MOTOR ACCIDENT CLAIMS TRIBUNAL, SRINAGAR.

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Present: *Subash C. Gupta*

File No. 199 of 2015
Date of Institution:- 10.08.2015
Date of Award:- 24.04.2019

JO Code : JK00030
CNR No. : JKSG02-002277-2015

1. Bashir Ah. Ganaie S/O Asadullah Ganaie
2. Mst. Fatima Begum W/O Bashir Ahmad Ganaie
   Residents of Agar Kallan, Pattan, Baramulla, Kmr.

......Petitioners

V E R S U S

1. Tariq Ahmad S/O Noor Mohammad
   R/O Lawaypora, Zainakoot, Srinagar, Kmr.
   (Regd. Owner of offending vehicle No. JK02BB/4324)
2. United India Insurance Company Ltd.
   Through its Divisional Manager
   Divisional Office, Regal Chowk, Srinagar.
3. Jawaid Ahmad Ganaie S/O Gh. Mohi-ud-din Ganaie
   R/O Check-e-Kawoosa, Beerwah, Budgam, Kmr.
   (Driver of offending vehicle No. JK02BB/4324)

.......Respondents.

Claim petition U/S 166 of M. V. Act for grant of compensation.

Present:-
Mr. Waqar-ul-zaman, Advocate for petitioners.
Respondents 1 & 3 are in ex-parte.
Mr. Ram Singh, Advocate, for respondent No. 2 – insurance company.

AWARD

Petitioners have sought the indulgence of this Tribunal for grant of compensation in terms of provisions of Section 166 of the M.V Act 1988 (hereinafter referred as the Act in short), on account of Death of one namely Aaryan Bashir S/O Bashir Ahmad Ganaie R/O Aglar Kalln, Pattan, Baramulla (hereinafter referred to as the deceased) as a result of vehicular accident caused due to rash and negligent driving of vehicle Scorpio bearing registration No. JK02BB/4324 (hereinafter referred to as the offending vehicle for short) by its driver on 15.07.2015.

The facts in brief relevant for the disposal of this claim petition are that on 15.07.2015, the respondent No. 3 – driver was driving the offending vehicle (Scorpio) bearing regd. JK02BB/4324 rashly and negligently on Magam – Kawoosa road and on reaching Agar Kallan, he lost control over the same and struck against deceased. With the result, he suffered fatal injuries on various parts of his body and was immediately rushed to S.D.H, Magam, where he was declared as brought dead. The accident took place due to the rash and negligent driving of respondent No. 3 – driver of offending vehicle, regarding which a case under FIR No. 58/2015 stands registered by police Station Magam U/S 279, 337, 304-A RPC & 177 of M. V. Act. That the petitioners being the parents of the deceased have claimed adequate compensation from respondents.

The respondent No. 1 did not choose to contest the proceedings as such on 10.12.2015, he was set, ex-parte. The respondents 2 & 3 have filed their respective written statements on 10.12.2015 and 05.11.2015, respectively, which are available on record of the file. Subsequently, respondent No. 3 absented from the proceedings and he was also set, ex-parte.

The respondent No. 2 – insurance company has resisted the claim on the grounds inter-alia that the respondent – driver was not holding a valid and effective driving license on the alleged date of accident. Further it is submitted that the offending vehicle was being driven without valid vehicular documents. It is admitted by the respondent – insurance company that the offending vehicle stand insured with the respondent – owner w.e.f 26.02.2015 till 25.02.2016. Since the respondent – owner has committed breach of policy conditions as such the respondent – insurance company is not liable to indemnify him. Lastly, it is prayed that the claim petition be dismissed against the answering respondent.

The respondent No. 2 has admitted in his written statement that the death of the deceased has taken place due to the negligence of the deceased and by the negligence of auto driver, who fled away from the spot as the matter of the fact is that the deceased was never hit by the vehicle of the answering respondent. He has also enclosed photocopies of his D/L & I/C with his written statement. At the last, he prayed that the claim petition be dismissed against the answering respondent.

