(2023) 08 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Miscellaneous Application No. 43 Of 2019

Future Generali India Insurance Company Ltd — APPELLANT

Vs

Surjeet Singh & Ors — RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A, 427

Citation : (2023) 08 J&K CK 0038

Hon'ble Judges : M. A. Chowdhary, J

Bench : Single Bench

Advocate : Manzoor Ahmad Dar, T. A. Malik

Final Decision : Partly Allowed

Judgement

M. A. Chowdhary, J

1. The Appellant-Insurance Company has preferred this appeal against the award dated 23rd of February, 2019 (for short "the impugned Award") passed by the Motor Accident Claims Tribunal, Srinagar in Claim Petition No. 224/2011 titled 'Mst. Haleema Hamid & Ors. v. Inderjeet Singh & Ors.', whereby the claimants/ Respondents 3 to 6 herein were granted an amount of Rs.14,55,814/-, including interim compensation, if any granted, along with simple interest @ 6.5 % per annum, from the date of presentation of the claim Petition till final realization.

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

"i) That in the face of the filing of the charge sheet against the driver of the offending vehicle under Section 279/427, 304-A RPC read with 66/192, 56/192 M. V. Act, the appellant company relied upon the copy of the charge sheet for the purposes of establishing and demonstrating that owner of the offending vehicle has committed breach of policy stipulations by allowing the driver to ply the vehicle without valid registration certificate and route permit. The non-existence of Registration certificate and Route Permit on the date of accident is a breach of policy stipulation which goes to the root of contract of insurance and on account of such breach having been committed by the owner of the offending vehicle, he is to be mulcted with the liability and appellant company required to be exonerated. That having not been done, the trial tribunal has come to a wrong conclusion, therefore, the impugned award being not in conformity with law requires to be set aside;

ii) That the computation done by the trial tribunal by taking into consideration the monthly payment on account of pension of deceased as Rs.17734/- as pecuniary loss caused to the family is not appropriate and correct view for the reasons that post demise of the head of family, family of the deceased continued to receive a family pension of Rs.15000/- per month. This fact is substantiated by the statement of official of Pension Division SKUAST, that the deceased at the time of death was drawing pension to the tune of Rs.17734/- per month and his post demise the pension of Rs.15,000/- was being received by the family. It is further indicated in the statement and documents submitted by the official that basic pension of the deceased was Rs.6948/- per month. In support of the assertion made by the witness requisite certificate was issued which has bene placed on record. Therefore, it was incumbent upon the trial tribunal to have adjusted the difference in computing the pecuniary loss caused to the family of deceased. There was no occasion for the trial tribunal to have arrived at computation by taking into consideration pecuniary loss of the family of deceased to the tune of Rs.17734/- per month. While computing the pecuniary loss the trial tribunal was required to take into consideration payment being received by the family. That having not been done, the finding recorded by the trial tribunal is neither in consonance with law nor with the law laid down by Apex Court in case Sarla Verma vs Delhi Transport Corporation. In that view of the matter, the quantum made by the trial tribunal is not in consonance with law, therefore, the award required to be brought down to the level of just compensation as envisaged under Motor Vehicle Act;

iii. That the failure of the trial tribunal to grant of recovery rights in favour of appellant company is also not in accordance with law. Non-grant of recovery rights on account of breach committed by the owner of the vehicle has the effect of vitiating of the award; and

iv. That the impugned award being not otherwise in conformity with law requires to be set aside.”

3. Learned Counsel for the Appellant, at the very outset, submits that though the Appellant had challenged the impugned award on two counts, one regarding the non-liability of the insurer for the reason that the offending vehicle was being driven by the driver of the vehicle without having the requisite documents, like RC and FC and, secondly, on the quantum of compensation, however, since the Respondent-owner had produced the documents before the Tribunal and the Appellant Insurer had also not led evidence with regard to this fact, he has instructions not to press this plea any further and that he chooses to restrict his

arguments to the extent of assailing the award only on the count of quantum of compensation.

4. Learned Counsel has further argued that the computation done by the Tribunal on the basis of pension of the deceased as Rs.17,734/- as pecuniary loss caused to the family is not appropriate and correct view for the reason that post demise of the head of the family, the family of the deceased continued to receive a family pension of Rs.15,000/- per month, which fact was substantiated by the statement of the official of the Pension Division, SKUAST that the deceased at the time of death was drawing pension to the tune of Rs.17,734/- per month and post his demise, the pension of Rs.15,000/- was being received by the family, as such, there was no occasion for the tribunal to have arrived at computation by taking into consideration pecuniary loss of the family of deceased to the tune of Rs. 17,734/- per month. He finally prayed that the compensation is required to be re-worked to modify the impugned Award for just and fair compensation.

5. Learned Counsel appearing for the Respondents 3 to 6/ Claimants argued that the Tribunal has passed the award in tune with the mandate of law governing the field and with due regard to the evidence brought on record by the parties. He prayed that the impugned Award be upheld and appeal be dismissed.

6. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

7. One Abdul Hamid Dar died as a result of the injuries received by him in a road traffic accident on 2nd of July, 2011, when he was hit by vehicle No. JK02G/8437 (Truck), insured with the Appellant herein. The wife, son and two daughters of the deceased filed a Claim Petition in terms of the Motor Vehicles Act, for the grant of compensation before the Motor Accident Claims Tribunal, Srinagar. The Tribunal, after holding a detailed enquiry, vide the impugned Award, granted compensation to the tune of Rs.14,55,814/- in favour of the Claimants/ Respondents 3 to 6 herein.

