
(2014) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : CIMA No. 39 Of 2013 and CMP No. 102 Of 2013

Bajaj Allianz Gen. Insurance Co.

APPELLANT

Vs

Mushtaq Ahmad Khanday

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 2 JKJ 474

Hon'ble Judges : Bansi Lal Bhat, J

Bench : Single Bench

Advocate : Imtiyaz Ahmad, Advocate for the Appellant; G.N. Sofi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Bansi Lal Bhat, J.—This Civil First Miscellaneous Appeal is directed against the award dated 11th December, 2012 (for short, 'award')

passed by the Presiding Officer of the Motor Accidents Claims Tribunal, (for short, 'Tribunal'), Anantnag, in a claim petition titled Mushtaq Ahmad

Khanday & anr. v. Mohammad Altaf Ganie and another, on the grounds taken in the memo of appeal. The brief facts of the case are summarized

as under:

2. One Mst. Hajra, on 09.06.2008, while walking on the road, was hit by a truck bearing temporary registration No. JMU-H-89 and Chassis No.

373344CRZ112224. It is alleged that the offending vehicle was being plied rashly and negligently by respondent No. 3 and Mst. Hajra succumbed

to her injuries. It is alleged that she was 45 years of age at the time of the accident. The offending vehicle was insured with the appellant-company.

Respondents 1 & 2, claimants, being the dependants of the victim of the

vehicular accident, filed a claim petition before the Tribunal for grant of compensation which was allowed and compensation to the tune of Rs. 3,28,500/- with interest @ 7.5% per annum was granted in their favour on the basis of factual assertion in the claim petition that the deceased was earning an amount of Rs. 3000/- per month working as a housewife and as being a marriage mediator/facilitator.

3. The instant appeal is confined to determination of quantum of compensation, as it is alleged that the Tribunal awarded compensation on higher side by taking the income of the deceased at Rs. 4500/- per month though in the claim petition the income of deceased, Mst. Hajra, was shown to be Rs. 3000/- per month only. The finding in regard to causing of the fatal accident by rash and negligent driving of the offending vehicle by respondent No. 3 has not been disputed and, I feel, rightly so. The Tribunal has, on appreciation of evidence, both oral and documentary, arrived at a conclusion that the fatal accident at National Highway, Qazigund, was caused due to rash and negligent driving of respondent No. 3, while offending vehicle was insured with the appellant at the time of accident. The finding is well merited and based upon appropriate appreciation of evidence.

4. Now, adverting to the issue of income of the deceased at the time of fatal accident, be it seen that in the claim petition before the Tribunal, it was asserted that the deceased was a housewife earning Rs. 3000/- per month doing household job. In view of the pleadings, which are silent about the income of the deceased derived by her working as a marriage facilitator, it was not permissible for the Tribunal to look into any amount of evidence adduced by the claimants to establish the factum of deriving of income by the deceased by acting as a 'go-between' or by running a conventional marriage bureau. The Tribunal could not have acted upon evidence which was beyond the scope of pleadings.

5. The claimants in unambiguous terms had spelt out the facts in regard to income of deceased by claiming that the deceased was rendering services to the family. It has come in the evidence adduced before the Tribunal that the deceased was the eldest member of the family, being the mother of the claimants and that, after the demise of her husband, she was the only eldest member of the family looking after the two sons, the

petitioners before the Tribunal. It is well settled principle of law now that the services of a female member of a family, working as a housewife, and

attending to domestic chorus can be reduced to pecuniary terms for working out dependency and for award of compensation. The Hon'ble apex

Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , has held that the services rendered by a housewife can be reduced to fiscal

terms by taking the monthly income of housewife at Rs. 3000/- per month.

6. The argument advanced by learned counsel for the appellant, that the Tribunal could not award compensation in excess of the sum claimed by

the claimants in the claim petition is devoid of any merit. The Hon'ble apex Court in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport

Insurance Co., , has held that the pecuniary loss to the aggrieved party would depend upon the data which cannot be ascertained accurately, but

must necessarily be an estimate or even partly a conjecture, and if this is so, then it is reasonable to accept precisely the amount of damages or

compensation that it would be entitled to. The Division Bench of this Court, relying upon the aforesaid judgment of the Hon'ble apex Court, in

Union of India v. Moti Lal, 2001 SLJ 366, has held that the Tribunal is well within its powers to grant and award compensation in excess of the

sum claimed in the original claim petition. The Tribunal is required to ensure that the compensation assessed is just, which will depend upon a

number of factors brought before it by the parties during the course of the trial. The judicial pronouncements being loud and clear on the subject, it

is for the Tribunal to assess and determine as to what amount can satisfy the test of "just and fair compensation" in a given case, regard being had

to the income of deceased supporting the dependants and the nature of dependency of the claimants. The argument advanced by learned counsel

on this score is accordingly held to be untenable.

7. Now coming to grips with the proved facts in the instant case, it is seen, that the Tribunal has assessed the income of deceased at Rs. 4500/-

per month which cannot be supported in terms of the ratio of the judgment of the apex Court handed down in Sarla Dixit's case supra. The

services rendered by the deceased to dependants have to be reduced to pecuniary limits of Rs. 3000/- per month. No addition of surplusage can

be allowed on account of her being projected as pursuing the profession of 'go-

between' the families intending to marry their children and while discharging functions as a conventional marriage bureau, as the pleadings in this regard are lacking. However, on this amount of Rs. 3000/- no deductions on account of personal expenditure are admissible. The dependency of claimants on the income of the deceased thus being assessed at Rs. 3000/- per month.

8. It is also seen that the Tribunal has adopted the multiplier of 9. Though the petitioners in their claim petition had stated that the age of the deceased at the time of the fatal accident was 45 years, in my view, in absence of any definite proof of age of the deceased, it was appropriate to take the age of the deceased as had been reflected in the medical record. The Tribunal has rightly taken the age of the deceased at 55 years.

However, it erred in applying 9 as the multiplier, which was not appropriate to the age of the deceased. In Smt. Sarla Verma and Others Vs. Delhi

Transport Corporation and Another, , the Hon'ble apex Court has held, and, in fact, directed that the multiplier to be adopted in claim petitions

governed by the provisions of Section 166 of the Motor Vehicles Act shall be as reflected in column 4 of the table incorporated in paragraph 19 of

the judgment supra. The multiplier appropriate to age group of 51 to 55 years, as given therein, is 11 and this figure represents the appropriate

multiplier for being adopted in the case at hand. However, the respondents - claimants have not challenged the award passed by the Tribunal; they

have rather accepted it. Therefore, even if the monthly income of the deceased is taken to be only Rs. 3,000/- per month and the accurate

multiplier in terms of judgment of the Supreme Court in Sarla Verma v. Delhi Transport Corporation (supra) is applied, the entitlement of the

respondents-claimants to compensation is likely to be higher than what has been awarded by the Tribunal. In that view of the matter, the appellant

should feel satisfied with whatever the Tribunal has awarded.

9. In the aforementioned backdrop, this appeal is devoid of any merit. It is dismissed as such. Registry is directed to remit the record forthwith

alongwith a copy of this order to the Tribunal.