This Tribunal in the light of the perusal of the pleadings of the contesting parties framed the following issues for adjudication vide order dated 03.05.2016:-

1. Whether on 15.07.2015 respondent No. 3 was driving the Scorpio vehicle bearing No. JK02BB/4324 rashly and negligently on Magam – Kawoosa Road and on reaching Agar Kallan, the driver of the offending vehicle because of rash and negligent driving lost control over his vehicle and struck against the deceased namely Aaryan Bashir, who sustained fatal injuries on various parts and was immediately shifted to SDH, *Magam, where deceased was declared as brought dead. ? (OPP)*

2. Whether the driver of the offending vehicle was not holding the valid D/L and the insured has committed the breach of policy conditions by employing the driver who was not holding the valid driving license as on the date of accident. ? (OPR – 2)

3. Whether the death of the deceased has taken place due to negligence of deceased and Auto driver who fled away from the spot. (OPR 3)

4. In case issue No. 1 is proved in affirmative, to what extent and from whom the petitioners are entitled to receive compensation. ? OPP

5. Relief. At last parties are entitled to what relief. ? OP Parties.

Heard the learned counsel for the contesting parties and have meticulously gone through the record available on the file including the evidence which have been led by the parties in support of their contentions.

The petitioners in support of their claim have examined besides petitioner No. 1, witnesses namely Farooq Ah. Ganie & Nisar Ahmad Ganai. On 25.09.2017 evidence of the petitioners was closed. Thereafter, respondent – Insurance company was directed to lead its evidence. The respondent – insurance company has produced & examined only one witness namely Rameez Ahmad Najar, Legal Assistant in support of their claim and on 28.12.2018 the evidence of respondent – insurance company came to be closed.

The petitioners have also placed on file documentary evidence in the shape of photostat copies of FIR, Injury memo, death report, R/C. I/C, D/L, site plan, Seizure memo, etc.

The relevant part of the evidence is reproduced as under:-

PW Bashir Ahmed Ganaie (Petitioner No. 1):- has deposed that the accident took place one year back. He was in the Mosque and in the meanwhile received information that his son had met with an accident. He rushed towards the spot and saw that his son had died on spot. However, they took him to hospital, where the doctors declared him as brought dead. At the time of accident, he was 8 years of age and was studying in local Government school. Rs. 40/50 thousand were incurred on his last rites.

On cross examination by counsel for the respondent – I/C the witness further deposed that the deceased was his own son. He does not know the actual date of birth of deceased. The accident took place on 27th of Ramzan. However, he does not know the date of accident. Perhaps, in the year 2015. He has not seen the accident. The postmortem of the deceased was conducted at Magam Hospital. He has enclosed the postmortem report with this file. He has not given any statement before police.

PW Farooq Ah. Ganie:- has in his evidence affidavit deposed that on 15.07.2015, he was standing near the site of occurrence at Agri Kallan, when a boy namely Aryan Bashir was hit by a Scorpio vehicle bearing regd. No. JK02BB/4324, resulting in his death. The accident was caused due to the rash and negligent driving of the driver. The deceased was standing on the side of the road. He is eye witness to the occurrence. The deceased was around 8 years of age. The deceased was shifted to the hospital where he was declared as brought dead. He also accompanied the deceased to Magam hospital. The deceased was his neighbour.

On cross examination by counsel for the respondent – insurance company, the witness further deposed that he has eye account of the accident. However, he does not remember the actual date & time of the accident. The accident occurred with the Scorpio vehicle having regd. No. 4324. The accident happened at Agri Kallan. He was not traveling in the offending vehicle. However, he was at a distance of five meters. The offending vehicle was going towards Magam from Srinagar at a high speed. The deceased – child was on left side of the road. He was 8 years of age. He used to visit the house of petitioner. The deceased died on spot. His postmortem was not conducted.

