
(2008) 11 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : CIMA No.04 Of 2004, CMP No.10 Of 2004

Himachal Road Transport Corp.

APPELLANT

Vs

Bindu and Ors.

RESPONDENT

Date of Decision : 10-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : AIR 2009 J&K 2714 : (2009) 1 JKJ 10 : (2009) 2 SriLJ 540

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : S.C.Gupta, Rupinder Singh, Anil Sethi, Advocates appearing for the Parties

Judgement

1. A bus No.HP480980, which was going from Baror to Holee (H.P) met with an accident on 01.03.2001. The said accident resulted into death

of many passengers including the driver of the vehicle. One of the victims, namely, Deepak Raj Majahan, who hailed from Jammu also died in the said accident.

2. A claim petition came to be filed before the learned Motor Accident Claims Tribunal, Jammu on behalf of widow, one daughter and parents of

deceased Deepak Raj Mahajan. The learned Tribunal after hearing the parties, awarded compensation of Rs.16,58,600/ along with interest @ 9%

p.a. from the date of filing of the claim petition under the following heads :

1. Loss of dependency : Rs.16,23,600.00 2. Loss of consortium : Rs. 15,000.00

3. Loss to the estate : Rs. 15,000.00

4. Funeral expenses : Rs. 5,000.00

3. Being aggrieved of the said award, present appeal has been filed by the

Himachal Road Transport Corporation on the following grounds:

(a) That calculating the average income of deceased at Rs. 22,800/per month which includes the future income, which the deceased would have earned, is based on no material.

(b) That family pension payable to the deceased was also required to be deducted from the gross income calculated by the learned Tribunal.

4. On the other hand, learned counsel for the respondents states that future prospects of the deceased has to be taken into consideration while

assessing the dependency and economic loss to the dependants of the deceased. This arrangement has been made on the basis of the material

available with the learned Tribunal. The plea that the family pension has to be deducted from the annual income assessed is not correct for the

reason that it is peculiar loss to the claimants. It is further stated that compensation payable under the Motor Vehicles Act is a statutory income and

any contribution made by deceased like General Provident Fund, Special Provident Fund, LIC, etc., which are repayable to the employee at the

time of voluntary retirement, death or for any other reason, are in fact the deferred payments and are savings and those cannot be deducted.

5. Heard learned counsel for the parties and perused the record.

6. The contention raised by learned counsel for the appellant is that future income which would have accrued to the deceased, has been calculated

without there being any basis. He states that future earnings cannot be considered unless all relevant facts are proved by reliable and cogent

evidence. He placed reliance on a Supreme Court judgment in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and others, reported in AIR 2006

SC1255.

7. While analyzing the import of the judgment (supra) there is no dispute that while calculating the future earnings of the deceased there has to be

cogent and reliable evidence before the learned tribunal. The claimants are required to prove that the deceased was in a trade where he would

have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his

income. The import of the judgment clearly reveals that the claimants were required to prove that deceased was in a trade where he would have

earned more from time to time. In other words, if the claimants would have been

able to prove that the deceased would have earned more from time to time then alone they would be entitled to this increase. Admittedly, the deceased was working as Senior Assistant in Himachal Pradesh State Electricity Board, Bharmour and was at the age of 45 years. His chances of promotion were apparent and one could have safely drawn this conclusion that the deceased would have earned promotion till he attained the age of superannuation. It is not a case where no such view could be drawn that the deceased would earn future promotion also. Even, the learned tribunal was conscious of this fact that deceased would have earned further promotion and there would be increase in his salary. The learned tribunal has recorded the findings that there was evidence on record which was sufficient to prove that the deceased had to yet serve the department for two and a half years and he would have to get further promotion, which would have increased his salary. Now how this increase could be calculated was the sole question. How the prospective income is to be considered came up for consideration before the Hon'ble High Court of Karnataka in a case Rita Van alias Vanita Van and others Vs.

Ahmedabad Municipal Transport Service and another, reported in 2000 ACJ in which it has been held as under :

It is a settled proposition of law that with a view to award a just and reasonable amount of compensation in a case of fatal injuries, it is incumbent as to what was the income at the relevant time of the accident and what would have been or probable prospective earnings in the later years of the life. The amount of income prevalent at the relevant time in absence of any other evidence, as required to be doubled and the reduced by half so as to reflect the prospective average income for the purpose of determining the tatum figure.

8. Applying this test, the learned tribunal has correctly worked out that after making aforementioned deduction, gross annual income would be

Rs.12,300/ per month which can be treated as monthly economic loss and annual loss to the tune of Rs.1,47,600/. The contention of learned counsel for the appellant is not well founded.

9. The other question that has been raised is in respect of multiplier. To be fair to Mr. L.K.Sharma, he has not pressed this point.

10. Now coming to the second question as to whether deduction of family

pension is deductible from the compensation amount so payable. This contention of the appellant is also not well founded. The compensation under the Motor Vehicles Act is on account of pecuniary loss to the claimants by accidental injury or death and not other forms of death. Therefore, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental death. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all kinds of heritable assets. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. The following observations of the Supreme Court are relevant for this purpose. An employee contributing to a provident fund and his heirs are entitled to the amount of funds irrespective of the accidental death. Similarly, the heirs receive family pension even otherwise than the accidental death. There is no correlation between the two. Similarly, the amount of life insurance policy is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc., though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount cannot come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction.

11. Consequently, family pension payable to the petitioner cannot be deducted from the annual income assessed by the learned tribunal.

12. For what has been stated hereinabove, there is no merit in this appeal, the same is, accordingly, dismissed. Amount, if any, deposited before this court, shall be released immediately in favour of the claimants along with interest after proper identification as per the award of the learned Tribunal.