

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

**Mac App No. 33/2022
CM No. 6083/2022
CM No. 3307/2023**

Reserved On: 10th of July, 2023.
Pronounced On: 14th of July, 2023.

National Insurance Company Limited

... Appellant(s)

Through: -

Mr Areeb Javed Kawoosa, Advocate vice
Mr Aatir Javed Kawoosa, Advocate.

V/s

Mst. Aisha Bano & Ors.

... Respondent(s)

Through: -

Mr Shabir Ahmad Dar, Advocate for R-1 to 3; and
None for R-4 & 5.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. This is an appeal preferred by the Appellant-National Insurance Company Limited, through its Divisional Manager, Srinagar, under Section 173 of the Motor Vehicles Act against the award dated 4th of August, 2022 (hereinafter referred to as "the impugned award") passed by the learned Motor Accident Claims Tribunal, Pulwama (for short "the Tribunal") in a claim petition titled '**Mst. Aisha Bano & Ors. v. Mudasir Jamal & Ors.**', whereby the claim petition stands allowed and the claimants/ Respondents 1 to 3 herein held equally entitled to the compensation worked out at Rs.23,84,800/-, along with interest @ 6 % per annum from the date of filing of the claim petition, till final realization of the awarded amount.

02. The brief facts of the case, as emerge from the perusal of the impugned award, are that a claim petition came to be filed before the

learned Tribunal by the claimants/ Respondents 1 to 3 herein, asserting therein that one Amir Rashid-son of Respondents 1 and 2 herein and brother of Respondent No.3 herein, along with a pillion rider, namely, Sameer Ahmad Bhat, were travelling on a motor cycle and, while going from Pampore towards Awantipora, a Tipper bearing registration No. JK01T-8802, coming from the opposite direction, which was being driven by one Mudasir Jamal Gojri/ Respondent No.4 herein, very rashly, carelessly and negligently hit the motor cycle, as a result whereof, the motor cycle got extensively damaged and both the persons travelling on the motor cycle got seriously injured. They were taken to Sub District Hospital, Pampore for initial treatment, wherefrom they were referred to Government SMHS Hospital, Srinagar, where the deceased Amir Rashid succumbed to his injuries. It was alleged that the accident occurred only due to the rash, negligent and careless driving of the Respondent No.4 herein. A case bearing FIR No. 192/2018 dated 18th of October, 2018 is also stated to have been registered with Police Station, Awantipora for the commission of offences punishable under Sections 279, 337, 304A of the erstwhile Ranbir Penal Code (RPC), which is now repealed with the re-organization of Jammu and Kashmir.

03. On the basis of the aforesaid facts and with the support of the relevant documents, the claimants/ Respondents 1 to 3 herein prayed for grant of compensation in their favour to the tune of Rs.83.00 lacs.

04. The Respondents 4 and 5 herein, driver and owner of the offending vehicle, respectively, did not choose to appear before the Tribunal despite having been duly served and were, as such, set *ex-parte* on 27th of June, 2019. The Appellant-Insurance Company, however, appeared before the Tribunal through its Counsel and filed Objections/ Written Statement, wherein they pleaded that the Company is not liable to indemnify the insured as the claimants had committed the breach of policy conditions by plying the vehicle in question without a valid route permit and fitness on the relevant date. It was stated by the Insurance Company that the compensation claimed is without any basis and highly exaggerated.

05. After conclusion of the proceedings, the learned Tribunal, in terms of the impugned award dated 4th of August, 2022, allowed the claim petition, thereby holding the claimants/ Respondents 1 to 3 herein entitled to compensation to the tune of Rs.23,84,800/-, along with interest @ 6 % per annum from the date of filing of the claim petition till final realization of the awarded amount. The learned Tribunal, accordingly, directed the Appellant-Insurance Company to deposit the awarded amount in the first instance with the Tribunal with a right to recover the same from the owner of the vehicle.