PW Nisar Ahmad Ganai:- has in his evidence affidavit stated that on 15.07.2015, he was returning from Mosque, when he saw a Scorpio vehicle coming from Srinagar towards Magam and its driver was plying the same rashly and negligently. He lost control over his vehicle because of rash and negligent driving and struck against a minor boy namely Aaryan Bashir, aged around 8 years, as a consequence of which he sustained multiple fatal injuries on various parts of his body, resulting his death on spot. He took the deceased to SDH Magam, where he was declared as brought dead. The accident took place only because of rash and negligent driving of the driver of the offending vehicle. There was no fault or negligence on the part of deceased as he was standing on one side of the road. The petitioners have been deprived of love, care, affection and support of their son. Rs. 50,000/- were incurred on his last rites.

On cross examination by counsel for respondent – insurance company, the witness further deposed that he has no relation with the deceased. He has come to this Tribunal for giving his statement on the request of petitioners. His evidence affidavit was prepared in the premises of Magam Court. Then said, the same was prepared in the premises of this court. He has eye account of the accident. The offending vehicle was Scorpio bearing regd. No. JK02BB/4324. He does not know as to whether the vehicle in question was commercial or private. At the time of accident, one woman and one a child was traveling in the offending vehicle. The name of the deceased was Aaryan Bashir. He was 8 years of age. At the time of accident, police did not come on spot. However, later-on police came, there. Police recorded his statement in the hospital. The child died on spot. He does not know as to whether the vehicle was seized or not. The driver was not known to him.

RW Rameez Ahmad Najar, Legal Assistant:- has in his evidence affidavit deposed that at the time of accident, the offending vehicle was not transferred in the name of respondent Tariq Ahmad. At the time of accident, the offending vehicle was in the name of Ellaquai Dehati Bank. It is very relevant to mention that the transfer endorsement was made on the name of respondent Tariq Ahmad after the accident. investigation in the present case has been done through their prominent investigator, who has submitted his report. As per the report of investigator, the R/P of the offending vehicle and D/L of the respondent – driver were not valid on the date of accident. The witness produced photocopy of investigation report.

On cross examination by L.C for the petitioners, the witness further deposed that he has not conducted the investigation, personally in the present matter. The contents of the affidavit have been prepared by him on the basis of the investigator's report. As per the investigation report, the deceased was 6 years of age at the time of accident. The challan has been produced against the respondent – driver namely Javed Ahmad Ganie. The report of investigator also encloses the R/C of the offending vehicle. As per the same, the offending is Mahindra Scorpio. It comes within the category of LMV vehicle. The R/C is in the name of Tariq Ahmad Ganie and is valid w.e.f 27.04.2013 till 25.02.2028. The respondent – driver was possessing D/L for plying LMV vehicles. The deceased is survived by six dependents including the petitioners.

I have heard the Ld. counsel for the contesting parties and have gone through the record available on the file.

ADJUDICATION OF THE ISSUES:

The issues framed in the case are now taken up for adjudication:-

Issue No. 1

Whether on 15.07.2015 respondent No. 3 was driving the Scorpio vehicle bearing No. JK02BB/4324 rashly and negligently on Magam – Kawoosa Road and on reaching Agar Kallan, the driver of the offending vehicle because of rash and negligent driving lost control over his vehicle and struck against the deceased namely Aaryan Bashir, who sustained fatal injuries on various parts and *was immediately shifted to SDH, Magam, where deceased was declared as brought dead. ? (OPP)*

The burden of proof of this issue lies on the petitioners. In the course of get recording of testimony of eye witnesses namely Farooq Ahmad Ganaie and Nisar Ahmad Ganai, who have fully supported the version of the petitioners as pleaded by them in para 16 of their claim petition – that on 15.07.2015, the respondent – driver was driving the offending vehicle rashly and negligently on Magam - Kawoosa Road and on reaching near Agar Kallan, he lost control over his vehicle and struck against a deceased, with the result, deceased namely Arayan Bashir Ganaie, sustained fatal injuries, who was immediately shifted to SDH, Magam, where he was declared as brought dead.

