(2016) 10 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : CIMA No. 130 of 2014 and MP Nos. 02 of 2016 & 179 of 2015

ICICI Lombard, General Insurance Co. Ltd. APPELLANT

Vs

Sakina Bi (Mst.) RESPONDENT

Date of Decision : 14-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) AAC 1066 : (2016) 4 JKJ 52

Hon'ble Judges : Mr. Janak Raj Kotwal, J.

Bench : Single Bench

Advocate : Mr. A.M. Malik, Advocate and Mr. Ch. Ghulam Murtaza, Advocate, for the Respondent; Mr. Sandeep Singh, Advocate, for the Appellant/Petitioner

Final Decision : Disposed Off

Judgement

1,Loss of dependency,:,"Rs. 6,48,000

2,Funeral Expenses,:,"Rs. 5,000

3,Loss of Estate,:,"Rs. 5,00

4,Loss of consortium,:,"Rs. 10,000

,Total,:,"Rs. 6,68,000/-

(i) Additions/deductions to be made for arriving at the income;,,,

(ii) the deduction to be made towards the personal and living expenses of the deceased; and,,,

(iii) the multiplier to be applied with reference to the age of the deceased.""",,,

17. Addition to the income where the deceased was having a permanent job, as in the case on hand, is governed by the age of the deceased (Para",,,

11 of the report):,,,

11.. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent of actual salary to the",,,

actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the",,,

annual income is in the taxable range, the words 'actual salary' should be read as actual salary less tax']. The addition should be only 30 per cent if",,,

the age of the deceased was 40 to 50 years. There should be no addition where the age of the deceased is more than 50 years. Though t Ire,,,

evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or",,,

different methods of calculations being adopted. A departure therefrom should be made only in rare and exceptional cases involving special,,,

circumstances.""",,,

18. Deduction towards the personal and living expenses of the deceased is governed by the number of the dependents/claimants (Para 14 of,,,

report),,,

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok",,,

Chandra's case, 1996 ACJ 831 (SC), the general practise is to apply standardized deductions. Having considered several subsequent decisions",,,

of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should",,,

be one-third (?rd) where the number of dependent family members is 2 to 3; one-fourth (Â¼th) where the number of dependent family members,,,

is 4 to 6; and one-fifth (?th) where the number of the dependent family members exceed six.""",,,

19. Multiplier is to be selected and applied on the basis of the age of the deceased from Column 4 of the table given in Para 40 of the reporting in,,,

Sarla Verma's case.,,,

20. A plain and collective reading of the principles stated by their Lordships in Sarla Verma, in particular, Para 9 and Para 14 (supra) of the",,,

reporting would render it beyond any doubt that award of compensation under the head, 'loss of dependency' is governed by the number of",,,

dependents of the deceased and not the number of legal representatives having filed the claim. Only such legal representatives of the deceased who,,, at the time of the death were dependent upon him are relevant for calculating compensation payable under the head 'loss of dependency'. Only,,,

such claimants would be entitled to compensation under this head.,,,

21. -,,,

22. -,,,

23. The legal position, thus, can be summarized that a legal representative of victim of a motor accident, who was not dependent upon the",,,

deceased, though can lay a claim for compensation, he is not entitled to compensation under the head 'loss of dependency'. He would be entitled",,,

to compensation for loss to estate as well as the statutory compensation under Section 140 of the Act.""",,,

8. In order to claim compensation under the head 'loss of dependency' a duty is cast on the claimant(s) to plead and prove before the Tribunal that,,,

he/they was/were dependent upon the deceased at the time of his death and have suffered loss on that score due to his death. In the case on hand,,,

the say of the claimants in the Claim application is that the deceased was a carpenter, he was earning Rs.9,000/- per month and that he used to",,,

spend his whole income on the welfare of the claimants. It has not been stated as to how the grown up children, in particular three sons aged 26,",,,

28 & 32, had no income of their own and were also dependent on t he income of the deceased.",,,

9. Claimants produced two witnesses, namely, Mohd. Khursheed Khan and Anayat Ahmed before the learned Tribunal, besides Claimant No. 1,",,,