06. The award impugned has been assailed by the Appellant-Insurance Company, *inter alia*, on the following grounds:

“a) That the compensation awarded by the Ld. Tribunal is arbitrary, excessive and unjust. The Ld. Tribunal has taken the income of the deceased as Rs. 16,000/- without any cogent evidence and without any substantial documentary basis. The petitioners in the claim petition/respondent No. 1 to 3 herein have not produced any cogent evidence to prove the avocation and the income of the deceased. In fact, the father of the deceased, i.e., respondent No. 2 herein has himself admitted in his cross-examination that the deceased was not having a contractor card. The respondent No. 1 to 3 could not prove or even produce any cogent evidence before the Ld. Tribunal with respect to the income and avocation of the deceased. The respondent No. 1 to 3, after final arguments in the claim petition before the Ld. Tribunal, submitted some alleged allotment letter of the Octria Contract, allegedly executed for the year 2017 but the said document was not proved by the petitioners/respondent No. 1 to 3 before the Ld. Tribunal. As such, the Ld. Tribunal ought not to have taken the income of the deceased as Rs. 16,000/- without any substantial documentary proof of the same.

b) That the Ld. Tribunal, while awarding compensation under non-pecuniary heads, has shown no respect to the guidelines and provisions of law and has exceeded its jurisdiction. The Ld. Tribunal is not right in awarding amount of Rs. 50,000/- as funeral expenses and Rs.50,000/- as compensation under the non-pecuniary head loss of estate. Same is against the guidelines laid down by the Constitution Bench of the Hon’ble Supreme Court in case titled ‘National Insurance Co. Ltd. v. Pranay Sethi and Ltd., 2017 SCC OnLine SC 1270’. As per the said judgment, reasonable figures on conventional heads, namely, loss of estate and funeral expenses should be Rs. 15,000/- each. As such, the compensation awarded under different heads is excessive, arbitrary and unjust.

c) That the Ld. Tribunal has also committed an error in awarding interest on the awarded amount as interest on future prospectus is not payable, in view of the settled legal position. It is settled position of law, as has been held by the Hon’ble Supreme Court as well as this Hon’ble Court and other Hon’ble High Courts that no interest can be ordered to be paid in respect of the amounts which are claimed for future expenditures. Reliance is placed upon the judgment titled ‘**R. D. Hattangadi versus**

M/S Pest Control (India) Pvt. Ltd., AIR 1995 SC 755' and '**United India Insurance Co. Ltd. versus Smt. Savitri Devi, 1998 SLJ 122'**. Furthermore, the Hon'ble High Court of Gauhati, in case titled 'The Oriental Insurance Co. Ltd. versus Smt. Champabati Ray and Others', decided on 01.10.2019, has held that future prospects are with regard to the probable income to be received in the future, as such there is no requirement to compensate the claimant by way of future prospect, for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects are given for the entire future as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event/s. As such, the compensation awarded by the Ld. Tribunal is arbitrary, unjust and excessive."

07. Mr Areeb Javed Kawoosa, the learned Counsel appearing on behalf of the Appellant, while reiterating the grounds urged in the memorandum of appeal, has argued that: **firstly**, the learned Tribunal has committed an error by accepting the monthly income of the deceased as Rs.16,000/- without any basis under the presumption that the deceased was a contractor by profession, whereas, the fact of the matter is that his father was a contractor and the father of the deceased, in his statement before the Tribunal, deposed that the deceased had no licence of contract, but was assisting him in his business/ avocation, therefore, there was no proof with regard to the exact monthly income of the deceased which has been accepted by the learned Tribunal at Rs.16,000/- without any basis. He has further argued that, in view of the wrong assessment made by the learned Tribunal with regard to the monthly income of the deceased, the amount of compensation has been wrongly assessed, as such, the impugned award requires to be interfered with. **Secondly**, the learned Counsel has argued that the learned Tribunal, while awarding compensation under the heads of loss of estate and funeral expenses, has also committed an error by awarding exorbitant amounts of Rs. 50,000/- under each of the heads against the settled position of law pronounced by the Hon'ble Apex Court in a case titled '**National Insurance Company Limited v. Pranay Sethi & Ors.**', reported as '**2017 SCC Online SC 1270**', wherein the Apex Court has granted only Rs.15,000/- under each of the aforesaid heads. Therefore, as per the learned Counsel, the learned Tribunal has transgressed its jurisdiction to award more compensation under conventional heads and, as such, the impugned award is not sustainable. **Thirdly**, Mr Areeb has argued

that the learned Tribunal has granted interest on whole of the compensation, including the portion of compensation awarded on account of loss of future prospects which could not be made available to the claimants/ Respondents 1 to 3 herein for the simple reason that the compensation for loss of future prospects is to accrue to the claimants on a future date, as such, there is no justification to award interest over the amount of compensation for loss of future prospects and prayed that, in view of his submissions, the impugned award requires to be modified.