Reference/contents of the photocopies of FIR, injury memo and death report available on record of the file corroborates the verbal versions of the petitioners & their witnesses.

There is nothing in rebuttal in the evidence of the respondents to refute the version as referred & discussed here-in-before. Accordingly, Issue No. 1 is decided in favour of the petitioners and against the respondents.

Issue No. 2

Whether the driver of the offending vehicle was not holding the valid D/L and the insured has committed the breach of policy conditions by employing the driver who was not holding the valid driving license as on the date of accident. ? (OPR – 2)

The burden to prove this issue was upon the respondent – insurance company. The respondent – insurance company has produced and examined **RW Rameez Ahmad Najar**, Legal Assistant He in unambiguous terms stated before this Tribunal that R/C of the vehicle stands in the name of one Tariq Ahmad Ganie, who appears to be impleaded as party respondent being owner of the offending vehicle. Moreover, photocopy of the R/C of the offending vehicle forming part of the record of the file also contains the name, parentage & address particulars of the owner as Tariq Ahmad S/O Noor Mohammad R/O Lawaypora, Zainakot, Srinagar. Those are similar situated as referred in the title of the claim petition. No reference appears to have made anywhere in his statement assailing the validity of D/L of the respondent – driver at the time of accident. On the other hand, he has proved that the respondent – driver was holding D/L for plying of LMV. In the present matter, offending vehicle is Mahindra Scorpio. It is further in the testimony of this witness that the offending vehicle comes within the category of LMV.

Viewed thus, I am of the considered opinion that the respondent – insurance company has miserably failed to prove the violation of any of terms and conditions of contract of insurance relating to D/L of the respondent – driver. On the other hand, his statement confirms the validity of the D/L of respondent – driver.

Accordingly, this issue is decided against the respondent – insurance company.

Issue No. 3

Whether the death of the deceased has taken place due to negligence of deceased and Auto driver who fled away from the spot. (OPR 3)

The burden to prove this issue was kept upon the respondent No. 3 – driver of the offending vehicle. However, neither he himself chosen to appear as witness nor examined anyone in support of his contention as detailed in this issue. Furthermore, in view of the finding returned with regard to issue No. 1, this issue has become redundant. Hence, he remained unsuccessful to prove this issue.

Accordingly, decided.

<u>Issue No. 4</u>

In case issue No. 1 is proved in affirmative, to what extent and from whom the petitioners are entitled to receive compensation. ? OPP

Prior to adverting to consider - what amount of compensation - the petitioners are entitled to and from whom, this Tribunal is under legal obligation to draw a finding as to whether all of them were dependent upon the income of the deceased at the relevant time of her death in the Road Traffic Accident or not. ?

On consideration of the evidence as led by the petitioners in the present matter, the petitioners were found legal representatives of the deceased as well as dependent upon his income prior to his death.

So far as first part of the issue is concerned, it is related to assessment of compensation. The present claim is with regard to death of deceased namely Aaryan Bashir.

On making the applicability of judgment of our own Hon'ble High Court in case titled ***Kuldeep Singh v. Union of India, SLJ 2017, 464,*** wherein the notional income of a non-earning child of 14 years of age, student of 9th standard – good at studies was taken as Rs. 60,000/- per annum. Out of the same, 50% was deducted towards the personal expenses and remaining 50% was assumed as contribution towards parents. Moreover, multiplier of 15 was adopted and thereby granted compensation of Rs. 4,50,000/- under the head “Loss of Dependency”.