Sakina Bi, the wife of the deceased, entering the witness box. There is nothing substantial in their evidence in regard to the individual dependency",,,

or the extent of the loss suffered by a claimant. There is not even a whisper to explain as to how even the grown up sons were dependent upon the,,,

deceased as at the time of his death. Relevant in the evidence of Claimant No. 1 is that entire family was dependent upon the deceased and all the,,,

children are yet to be married. It is in the evidence of PW-Mohd. Khursheed Khan that family of the deceased has been rendered support less as,,,

they have no source of income and children are yet to be married. Likewise, it is in the evidence of PW-Anayat Ahmed that family of the deceased",,,

was dependent upon the deceased.,,,

10. The evidence led by the claimants is too scanty and insufficient to prove that

even the grown up children of the deceased or some of them were,,,

dependent upon their old aged father. Grown up children normally cannot be treated as the dependents of their old aged father and to have,,,

suffered any loss of dependency due lo his death. So in order to claim compensation for loss of dependency they have to lead positive evidence to,,,

prove that they were dependent upon him The possibility of the grown up children being dependent on their old aged father may, however, arise in",,,

a case where they are still undergoing their studies or are incapacitated due to some disability or disease from earning their livelihood or, may be,",,,

there is any other special reason. Claimants are required to prove this aspect as a fact by leading evidence.,,,

11. Impugned judgment and award on its plain reading would show that learned Tribunal has acted in a mechanical manner under an impression as,,,

if all legal representatives of victim of a fatal accident are entitled to compensation even under the head 'loss of dependency', notwithstanding",,,

whether they were dependent upon the deceased or not. The question of the loss of dependency is incorporated in Issue No. 2 framed by the,,,

learned Tribunal. A plain reading of the learned Tribunal's discourse on issue No. 2 would show, however, that, whereas, the Tribunal has dealt",,,

with the income of the deceased, deduction towards his personal and living expenses and the selection of multiplier, it has totally ignored to",,,

ascertain and identify the claimants who were dependent upon the deceased as at the time of his death. This is not the correct legal approach. It,,,

needs to be reiterated that only those legal representatives, who were dependent upon the deceased as at the time of his death, are entitled to",,,

compensation under the head 'loss of dependency'. It needs to be dated that Section 168 of the Act casts a solemn duty on a Claims Tribunal to,,,

hold inquiry into the claim and determine the amount of compensation, which is just and reasonable and to specify the person(s) to whom",,,

compensation shall be made. In determining the entitlement of the claimants to compensation in death cases loss of dependency suffered by a,,,

claimant is on important factor which should not be ignored and must get specific attention and determination by the Tribunal.,,,

12. Learned Tribunal in this case has fallen in serious error of law by granting compensation under the head 'loss of dependency' on the basis of,,,

head count of the claimants without ascertaining whether all of them were dependent upon deceased or not. That the Tribunal acted in a,,,

mechanical manner is evident from the direction that compensation payable to ""minor shall be kept in fixed deposit till they attain majority"",",,,

notwithstanding that all the claimants were major as at the time of filing the claim. Finding of the learned Tribunal in issue No. 2, therefore, does not",,,

sustain and is liable to be set aside.,,,

13. Before setting aside the finding in issue No. 2 important question in regard to maintainability of this appeal raised by the learned counsel for the,,,

claimants needs to be taken up. Argument was that the insurer cannot file appeal on quantum of compensation when it neither had sought leave in,,,

terms of Section 170 of the Act before the Tribunal nor led any evidence in rebuttal.,,,

14. Contextually, it is noticed that the driver and the owner of the offending bus did not contest the claim before the learned Tribunal. In spite of",,,

that the appellant-insurer did not seek leave of the Tribunal in terms of Section 170 of the Act that gives the insurer right to contest a claim on all or,,,

any of the grounds that are available to the person against whom the claim has been made, that is, driver and/or owner of the offending vehicle.",,,

This right accrues when to the satisfaction of the Claims Tribunal there is collusion between the person making the claim and the person against,,,

whom the claim is made, that is, owner and/or driver of the offending vehicle or the person against whom the claim is made has failed to contest the",,,

claim.,,,

15. Section 173 of the Act provides for the appeal against the award of a Claims Tribunal in a claim under Section 166 of the Act. There is nothing,,,

in Section 173 or any other provision in the Act that completely debars the Insurance Company from filing appeal against award of a Claims,,,

