit no loss basis. PW-Sham Lal has stated that the deceased was earning Rs. 12000 per month and was contributing Rs. 5000/- per month to the Committee. The Tribunal, while considering the evidence of the witnesses in the absence of any documentary proof, assessed the income of the deceased as that of an unskilled labourer and at the rate of Rs.300/- per day on an average and, thus, taking into consideration, the age of the deceased which was 23 years, awarded an amount of Rs. 17,57,800/-.

9. It appears that due to some error apparent on the face of record, a review application was filed and the Tribunal in the review petition finally took the income of the deceased to be Rs.9,000/- per month after deducting 1/3<sup>rd</sup> towards personal and living expenses as the deceased was survived by widow mother, physically handicapped sister and minor sister.
10. In view of the judgment of Apex Court in '**National Insurance Company Ltd. V. Pranay Sethi and others**', wherein it has been held that in case the deceased was self-employed or on a fixed salary, an addition of 40% towards future prospects of the established income should be warranted where the deceased was below the age of 40 years. Thus, an addition of 40% towards future prospects was added. The annual income after considering the future prospects as 40% of income of deceased, is therefore  $\text{Rs.6000} + \text{Rs.2400} = \text{Rs. 8400/-}$  per

month X 12 = Rs.1,00,800/-. Thus, loss of dependency would be Rs.1,00,800 x 16 = Rs. 16,12,800/-. Though the Tribunal taking the age of the deceased as 23 years had wrongly reduced the multiplier of 18 to 16 on the ground of uncertainties of life but the same is not being interfered with as the claimants are not aggrieved of the same. The Tribunal rightly awarded Rs. 15,000/-, Rs. 40,000/- & Rs. 15,000/- towards loss of estate, loss of consortium and funeral expenses respectively and also an amount of Rs. 75,000/- (Rs.25,000/- each) for loss of love and affection. Therefore, the total compensation was awarded by the Tribunal at Rs.17,57,800/- with 7.5% p/a interest from the date of institution of the claim petition till realization of the award.

11. In view of the above, there is no merit in this appeal, which is accordingly dismissed alongwith connected CM. Claimants are, thus, held entitled to compensation of Rs.17,57,800/- alongwith interest as awarded by the Tribunal.

**(Sindhu Sharma)**  
**Judge**

**JAMMU**  
1 .06.2020  
SUNIL-II

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