

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

Reserved on 14.09.2026
Pronounced on 18.09.2026
Uploaded on: 18.09.2026
Whether the operative part or full
Judgment is pronounced: **Full**

Mac App No. 134/2019
c/w
Mac App No. 133/2019

Oriental Insurance Co. Ltd.
Oriental Insurance Co. Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Amrit Sarin, Adv.

vs

Ghulam Nabi Naik and others
Haneefa Begum and others

..... Respondent(s)

Through: Mr. T. R. Wani, Adv.

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

JUDGMENT

1. Through the medium of this judgment, afore-titled two appeals arising out of a common award passed by Motor Accidents Claims Tribunal, Ramban(for short the Tribunal) in two claim petitions arising out of same motor vehicular accident are proposed to be disposed of.
2. It appears that two separate claims petitions arising out of same road traffic accident came to be filed by the dependants of deceased Fayaz Ahmed Naik and deceased Jhangir Alam. While claim petition No. 45 was filed by mother and sister of deceased Jhangir Alam, the claim petition No. 46 was filed by the parents of deceased Fayaz Ahmed Naik.
3. As per the case of the claimants, on 28.06.2014, both the deceased, while travelling on a motorcycle bearing registration No. JK02AH 0139 from

Ramban towards Dharamkund, on reaching near Sharoor, at a place near Kanga, their motorcycle was hit by a speeding Tipper bearing registration No. JK14B 7164, which was coming from opposite direction. As a result of this accident, both the deceased suffered fatal injuries leading to their death. FIR No. 8/2014 for offences under sections 279 and 304-A RPC was registered with Police Station, Dharamkund and after investigation of the case, charge sheet was filed against driver of the offending Tipper.

4. In the claim petitions, the claimants impleaded the appellant-insurer and driver as well as the owner of the offending vehicle as the respondents. While dependents of deceased Jhangir Alam claimed compensation to the tune of ₹30.10 lacs by pleading that the deceased had qualified in engineering examination and he had taken examination in Polytechnic College, Ramban in the second year. It was further pleaded that the deceased was aged 21 years at the time of his death and he was earning ₹10,000/- per month from agriculture.
5. The dependents of deceased Fayaz Ahmed Naik, claimed a total compensation of ₹30.30 lacs. According to them, the deceased was aged 22 years at the time of his death. It was claimed that the deceased had completed his two years electronic course from Industrial Training Institute(ITI) College, Ramban and he had also completed diploma in Computer Science. His income from agriculture was projected as ₹30,000/- per month.
6. The owner and driver of the offending vehicle did not contest the claim petitions and they were set *ex parte*, whereas appellant-insurer filed its reply to the claim petitions. In the reply, the insurer(appellant herein) while admitting the currency of policy of insurance of the offending vehicle with it,

at the time of the accident, it was pleaded that the driver of the offending vehicle was not holding a valid and effective driving license and that the offending vehicle was being plied against the conditions of insurance policy, without fitness certificate and road permit. On the basis of the pleadings of the parties, the learned trial court framed the following issues:

- i) Whether deceased Jhangir Alam and Fayaz Ahmed Naik died as a result of injuries received in a Road Traffic Accident on 28.06.2014 near Sharoor Kanga fall within the jurisdiction of Police Station Dharam Kund, involving vehicle No. JK14B 7164 being driven in a rash and negligent manner by its driver, respondent No. 3? (OPP)
- ii) Whether the petitioners are entitled to receive compensation in terms of M. V. Act, and if so, to what extent and from whom? (OPP)
- iii) Whether the offending vehicle was being driven at the time of accident in contravention of terms and conditions of the insurance policy and the driver is not having a valid license, thus respondent insurance company is not liable to pay compensation? (OPR-1)
- iv) Relief?

7. The learned Tribunal on the basis of the evidence led by the parties, while deciding Issue No. 1, held that the said issue is proved and that the deceased had died due to road traffic accident caused on account of rash and negligent driving of the offending Tipper by its driver. While deciding Issue No. 3, the learned Tribunal concluded that after scrutiny and verification of the documents of the offending Tipper, no violation of the terms of the policy of insurance has been detected. Thus, Issue No. 3 has been decided against the appellant- insurance company.