Similarly, in case titled ***Kishan Gopal v. Lala, 2013, ACJ 2594***, the Hon'ble Supreme Court held that:-

> ***“In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact the rupee value has come down drastically from the year 1994. When the notional income of the non-earning member prior to the date of accident was fixed at Rs. 15,000/-. Further, the deceased boy, had been alive, would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC), the multiplier of 15 can be applied to the multiplicand. Thus, Rs. 30,000 x 15 = Rs. 4,50,000.”***

Applying the ratio of the above referred judgments to the present matter, which is almost similar situated as the deceased is also referred as a student at time of his death. Accordingly, notional income of the deceased is taken as Rs. 60,000/- per annum, 50% of which is considered as contribution towards parents. Accordingly, it comes to Rs. 60,000/- Minus 30,000/- = Rs. 30,000/- per annum. As per the photocopies of Injury memo and death report, the deceased was 6 years of age at the time of accident. Obviously, his age can safely be taken as six years at the relevant time of accident.

The relevant multiplier is “15” as per the citation namely ***Sarla Verma,*** thus the total loss of dependency comes to Rs. 30,000 x 15 = 4,50,000/-.

On making the applicability of citation of the Hon'ble Supreme court of India dated 18.09.2018 in case titled ***Magma General Insurance company Limited v. Nanu Ram Alias Chuhru Ram & ors.***, an amount of **Rs. 40,000/-** (Rupees Forty Thousand only) is awarded on account of loss of **Filial consortium** to each of the parents – petitioners who have lost their son. Furthermore, an amount of **Rs. 15,000/-** (Rs. Fifteen Thousand) is awarded on account of **funeral expenses**. I am being fortified by the citation namely ***SLP*** (***Civil) No. 25590 of 2014 (S.C), titled NIC v. Pranay Sethi*** in grant of afore referred compensation under the head Funeral.

Therefore, the total compensation which can be granted in claim petition comes at **Rs. 5,45,000/-** (Rupees Five Lacs & Forty Five Thousand only) with following break up: -

a	On account of loss of dependency	**Rs. 4,50,000/-**
b	On account of Filial Consortium	**Rs. 80,000/-**
c	On account of burial expenses	**Rs. 15,000/-**
	Total	**Rs. 5,45,000/-**

The second part of this issue is – who is responsible to make the payment of the compensation to the petitioners. The vehicle in question is insured with the respondent No. 2 Insurance company on the date of accident under Policy No. 111402/31/14/01/00001720 valid from 26.02.2015 to 25.05.2016, whereas the accident has taken place on 15.07.2015 which covers the date of accident as such the respondent

Insurance company is saddled with liability to indemnify the owner (insured) by making the payment of compensation to the claimants. Moreover, in view of the findings returned with regard to issue No. 2, respondent - insurance company is liable to pay the compensation as assessed here-in-above.

This issue is decided, accordingly.

<u>Issue No. 5 Relief:-</u>

In view of the findings rendered on the issues framed in this claim petition, I am of the opinion that there is no reason to deny the compensation, assessed herein above while rendering finding on issue No. 4, to the petitioners. Accordingly, this petition is allowed and compensation to the tune of **Rs. 5,45,000**/- ***(Rupees Five Lacs & Forty Five Thousand only)*** as discussed while rendering finding on issue No. 3, including interim compensation, if already granted, along with simple interest @ 6.5% per annum from the date of presentation of the claim petition till its final realization, is awarded in favour of petitioners. The Petitioners shall share the awarded amount according to Muslim Personal Law as the petitioners appears to be Muslims by religious faith except the amount of Filial Consortium. Respondent No. 2 – United India Insurance Company is hereby directed to deposit the awarded amount before this tribunal within four weeks period. Court fee shall be the first charge on the awarded amount. The petition is disposed of and shall be consigned to records after due completion.

<u>Announced:</u>
24.04.2019.

"Irshad"

Sd/-
Presiding Officer
MACT, Srinagar.

IRSHAD HUSSAIN BHAT

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Date: 2019.05.01 12:03:15 +0530