08. Mr Shabir Ahmad Dar, the learned Counsel appearing for Respondents 1 to 3, on the other hand, vehemently argued that the learned Tribunal has assessed the income of the deceased on an approximation which is usually done in the case of compensation by the Tribunals, as has been held by the Hon'ble Apex Court in a catena of Judgments. He has argued that since the deceased was involved in the business of his father, who was a known contractor, as such, the income of the deceased had been taken by the learned Tribunal on a lower side, while assessing the income of the deceased. He has further argued that the claimants/ Respondents 1 to 3 herein had pleaded that the deceased was having a monthly income of Rs.50,000/- as he was carrying on the business of cement in wholesale and was also a successful bidder in getting the Octrai Contract. He has also argued that the contention of the learned Counsel for the Appellant that the amount of compensation under the heads of loss of estate and funeral expenses was on higher side is also misplaced as the Hon'ble Apex Court has nowhere laid that the compensation under these heads cannot be more than Rs.15,000/-, as has been projected by the learned Counsel for the Appellant. In this behalf, the learned Counsel has relied upon a Judgment of the Hon'ble Apex Court titled as '**Kirti & Anr. v. Oriental Insurance Company Limited**', reported as '**(2021) 2 Supreme Court Cases 166**', wherein an amount of Rs.25,000/- had been granted by the Hon'ble Apex Court under each of the aforesaid heads. Therefore, the learned Counsel pleaded that it cannot be said that the learned Tribunal has committed any error while granting an amount of Rs.50,000/- under each of the aforesaid heads as these calculations are to be made with regard to expenses incurred

on the demise of the deceased by the claimants and that, in some areas, these can be more expensive, as such, there cannot be any straight jacket formula to provide a fixed rate of compensation. It was, accordingly, urged that the impugned award be upheld and the appeal be dismissed.

09. The impugned award has been primarily challenged only on three grounds:

(i) Firstly, that the income of the deceased has been taken and accepted by the learned Tribunal on a higher side;

(ii) Secondly, that the amount of compensation under the conventional heads of loss of estate and funeral expenses has been granted by the learned Tribunal on a higher side; and

(iii) Thirdly, that the total amount of compensation granted by the learned Tribunal has been also subjected to be paid along with interest, including the component of loss of future prospects.

10. Coming to the first contention of the learned Counsel for the Appellant that the income of the deceased has been wrongly accepted by the learned Tribunal, the deceased was stated to be of the age of 25 years and, as per the evidence brought on record, he was son of a contractor and was into his business, therefore, his income is to be assessed on some guess work only. The Hon'ble Apex Court also, in a catena of Judgments, has held that there can be no exact calculation or formula that can magically ascertain the true value provided by an individual graciously for those that are near and dear to him and that the attempt of the Court, in such matters, should, therefore, be towards determining in the best manner possible the truest approximation of the value added for the purpose of assessing monthly income. In this case, the learned Tribunal, having regard to the statements of the witnesses and also an allotment of an Octrai Contract in favour of the deceased, coupled with the fact that the deceased was also dealing in the same business as that of his father, i.e., the claimant No.2/ Respondent No.2 herein, has held that it can be safely said that the deceased was a businessman/ contractor by profession and, without any documentary

proof, the income of the deceased was accepted at Rs.16,000/- per month as just and reasonable. In the considered opinion of this Court, the amount of Rs.16,000/- as monthly income of the deceased cannot be said to be on a higher side in view of the given background of the deceased, being son of a contractor/ businessman. The deceased, at the time of accident, was found to be plying a motor cycle which, in itself, means that he had his own motor cycle and, in that backdrop, the income of Rs.16,000/- per month, by no stretch of imagination, can be stated to be over-rated and, therefore, it appears to this Court that the learned Tribunal has rightly held this income as just and reasonable. Accordingly, with 50 % deduction towards his personal expenses, being a bachelor, and with 40 % increase in view of the future prospects and use of multiplier of 17 as per the Sarla Verma Judgment rendered by the Hon'ble Apex Court, an amount of compensation under the head of loss of dependency has been rightly assessed at Rs.22,84,800/-.