8. The issue which falls for consideration, in the case on hand, is whether the pension which the deceased was receiving could have been deducted while computing the amount of compensation. This issue is no more res integra, as it has been considered by the Hon'ble Supreme Court in the case of 'Helen C. Rebello (Mrs) & Ors. v. Maharashtra State Road Transport Corporation & Anr.', reported in '(1999) 1 SCC 90' and followed by subsequent judgment of the Hon'ble Supreme Court in case of 'Lal Dei and Ors. v. Himachal Road Transport Corporation' reported in '(2007) 8 SCC 319'. The Hon'ble Supreme Court in the case of Helen C. Rebello (supra) has held that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service condition, receivable by the heirs after his death. It has been held that heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and, therefore, the family pension amount paid to the family cannot be deducted while calculating

the compensation awarded to the claimants.

9. In view of the Judgments (supra), wherein the Apex Court has succinctly and authoritatively held that the family pension earned by an employee for the benefit of his family in the form of his contribution of service in terms of service conditions receivable by the heirs after his death, to which they are otherwise entitled than the accidental death, the contention of the learned Counsel for the Appellant that the amount of family pension received by the widow of the deceased is required to be deducted from the total pension of Rs.17,734/- which has to be accepted as a loss of income to the claimants is misconceived and untenable. The Tribunal has rightly taken the monthly pension of Rs.17,734/- as total monthly loss of income to the claimants. The Tribunal has even very meticulously deducted the amount payable as tax by a senior citizen and, therefore, deducted an amount of Rs.5,280/- out of the yearly loss of income. With monthly loss of income of Rs. 17,734/-, the annual loss was worked out as Rs.2,12,808/- (17,734 x 12). With deduction of Rs.5,280/- as annual income tax, the actual loss of income was accepted as Rs.2,07,528/- (2,12,808-5,280). With 1/4 deduction on personal expenses and application of multiplier of 9, the total loss of dependency to the claimants was worked out as Rs. 14,00,814/-. The Tribunal, vide the award impugned, granted the following amounts as compensation in favour of the Claimants/ Respondents:

S. No.	Head under which compensation granted	Compensation granted by the Tribunal (Rs.)
01.	Loss of Dependency	14,00,814/-
02.	Loss of Consortium	40,000/-
03.	Burial Expenses	15,000/-
	Total	Rs. 14,55,814/-

10. The contention of the learned Counsel for the Appellant is that the deduction on personal expenses has also not been made properly by the Tribunal, for the

reason that with the receiving of the family pension by the widow, she was no longer a dependent and so was the case of the son, who had attained the age of majority, therefore, the number of dependents was to be taken as only 2 daughters. This contention of the learned Counsel appears to be misplaced, inasmuch as all the claimants, including the wife, were dependents of the deceased, being his wife and unearning children, even though major and, as such, having regard to the number of dependents as 4, the deduction was to be made on applying the ratio of the Judgment rendered by the Hon'ble Supreme Court in Sarla Verma case, wherein it had been held that the deduction on personal expenses from the loss of income has to be made 1/4th when the number of dependents is 4. The Tribunal has, thus, used the appropriate 1/4th deduction of personal expenses and worked out the actual loss of income to the claimants as Rs.1,55,646/-.

11. The learned Counsel for the Appellant has also flagged the point that the appropriate multiplier should have been reckoned as 7, instead of 9 as taken by the Tribunal, having regard to the age of the deceased as above 61 years. In this regard, it needs to be mentioned here that the learned Counsel for the Respondents, during the course of hearing, has produced a certificate issued by the office of the SPM Higher Secondary School, Srinagar dated 2nd of June, 1970, wherein the date of birth of the deceased has been mentioned as 24th of March, 1948, meaning thereby that the deceased, at the time of his death on 2nd of July, 2011, was of the age of more than 63 years. Therefore, the contention of the learned Counsel for the Appellant has to be accepted that the deceased, at the time of his death in an accident, was of the age of more than 61 years. In the age bracket of 61-65 years, as per the directions of the Hon'ble Apex Court in Sarla Verma's case (supra), the appropriate multiplier has to be 7 instead of 9, therefore, the multiplier, as applied by the Tribunal, is not proper. Accordingly, with the application of multiplier as 7, the loss of dependency comes to Rs.10,89,522/- (1,55,646 x 7). There is no dispute with regard to the compensation awarded by the Tribunal on other two counts of loss of consortium and burial expenses and, therefore, the compensation, as awarded by the Tribunal, is modified as per the following details:

S. No

Head under which compensation granted

Compensation granted by the Tribunal (Rs.)

Compensation modified (Rs.)

01.

Loss of Dependency

14,00,814/-

10,89,522/-

02.

Loss of Consortium

40,000/-

40,000/-

03.

Burial Expenses

15,000/-

15,000/-

Total

Rs. 14,55,814/-

Rs. 11,44,522/-

12. The Tribunal awarded compensation, along with interest @ 6.5 % per annum, from the date of filing of the Claim Petition, till realization. However, in the considered opinion of this Court, the interest @ 6.5 % is not appropriate and is, as such, raised to 7.5 % per annum from 6.5 %, throughout. The aforesaid modified amount of compensation of Rs.11,44,522/-, along with simple interest @ 7.5 % per annum, shall be payable to the claimants/ Respondents 3 to 6 herein in tune with the award passed by the Tribunal, payable as a whole by the Appellant-insurer. There shall, however, be no order as to costs.

13. The amount of compensation which has been deposited in the Registry of this Court is directed to be remitted to the Tribunal, through available mode, along with a copy of this Judgment, for its onward disbursement, in favour of the claimants/ Respondents 3 to 6 herein in terms of the award of the Tribunal, after deduction of Court fee and proper identification. Excess amount, if any deposited, shall be reimbursed to the Appellant-Insurance Company.

14. The appeal filed by the Appellant-Insurance Company is, thus, partly allowed on the above terms.

15. Disposed of, along with all connected CM(s).