HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

MA No. 172/2012
c/w CCROS No. 15/2012

Pronounced on: 11.09.2025

M/s Bajaj Allianz General Insurance Company Ltd. …. Appellant(s)

Through: - Mr. Baldev Singh, Advocate

V/s

Darshana Devi & Ors. …. Respondent(s)

Through: - Mr. Jatinder Choudhary, Advocate
Mr. Harmit Kumar Mehta, Advocate

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

JUDGMENT

01. The appellant has filed the instant Civil 1st Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 against the award dated 18.01.2012 passed by the Motor Accident Claims Tribunal, Jammu (for short, '*learned Tribunal*') in File No. 385/Claims titled *Darshana Devi & ors. Vs. Kamal Kishore & ors*. whereby the appellant was directed to pay an amount of Rs.5,45,000/- along with interest @ 7.5% p.a. from the date of filing the petition till final payment is made to respondent Nos. 1 to 3. The appellant prays for setting aside the same.

02. Briefly stating the facts of the case that one Baldev Raj, husband of respondent No. 1 and father of respondent Nos. 2 & 3, was taken by respondent No. 4-Kamal Kishore, on a Tractor for ploughing the land bearing Registration No. JK02D-8408, which was driven by him in a rash and negligent manner, as a result of which, the said Tractor met with an

accident, resulting fatal injuries to the deceased-Baldev Raj which resulted into his death.

03. The claimant No. 1, being widow of the deceased-Baldev Singh and claimant Nos. 2 & 3, his minor children, filed a claim petition before the learned Tribunal claiming compensation to the tune of Rs. 25.40 lacs from the appellant and respondent Nos. 4 & 5. The learned Tribunal passed an award for an amount of Rs. 5,45,000 along with interest @7.5% p.a. in favour of respondent No. 1 to 3 by assessing the income of the deceased as Rs. 4,500/- per month.

04. The contention of the learned counsel for the appellant is that the learned Tribunal has committed illegality in passing the impugned award by ignoring the defence of the appellant regarding the cause of the accident, which resulted into death of the deceased as projected by the respondents/claimants that the deceased fell from the building as is evident from the medical record of the hospital where he was medically treated. The said record was disbelieved by the learned Tribunal on the ground that Ramesh Lal (RW), who got the deceased admitted in the hospital, has not stated so in his statement.

05. It is stated that the observation made by the learned Tribunal is bad in law as the official medical record is a public document which is required to be rebutted by cogent evidence, but not by way of oral evidence. It is further stated that it was the duty of the respondents/claimants to clarify as to why, it was wrongly recorded in the said medical record that the accident caused due to fall from the building, as such, the finding of the learned Tribunal by ignoring the Government medical record and relying upon the

oral evidence, is bad, thus, the learned counsel for the appellant submits that the impugned award is not sustainable in the eye of law.

06. Further contention of learned counsel for the appellant is that the learned Tribunal has ignored another important fact that the FIR has been registered at the intervention of learned Chief Judicial Magistrate, Jammu on 14.04.2007 by respondent No. 1, whereas the alleged accident took place on 06.03.2007 and that there is no explanation of delay in lodging the said FIR and the delay in lodging the FIR has not been explained by the claimants.

07. Learned counsel for the appellant submits that the claimants in the petition filed before learned CJM, Jammu have mentioned that the deceased was taken to hospital by respondent No. 4, however, before the learned Tribunal, the claimants produced the alleged eye-witness namely Ramesh Lal, whose name nowhere exits in the scene as per petition filed for registration of FIR, as such, his statement before the learned Tribunal losses credibility and the aforesaid aspect has totally been ignored by the Tribunal while passing the impugned award.

08. Further that the learned Tribunal has missed an important factor that as per pathological report enclosed by the claimants with the claim petition, mentions the cause of death as "Bronchopneumonia" and not by the injuries sustained by him in the alleged accident and thus, the said document relied upon by the claimants themselves shows that alleged injuries has nothing to do with the cause of death.