8. The learned Tribunal, while assessing compensation, in the claim petition No. 45 which has arisen out of death of Jhangir Alam. Age of the deceased was taken in the range of 21 to 25 years, his notional income has been taken as ₹10,000/- per month. After applying the multiplier of 16, 'loss of dependency' to the claimants, was worked out as ₹13,44,200/-. After adding compensation

on account of “loss of estate” to the tune of ₹15,000/- and the funeral expenses to the tune of ₹15,000/-, the total compensation was assessed as ₹13,74,200/-.

9. In the claim petition No. 46, which has arisen out of death of deceased Fayaz Ahmed Naik, his age was taken in the range of 21 to 25. So far as his income is concerned, the learned Tribunal, after relying upon the certificates issued by the Director Technical Education, Jammu and Kashmir, observed that the deceased had passed the prescribed test in the trade of electrician and he had pursued this course from August 2011 to July 2013, as such, he was a qualified electrician. His monthly income was taken as ₹12,000/-. After applying the multiplier of 16, the “loss of dependency” was assessed as ₹16,12,800/- to which the compensation of ₹15,000/- on account of “loss of estate” and another sum of ₹15,000/- under the head of “funeral expenses” was added, thereby making the total compensation as ₹16,42,800/-.
10. The appellant has challenged the impugned award primarily on the ground that both the deceased were non earning persons and there was no cogent and convincing evidence on record with regard to their income before the learned Tribunal. Therefore, their income should have been taken on the basis of minimum wages prescribed by the Government. It has been contended that it was not open to the learned Tribunal to assess compensation of the claimants by taking the income of the deceased at the rate of ₹10,000/- and ₹12,000/- per month. Thus, according to the appellant, the compensation assessed in terms of the impugned award is highly exaggerated.
11. I have heard learned counsel for the parties and I have also perused the record, including the record of the learned Tribunal.

12. So far as claim petition No. 45 is concerned, which arises out of death of Jhangir Alam, as per the claim petition, the deceased had just qualified the examination of engineering. He had taken admission in Government Polytechnic College, Ramban in second year and was a student. His income from agriculture has been projected as ₹10,000/- per month. Claimants have not placed on record any document to show that the deceased was student of Polytechnic College and was undergoing the course in Electronics.
13. Mother of the deceased, in her statement, has projected a different story by stating that the deceased was teaching the children at his home and he was also helping in agriculture activities. In her cross examination, she admitted that she had not produced any document on record with regard to the income of the deceased.
14. In view of the aforesaid nature of the evidence on record, it was not open to the learned Tribunal to take the income of the deceased as ₹10,000/- per month. The deceased was a young man, aged 21 years at the time of his death, as such, was capable of earning income. In the absence of any cogent evidence with regard to his income, the Tribunal at best, could have been taken his income on the basis of minimum wages of an unskilled labourer. As per the notification issued by the Government of the Jammu and Kashmir, the minimum wages for an unskilled labourer with effect from 01.01.2013 at the relevant time was Rs. 150/- per day. Thus, on that basis, his monthly income should have been taken as ₹4500/-. After adding 40% of ₹4500/- on account of 'future prospects' in terms of ratio laid down by the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, (2012) 6 SCC 421**, the total monthly income of the deceased works out to ₹6300/-.

After deduction of 50% on account of 'personal and living expenses', the monthly 'loss of dependency' to the claimants would work out to ₹3150/-. Since the age of the deceased was in the group of 21 to 25, as such, multiplier of 18 is to be applied. Therefore, 'loss of dependency' to the claimants would work out to ₹6,80,400/-. Besides this, the claimants are also entitled to ₹15,000/- on account of 'loss of estate' and another sum of ₹15,000/- on account of 'funeral expenses'. The claimants are also entitled to 'loss of filial consortium' at the rate of ₹40,000/- each in terms of ratio laid down by the Apex Court in **Magma General Insurance Co. Ltd. v Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**, making the total compensation of ₹7,90,400/-.

