

(2019) 03 J&K CK 0093

In the Jammu And Kashmir High Court

Case No : MA No. 195 Of 2011, IA No. 858 Of 2014

Director General Auxiliary Police & Anr

APPELLANT

Vs

Neelam Sharma And Others

RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

Dependents Of Deceased Government Employees Rules, 2006 — Rule 5 (1), 5(5)(2)

Citation : (2019) 03 J&K CK 0093

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Raman Sharma, Sanchit Verma, Varun Kotwal

Final Decision : Disposed Off

Judgement

1. This is an appeal by the Director General Auxiliary Police and the Commandant Auxiliary Police, 2nd Bn, Jammu against the award dated 30th November, 2010 passed by the Motor Accident Claims Tribunal, Doda (hereinafter referred to as "the Tribunal") in File No.18/Claim titled Neelam Sharma and others v. Director General Auxiliary Police and another.

2. Facts in brief:

On the fateful day of 24th November, 2006, the deceased Rohit Sharma, selection grade constable serving in the Police Department, was travelling in the offending vehicle (truck) bearing Registration No.JK02D-1928 which was going from Jammu to Doda. On reaching Raghi Nallah, the offending vehicle met with an accident in which the deceased Rohit Sharma sustained grievous injuries as a result whereof he died on spot. The accident is stated to have taken place due to rash and negligent driving of the offending vehicle by its driver. The deceased

Auxiliary Police as Selection Grade Constable, left behind his wife and three minor children. A claim has been preferred by the wife and minor children of the deceased before the Tribunal claiming compensation under different heads from the appellants who are owners of the offending vehicle in which the deceased

being an employee of the respondents was travelling.

3. The claim petition was contested by the appellants. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether on 24-11-2006 deceased Rohit Sharma was travelling in vehicle bearing No.JK02D1928(Truck) from Jammu to Doda and while reaching at Raghi Nalla the vehicle met with an accident due to rash and negligent driving of the driver due to which the deceased died? OPP

2. In case Issue NO.1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from whom?OPP

3. Whether the deceased was not authorized to travel in the vehicle involved in the accident un authorisedly of his own against the norms of the Department, if so, what is its effect on the claim petition? OPR

4. Relief."

4. The Tribunal after considering the evidence adduced by the parties, held the claimants/respondent Nos.1 to 4 entitled to the compensation in the following manner:-

1.

Loss of dependence

:

Rs.14,40,000/-

2.

Funeral Expenses

:

Rs.2,000/-

3.

Loss of love and affection

:

Rs.10 ,000/-

4.

Loss of consortium

:

Rs.10,000/-

Total

:

Rs.14,62,000/-

The claimants have also been held entitled to interest @ 9% per annum.

5. The primary ground raised by the appellant-Insurance Company against the award of the Tribunal is that the compensation awarded by the Tribunal is exorbitant and excessive.

6. Learned counsel for the appellants submits that the claimants have not produced any documentary evidence to prove the alleged income of the deceased. The appellants have also disputed the multiplier of 15 which has been applied by the Tribunal to work out the loss of dependency. The other contention raised by the appellant to assail the award impugned is that the Tribunal has erred in not deducting the seven years salary received by the widow of the deceased.

7. Per contra, learned counsel for the respondent/claimants submits that the claimants are entitled to enhanced compensation as the Tribunal has not made any addition on account of future prospects and that as per the law laid down by the Supreme Court in the case of National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680, addition of 30% should have been made to the income of the deceased while working out the loss of dependency. He further submits that the amounts granted under the convention heads are not in tune with the principle laid down by the Supreme Court in the case Pranay Sethi (supra) and, therefore, same are required to be modified.

8. Having heard learned counsel for the parties and perused the record, I am of the view that the award of compensation made by the Tribunal does not represent just and fair compensation. The law laid down by the Supreme Court in the case of Sarla Verma and others v. Delhi Transport Corporation and another; (2009)6 SCC 121 and Pranay Sethi (supra) and also the legal position settled in Mrs. Helen C. Rebello v. Maharashtra SRTC and anr, AIR 1998 3191, Bhakra Beas Management Board v. Smt. Kanta Aggarwal and ors., (2008) 11 SCC 366 and Reliance General Insurance Company Ltd. v. Shashi Sharma and ors., 2016 AIR (SC) 4465 has not been taken note of.

Admittedly, the deceased at the time of accident was 41 years of age and was statedly receiving Rs.12,000/-per month which has not been denied by the appellants. As concluded by the Tribunal, the deceased was receiving a net salary of Rs.12,000/- per month. To this extent no default can be found with the conclusion so arrived at by the Tribunal.

The Tribunal has adopted the multiplier of 15, which as per Sarla Verma (supra) is not correct because keeping in view the age of the deceased, multiplier of 14 was applicable. In terms of the judgments of the Supreme Court in the cases of Sarla Verma (supra) and Pranay Sethi(supra), addition on account of future prospects would be 30% of the actual salary. The deceased in the instant case is

survived by four dependents and therefore in view of the law settled in Sarla Verma (supra), deduction to be applied on account of personal expenses should be 1/3rd. This is how the loss of dependency is required to be worked out. But, with a view to arrive at the actual loss of dependency, we need to take note of the law laid down by the Supreme Court in the case of Mrs. Helen C. Rebello (supra) and Reliance General Insurance (supra). Para 16 of the judgment of the Supreme Court in the case of Shashi Sharma's case (supra) needs to be noticed and is, therefore, reproduced hereunder:-

16. The principle discernable from the exposition in Helen C. Rebello's case (supra) is that if the amount " would be due to the dependents of the deceased even otherwise", the same shall not be deductible from the compensation amount payable under the Act of 1988. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the Act of 1988. The component of quantum of "loss of income", inter alia, can be "pay and wages" which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006 - to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the Act of 1988.