09. The appellant has challenged the impugned award precisely, on the following grounds:-

(i) That the cause of accident is not fall from the alleged offending vehicle, but fall from the building as recorded in the medical record of the deceased and being a public document requires rebuttal by cogent evidence;

(ii) That the actual cause of death is "Bronchopneumonia" and not the injuries allegedly suffered by the deceased in the alleged accident;

(iii) That there is delay in lodging FIR which has not been explained by the claimants and there is also delay on the part of respondents in leading evidence;

(iv) That the driver at the relevant time of accident was driving the vehicle without having a valid license in violation of the terms of the policy and breach of the provisions of the Motor Vehicles Act;

(v) That the vehicle at the relevant time of accident was being driven without permit and in violation of the terms and conditions of the policy;

(vi) That the learned Tribunal failed to appreciate that if a vehicle is driven in violation of the terms of the contract and provisions of the Motor Vehicles Act, the Insurance Company is ought to have been exonerated from any liability.

10. The claimants have also filed the Cross Appeal under Order-41 Rule-22 of CPC against the impugned award passed by the learned Tribunal for enhancement of compensation on account of death of Sh. Baldev Raj-deceased, in a motor accident within the jurisdiction of Police Station Kana Chak. The ground taken by the claimants is that the deceased had suffered head injury and was diagnosed as large hemorrhagic contusions in right

frontal, right temporal and right parietal lobes. Cerebral sulci effaced in both hemispheres with hyper dense blood in the left sided sulci; with further mild shift of the midline structures towards left side and right lateral ventricle mildly compresses. Linear fracture of right temporal bone (squamous part) and oblique fracture of right mastoid bone in the bone window settings on right side and right mastoid air cells were also hazy.

11. It is claimed by the claimants that due to the aforesaid injuries suffered by the deceased, he was diagnosed as suffering from organic psychosis with seizures, as such, was advised to go for psychiatric treatment and was receiving the same till death. It is stated that the deceased at the time of accident was not travelling on the offending vehicle, as agricultural labourer with the Tractor. At the time of accident, the deceased is claimed to be of 36 years and was working as labour on the Brick Kiln as well as agricultural labourer during off season and used to earn Rs. 6,000-7,000 per month and contributing Rs 5,000/- towards his family and is survived by appellant No. 1/wife and two daughters solely dependent upon him.

12. The claimants seek enhancement of the impugned award on the following grounds: -

(i) That the age of deceased at the time of death was 36 years and the multiplier provided in the Schedule-II of the Motor Vehicles Act for the age group of 36 to 40 is 15 and the Hon'ble Supreme Court in case titled **Sarla Verma V/S DTC** reported as **(2009) 6 SCC 121** has mandated that the multiplier should start with 18 for the age group of (15-20) and (21- 25) thereafter is to be reduced by one for every five years and accordingly has fixed the multiplier for the age group of (36-40) at 15. It is stated that the Hon'ble Supreme Court has left no scope for the Tribunals to adjudicate upon the choice of the multiplier to be adopted in a case and the jurisdiction of the Tribunal has been confined to adjudicate the age of the deceased and accordingly apply the multiplier as provided but learned Tribunal has fallen in error by adopting the multiplier of 14 instead of 15;

(ii) That the learned Tribunal while computing the compensation payable to the claimants took the income of the deceased as Rs 4,500/- as opposed to the actual income of the deceased which was proved by leading cogent evidence and that vide SRO No. 157, the minimum wages payable under the Minimum Wages Act have been revised w.e.f 2nd of Oct. 2009 and revised from Rs. 147/- to Rs. 200/- which comes to Rs 6,000/- per month.

13. Heard learned counsel for the parties and perused the material on record.

14. The learned Tribunal had erred in appreciating the law laid down by the Hon'ble Supreme Court and the statutory provision laying the minimum wages. The claimants would have been entitled to enhanced compensation.