15. That takes us to the claim petition No. 46, which arises out of death of deceased Fayaz Ahmed Naik. As per the claim petition, the deceased had completed two years electrician course from Government ITI Ramban and he had also completed one year diploma in Computer Science. It has been pleaded in the claim petition that the deceased was earning ₹13,000/- per month from agriculture activities. Age of the deceased has been mentioned as 22 years.
16. Father of the deceased in his statement recorded before the Tribunal has deposed that his son had undergone training of electrician from ITI Ramban and he was also trained in computers. He further stated that the deceased was working as electrician besides undertaking agriculture activities. He stated that his monthly income was ₹35,000/-. In his cross examination, he stated that he does not have any document with regard to the income of the deceased. However, he reiterated that his son was doing the job of electrician.

17. The claimants also placed on record certificate issued by the Directorate of Technical Education, Jammu and Kashmir which certifies that the deceased had undergone course in the trade of electrician. The claimants have further placed on record copy of certificate to show that the deceased had undergone six months certificate course in computers.
18. From the aforesaid material on record, it can safely be stated that the deceased was a trained electrician and as such, had the potential of earning income as a skilled worker. Even in the absence of any documentary material with regard to the income of the deceased, it can safely be stated that the deceased was a skilled person and on the basis of the minimum wages of skilled workers, he would have earned ₹225/- per day, which comes to ₹6750/- per month.
19. The learned Tribunal, without any material in support of his findings that the deceased was earning ₹12,000/- has proceeded to take the said figure as the monthly income of the deceased. The figure of the monthly income of the deceased as projected by the Tribunal in these circumstances cannot be relied upon being devoid of any supporting material. The monthly income of the deceased is therefore, taken as ₹6750/-.
20. After adding 40% as 'future prospects', the monthly income of the deceased would come to ₹9450/-. After deducting 50% on account of 'living and personal expenses', the 'loss of dependency' per month would work out to ₹4725/-. After applying multiplier of 18, the 'loss of dependency' of the claimants would work out to ₹10,20,600/-. Besides this, a sum of ₹15,000/- as 'funeral expenses' and another sum of ₹15,000/- as 'loss of estate' is to be added. Further, the claimants, who happen to be the parents of the deceased, are also entitled ₹40,000/- each on account of 'filial consortium'. Finally, the

claimants in claim petition No. 46 are held entitled to compensation of ₹11,30,600/-.

21. In view of the aforesaid discussion, the details of compensation awarded by the learned Tribunal and the compensation assessed by this Court are tabulated as under:

S. No.	Head	Amount assessed by the Tribunal in rupees	Amount assessed by this Court in rupees
Deceased (Jhangir Alam) Claim Petition No. 45			
1	Income of the deceased	₹10,000/- per month	₹4500/- per month
2.	Add Future prospects @40%	₹14,000/-	₹6300/-
3.	Dependency i.e. personal and living expenses @ 50%	₹7000/-	₹3150/-
4.	Multiplier applied	16	18
5.	Compensation on account of loss of dependency	7000x12x16=13,44,200/-	3150x12x18=₹6,80,400/-
6.	Funeral expenses	15000/-	15,000/-
7.	Loss of estate	15,000/-	15,000/-
8.	Loss of filial consortium	Nil	40,000 each to the claimants
9.	Interest	7.5%	7.5%
	Total	₹13,74,200/-	₹7,90,400/-
Deceased (Fayaz Ahmed Naik) Claim Petition No. 46			
1	Income of the deceased	₹12,000/- per month	₹6750/- per month
2.	Add Future prospects @40%	₹16,800/-	₹9,450/-
3.	Dependency i.e. personal and living expenses @50%	₹8400/-	₹4725/-
4.	Multiplier applied	16	18
5.	Compensation on account of loss of dependency	8400x12x16=16,12,800/-	4725x12x18=₹10,20,600/-
6.	Funeral expenses	15000/-	15,000/-

7.	Loss of estate	15,000/-	15,000/-
8.	Loss of filial consortium	Nil	40,000 each to the claimants
9.	Interest	7.5%	7.5%
	Total	16,42,800/-	11,30,600/-

22. In light of the position noted above, the appeals are allowed and the impugned award is modified as indicated above and the interest awarded by the learned Tribunal as also the other terms are conditions of the impugned award shall remain unaltered. The amount of compensation as assessed by this Court indicated above, shall be disbursed to the claimants as per their entitlement in terms of the award after their proper identification. The excess amount, if any deposited by the appellant-insurance company, shall be released in favour of the appellant.

(SANJAY DHAR)
JUDGE

Jammu
18.09.2026
Rakesh PS

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