In the aforesaid case, Hon'ble Supreme Court was confronted with the death of an employee of Haryana Government in the motor vehicular accident whose legal heirs were entitled to compensation from the Government equivalent to the salary last drawn by the deceased for a period of seven years in terms of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, Rules 2006 (Rules of 2006 for short). Hon'ble Supreme Court after discussing Rule 5(i) which provided for payment of financial assistance to the family of the deceased employee equivalent to pay and allowances that was last drawn by the deceased employee in normal course without raising a specific claim for a specified period depending upon the age of the deceased employee at the time of his death, and straightening the law on the subject in paragraph 22 of the judgment held thus:-

"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the

dependants/claimants towards the head of pay and allowances in the form of exgratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependants of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependants of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C. Rebello and Patricia Jean Mahajan's cases (*supra*)"

It may be noted that decision of the Supreme Court in the case of Shashi Sharma's case (*supra*) is rendered by three judges Bench and is latest on the point of law.

10. From the aforesaid discussion and the position of law elaborately explained by the Supreme Court in Shashi Sharma's case (*supra*), following conclusions can be drawn:- (i) The pecuniary advantage received by the legal heirs of the deceased employee which has no correlation to the accidental death is not deductible from computation of compensation under the Motor Vehicles Act. The pecuniary advantage resulting from a death other than a motor vehicular accident death like assets, movable, immovable, shares, bank accounts, cash and every amount receivable under any contract cannot be taken to be a pecuniary advantage which is liable to be deducted for computation of compensation payable to the legal heirs of the deceased under the provisions of the Motor Vehicles Act. Similarly, the pecuniary advantage received by legal representatives of the deceased government employee like gratuity, pension, provident fund, etc. including the social security amount like LIC is the pecuniary advantage which is received by the legal representatives even in case of a death other than an accidental death caused in a motor vehicular accident. Such amounts which have no correlation with the death of the deceased in a motor vehicular accident are not required to be deducted or taken into consideration

while computing the compensation payable under the provisions of the Motor Vehicles Act. (ii) Under the provisions of the Motor Vehicles Act, the amount of compensation payable to the legal heirs/claimants must be just, fair, adequate and reasonable and should not be a bonanza, largess or source of profit. It is true that the claimants would have been entitled to full salary for a period of seven years as per service rules governing the deceased, even if the deceased would have died due to natural death. Strictly speaking there may not be any correlation between the pecuniary advantage received by the legal heirs of the deceased employee equivalent to the salary for a period of seven years and the death of the deceased occurred in a motor vehicular accident but at the same time, while calculating the loss of income happened due to the death of the deceased in the motor vehicular accident, the fact that the legal heirs/claimants would receive full salary for a period of seven years and that there would be no loss of income during the said period cannot be ignored. Though the other benefits like family pension, LIC, provident fund etc. would remain unaffected and could not be allowed to be deducted in view of the principle laid down in Helen C. Rebello's case and Patricia Jean Mahajan(supra)."

Accordingly, taking note of the law laid down by the Supreme Court in the judgments aforementioned, I have come to the conclusion that the following would be the fair and just compensation payable to the claimants:-Loss of income/dependency is Rs.12,000/-.Adding 30% on account of loss of future prospects, monthly income comes to Rs.15,600/-. Deducting 1/3rd, the net monthly loss of dependency comes to Rs.10400.00, therefore, annual loss of dependency comes to Rs.1,24,800/-. Adopting the multiplier of 14, the total loss of dependency comes to Rs.17,47,200/-. In view of the above settled legal position, the amount receivable or received by the claimants by way of family pension in terms of Article 249-M(A) (a) of the Jammu and Kashmir Civil Service Regulations, 1956 is required to be deducted. The respondent No.1 in her statement before the Tribunal has admitted that she has been receiving Rs.11,000/- per month after the death of the deceased and she will continue to receive the same for a period of seven years. The amount to be received or receivable by the claimants in terms of the J&K CSR comes to Rs.9,24,000/- (11000 x 12 x 7). Accordingly, the claimants would be entitled to Rs.17,47,200.00 - 9,24,000= Rs.8,23,200.00 on account of loss of dependency. Since the amounts awarded by the Tribunal to the claimants under conventional heads are not in accordance with the principle laid down by the Supreme Court in the case of Pranay Sethi (supra), therefore, the same require to be modified so as to bring the same in tune with the principle laid down by the Supreme Court in Pranay Sethi (supra)

The award of the Tribunal is modified and the claimants/respondent Nos.1 to 4 are held entitled to the following amount of compensation along with interest as has been awarded by the Tribunal as per the terms and conditions laid down in the award of the Tribunal.

Loss of dependency

:

Rs.8,23,200.00

Funeral expenses

:

Rs.15,000.00

Loss of Estate

=

Rs.15,000.00

Loss of spousal consortium

to respondent No.1

=

Rs.40,000.00

Loss of parental consortium

o respondent Nos. 2 to 4 @ Rs.40,000/

-

Rs.1,20,000.00

Total

Rs.10,13,200.00

The appeal is disposed of in the above terms.