11. Insofar as the second ground of challenge projected by the learned Counsel for the Appellant that an amount of Rs.50,000/- under each of the heads of 'loss of estate' and 'funeral expenses' has been wrongly awarded is concerned, it needs to be mentioned that no Judgment of the Hon'ble Apex Court was brought to the notice of this Court that compensation more than Rs.15,000/- cannot be granted under these heads, though, in most of the cases, the amounts of Rs.15,000/- have been granted under the aforesaid heads, as is the case in the Judgment relied upon by the learned Counsel for the Appellant as well. It has, however, come to the notice of this Court in the Judgment relied upon by the learned Counsel for the Respondents in the case of '**Kirti and Anr. v. Oriental Insurance Company Limited; (2021) 2 Supreme Court Cases 166**' (supra) that an amount of Rs. 25,000/- under the heads of 'funeral charges' as well as 'loss of estate' each has been awarded by the Hon'ble Apex Court, which is a later Judgment than the one relied upon by the learned Counsel for the Appellant, i.e., '**National Insurance Company Limited v. Pranay Sethi & Ors.; 2017 SCC Online SC 1270**' (supra). Taking a pragmatic view of the rival submissions and having regard to the Judgments of the Hon'ble

Apex Court, as discussed hereinabove, it is, while following the aforesaid Judgment of the Hon'ble Supreme Court reported as '**(2021) 2 Supreme Court Cases 166**', held that an amount of Rs.25,000/- under each of the head of 'funeral expenses' and 'loss of estate' was just and proper in the case and the impugned award is required to be modified to that extent.

12. The third and last contention raised by the learned Counsel for the Appellant is that the portion of compensation granted under the head of loss of future prospects should not have been subjected to payment of any interest thereon. This argument of the learned Counsel carries force due to the fact that future prospects are relatable to an income to be received in the future and, as such, there could not be any loss to the claimants for the payment of future prospects at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future prospects, is due to the fact that, though the loss of dependency starts from the date of the accident, the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as the time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects are with regard to probable income to be received in the future and, as such, there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects are given for the entire future and, as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event(s). Thus, with regard to future prospects, this Court is of the view that there cannot be any interest on future prospects, as the same relates to an income to be given in the future. The same view has been taken by the Gauhati High Court in cases reported as '**2018 Supreme (Gau) 966**'; and '**2019 Supreme (Gau) 507**', therefore, the contention of the learned Counsel for the Appellant is accepted that the component of compensation under the head of loss of future prospects is not to be subjected to interest.

13. Having regard to the above discussion and for the reasons stated hereinabove, the instant appeal is partly **allowed** and the impugned award is modified as follows:

S. No.	Head under which compensation granted	Compensation granted by the Tribunal (Rs.)	Compensation modified (Rs.)
01.	Loss of Dependency/ Income	16,32,000/-	16,32,000/-
02.	Loss of Future prospects	6,52,800/-	6,52,800/-
03.	Loss of Estate	50,000/-	25,000/-
04.	Funeral Expenses	50,000/-	25,000/-
<u>Total</u>		<u>Rs. 23,84,800/-</u>	<u>Rs. 23,34,800/-</u>

The aforesaid modified amount of compensation, except that of loss of future prospects of an amount of Rs.6,52,800/-, shall be payable along with interest @ 6 % per annum from the date of filing of the claim Petition till its realization.

14. The amount of compensation which has been deposited in the Registry of this Court is directed to be sent to the learned Tribunal, through available mode, along with a copy of this Order, for its onward disbursement in favour of the claimants/ Respondents 1 to 3 herein in terms of the award of the Tribunal, after proper identification. Excess amount, if any deposited, shall be reimbursed to the Appellant-Insurance Company.

15. **Disposed** of as above, along with all connected CMs.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
July 14th, 2023
"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes/ No. |
| ii. | Whether the Judgment is reportable? | Yes/ No. |