15. The claimants examined PW Ramesh Lal, PW Ashok Kumar, Darshana Devi, who have deposed before the Tribunal. PW Ashok Kumar figured in the list of witnesses to the occurrence referred to the Police Challan, therefore, his statement was relied upon. PW Ramesh Lal has also stated that the accident took place at the place of occurrence and he carried one person to the hospital. The insurer examined RW Jagdev Singh, Record Keeper at GMC, but the driver of the offending vehicle has not been

examined as a witness. Therefore, the evidence adduced by the claimants, corroborated with the copy of the Challan and post mortem report, clearly reflects that the death occurred due to the negligence of the driver.

16. The Hon'ble Supreme Court in **'ICICI Lombard General Insurance Co. Ltd. Vs. Rajani Sahoo & Ors.',** Civil Appeal No. ___ of 2025 [arising out of SLP (C) No. 29302 of 2019], held as under:

> "8. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohammed Shafi & Anr.2, this Court held thus:-
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> > "12. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi."

17. From the perusal of the record reveals that it is evident that the deceased-Baldev Singh died as a result of motor vehicle accident involving Tractor No. JK02D/8404 being driven by respondent No. 4-Kamal Kishore.

18. As per the post-mortem report, the death of the deceased was a result of cardiorespiratory failure as a result of septic shock, which was a consequence of cerebral damage caused by blunt force trauma to the head, therefore, the Tribunal rightly held that the death of the deceased was due to cerebral damage due to blunt head trauma which was a result of the accident.

There was no breach of the terms and conditions of the policy of insurance which stood substantiated and was rightly held by the Tribunal.

19. At the time of accident, the deceased was 36 years old. He was a labourer and it is established that he was earning Rs. 6000/- to Rs. 7000/-. Therefore, as per SRO No. 157, the minimum wages payable under the Minimum Wages Act have been revised w.e.f 2nd of Oct. 2009 and revised from Rs. 147/- to Rs. 200/-, as such, the income of the deceased instead of Rs. 4,500/- as taken by the learned Tribunal, the appropriate income of the deceased in the instant case would be Rs 6,000/- per month and as per schedule-II of the Motor Vehicles Act and as given in *Sarla Verma (supra),* the appropriate multiplier would be 15 instead of 14 as taken by the learned Tribunal.

20. In terms of the judgment of **'National Insurance Company Ltd. Vs. Pranay Seth and Ors.', 2017 (16) SCC 68'**, after adding 40% towards future prospects, the monthly income of the deceased would come to Rs. 8,400/-. After deducting 1/3rd on account of personal expenses of the deceased, the monthly contribution to the family is assessed at Rs. 5,600/-, and therefore, the annual dependency would come to Rs. 67,200/-. After applying the multiplier of 15, the total loss of dependency would come to Rs. 10,08,000/-. The amount awarded under the conventional heads is also required to be modified so as to bring it in conformity with the law laid down in *Pranay Sethi (supra).*

21. The Hon'ble Apex Court in **'Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram', (2018) 18 SCC 130**, has clarified that 'consortium' is a compendious term, encompassing spousal consortium (for the spouse), parental consortium (for children), and filial consortium (for parents). Thus, claimants are entitled to consortium under these heads, and the

compensation is to be awarded accordingly, in addition to other conventional heads outlined in *Pranay Sethi (supra)*.

22. The claimants are hereby entitled to enhanced compensation in the following manner:-

Heads of Compensation	Court Enhanced Award (Rs.)
Loss of dependency	10,08,000/-
Funeral Expenses	15,000/-
Loss of estate	15,000/-
Spousal consortium to claimant No. 1	40,000/-
Parental consortium to claimant No. 2	40,000/-
Parental consortium to claimant No. 3	40,000/-
Medical expenses incurred on treatment of the deceased before his death	16,000/-
Total	11,74,000/-

23. The appellants are held entitled to the compensation as mentioned above along with interest @ 7.5% per annum from the date of filing of the claim petition until its realization and shall be disbursed in the manner directed by the learned Tribunal. There shall be no change in respect of the interest awarded by the Tribunal.

24. In view of the above, the instant appeal filed by the Insurance Company is dismissed. The cross appeal filed by the claimants is allowed in the aforesaid terms.

(Sindhu Sharma)
Judge

Srinagar:
RAM MURTI/PS
11.09.2025