(2020) 07 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 230 Of 2011

Ashok Kumar Gupta — APPELLANT

Vs

Divisional Manager, National Insurance Company Ltd And Others — RESPONDENT

Date of Decision : 27-07-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2020) 07 J&K CK 0014

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ravinder Gupta

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1 This appeal for enhancement of compensation filed by the appellants (hereinafter referred to as the ?claimants?) under Section 173 of Motor Vehicles Act (?the Act? for short) is directed against the award dated 24.02.2011 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the ?Tribunal?) in claim petition No. 16/claim titled ?Ashok Kumar Gupta and anr vs. Divisional Manager, NIC and others.

2. Before adverting to the grounds, on which the enhancement of compensation is sought, it would be profitable to briefly refer to few relevant facts. On 10.05.2009, one Sudesh Gupta wife of claimant No.1 and mother of claimant No.2 was travelling in the offending vehicle which was going from Jammu to Himachal Pradesh. The offending vehicle met with an accident near Rait Tehsil Shahpur, District Kangra when its driver, who was driving rashly and negligently, lost control over the vehicle. In the accident, Sudesh Gupta sustained grievous injuries to which she later succumbed in CHC Hospital, Shahpur. The claimants being husband and son filed a claim petition before the Tribunal claiming a

compensation of Rs.16,20,000/- along with interest.

3. In the claim petition, it was claimed that the deceased, aged 49 years, was working as a teacher in a private school, giving tuitions and also working as an agent of LIC and, therefore, was earning Rs.4250/-per month. In the claim petition, apart from driver and owner of the offending vehicle, the insurer was also arrayed as party respondents. As is evident from the award, the claim petition was contested only by the insurer. The driver and owner chose not to contest the claim petition and were, thus, proceeded set ex parte.

4. The Tribunal, on the basis of evidence on record, found the driver of the offending vehicle rash and negligent and, thus, held the driver and owner of the offending vehicle liable to compensate the claimants. Since the vehicle was insured with the insurer, as such, the insurer was directed to indemnify the owner and pay compensation to the claimants. The claimants were held entitled to compensation of Rs.1,35,000/- only alone with pendent lite and future simple interest at the rate of 7.5% per annum.

5. The claimants are dissatisfied with the impugned award and have, therefore, challenged the same on the ground that the Tribunal had erroneously held that the claimants being well employed and getting salary of Rs.10,000/- and Rs.25000 per month respectively, were not dependent on the earnings of the deceased and on that erroneous finding, the Tribunal rejected the claim of the appellants on account of loss of dependency.

6. Mr. Ravinder Gupta, learned counsel for the claimants, relying upon a latest judgment of the Hon?ble Supreme Court rendered in the case of National Insurance Company Ltd vs Birender and others (Civil Appeal Nos. 242-243 of 2020), decided on 13.01.2020, submits that the claimants being legal representatives of the deceased are entitled to apply for compensation and, therefore, the Tribunal has gone wrong in assuming that the earning legal representatives of the deceased, killed in the motor vehicle accident, have no right to claim compensation. He, however, submits that, apart from the earning which the deceased was contributing to the joint family, she was also contributing towards household chores and her untimely death has necessarily caused loss to the claimants.

7. Heard learned counsel for the claimants and perused the record.

8. It is seen that claimants No.1 and 2 as per their own statements were earning Rs.10000 and Rs.25000 per month respectively which are the wages/income much higher than what was claimably earned by the deceased. In these circumstances, I find nothing wrong in the view taken by the Tribunal that the claimants were not, in any manner, financially dependent upon the income of the deceased.

9. If that be so, it cannot be said that the claimants have suffered loss of dependency due to death of the deceased. Though, I agree with the learned

counsel for the claimants that a claim petition can be filed by all or any of the legal representatives of the deceased, yet the payment of compensation would dependent upon the nature of dependency and other factors. Even in cases where the legal representatives of the deceased are not dependent on the income of the deceased, they would still be entitled to compensation under other conventional and non-conventional heads. This exactly is the position of law stated by the Hon?ble Supreme Court in the case of Birender and others (supra). The legal position is summed up by the Hon?ble Supreme Court in paragraph 15 of the judgment which reads thus:

"It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years".

10. Equally specious is the plea of the learned counsel for the claimants that apart from the earnings from three different sources, the deceased was also contributing largely in managing the household affairs. As is claimed by the claimants, the deceased was a teacher in private school, giving tuitions in the evening and simultaneously working as an agent of LIC Given the nature of work the deceased was doing, it is difficult to accept the contention of the learned counsel for the claimants that she was contributing largely in domestic chores and, therefore, loss of such contribution was caused to the claimants.

11. The judgment rendered by the Hon?ble Supreme Court in the case of Arun Kumar Agrawal and anr vs. National Insurance Company and others, decided on 22.07.2010 relied upon by learned counsel for the claimants is distinguishable on facts and is not applicable in the instant case.

12. In the said case the Hon?ble Supreme Court while considering the contribution of a house wife towards the family and in case of her death in the motor vehicle accident, the dependents were held entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. In the instant case, the deceased was not a house wife, but was doing three jobs one after the other.

11. Relying upon the judgment rendered in the case of Birender (supra), I find that the Tribunal has correctly not awarded any amount of compensation on account of loss of dependency. Needless to say that loss of dependency is a

question of fact needs to be established by leading cogent evidence.

13. Having held thus, I find the appellants, notwithstanding, entitled to compensation on other heads as laid down in the case of National Insurance Company Ltd vs. Pranay Sethi and ors, AIR 2017 SC 5157. Accordingly, the claimants are held entitled to the following sum:-

Funeral expenses = Rs.15,000/-

Loss of estate = Rs.15,000/-

Loss of spousal consortium to claimant No.1 = Rs.40,000/-

Loss of parental consortium to claimant No.2 = Rs.40,000/-

Transport charges from Kangra to Jammu =Rs.25000/-

Total =Rs.1,35,000/

14. The claimants have, thus, been rightly held to a compensation of Rs.1,35,000 by the Tribunal, though giving the compensation under different heads in a different manner not necessarily in consonance with the judgment rendered in the case of Pranay Sethi (supra).

15. For the foregoing reasons, I find no merit in this appeal. The same, is accordingly, dismissed.