Tribunal, howsoever aggrieved it might feel. Section 173 in wider terms gives the right of appeal to 'any person aggrieved by any award of a",,,

Claims Tribunal.' Argument of learned counsel for the claimant was that when the insurer fails to avail his right under Section 170, right to appeal",,,

under Section 173 is not available to the insurer as it cannot be treated as aggrieved person as the aggrieved person may either be a claimant or the,,,

owner and/or driver of the offending vehicle. The question, thus, raised precisely is, whether insurer or an offending vehicle on whom liability of",,,

satisfying the award passed against the owner (insured) has been foisted has no independent right of appeal against the quantum of compensation,,,

awarded by the Claims Tribunal? Answer to this question can be found in Supreme Court Judgment in United India Insurance Company Ltd.,,,

v. Bhushan Sachdeva & Ors., AIR 2002 SC 662. Their Lordships have held in Para 7 of the reporting:",,,

7. In our view, the stand of the appellant that it cannot file an appeal at all before the High Court under Section 173 of the Act is based on an",,,

erroneous assumption. So long as the insured has not challenged the award passed against him and so long as the liability would only fall on the,,,

Insurance Company it is inequitable to deny a remedy of appeal to the Insurance Company. We will now see whether Section 173 contains any,,,

bar against filing such appeal by the Insurance Company""",,,

16. In Bhushan Sachdeva's case Supreme Court has interpreted the term 'any person aggrieved by an award of the Claims Tribunal' to determine,,,

'when can insurance company can be aggrieved with the award passed by a Claims Tribunal to invoke the right envisaged in Section 173 of the,,,

Act' and 'can it be said that the Insurance Company should not have any grievance at all even in a case where the award appears to be unjust to,,,

that company?' Supreme Court has held in Para 10:,,,

10. We are, therefore, of the view that the insurance company can fall within the ambit of the words ""any person aggrieved by an award of the",,,

Claims Tribunal"" as used in Section 173(1) of the Act, when the insured failed to file an appeal against the award.""",,,

17. Supreme Court in the same judgment has held that right to contest that accrues to the insurer before the Claims Tribunal will similarly accrue if,,,

the insured fails to prefer an appeal against the award. Para 13 of the reporting is important, which I reproduce:",,,

13. What is meant by the words ""failed to contest""? Those words must be interpreted in a realistic manner. Right to contest would include the right",,,

to contest by filing an appeal against the award of the Tribunal as well. Hence the insured can continue to contest the claim by filing an appeal as,,,

provided under Section 173 of the Act. If the insured fails to prefer an appeal that also would amount to failure to contest that claim effectively.,,, Quite often the insured would lose the desire to contest the claim once he is told that he would not be mulcted with the liability as the same is,,,

siphoned off to the insurer. It means that insured had dropped out from contesting a claim midway. In such an eventuality the Act enables the,,,

insured to contest it on all grounds available to the insured.""",,,

18. Legal position, thus, emerges clear. There is no statutory provision nor any recognised principle of law that debars insurance company from",,,

filing appeal against award passed by a Claims Tribunal on the question of quantum only. It would not be impressible or difficult for the insurer to,,,

invoke remedy of appeal under Section 173 of the Act if award suffers from illegality, in a case where the insured has failed to contest the claim",,,

before the Tribunal or has not filed appeal against the award. In such a case seeking leave under Section 170 of the Act before the Tribunal cannot,,,

be treated as a pre condition to filing of appeal by the insurer.,,,

19. In the case on hand, as said above, learned Tribunal has committed a serious error of law in deciding issue No. 2 and determining the",,,

compensation, appeal filed by the appellant-insurer is, therefore, accepted and finding in issue No. 2 is set aside. The case is remanded to the",,,

learned Tribunal to decide issue No. 2 afresh by allowing the parties to lead more evidence, if so desired.",,,

20. Given that the award of the Tribunal has been assailed on the quantum of compensation only, out of the award amount deposited in this Court,",,,

two lac rupees shall be released in favour of Claimant No. 1 Sakina Bi, that is, wife of the deceased and one lac each in favour of Claimants 5 to",,,

7, which shall be subject to final award and apportionment by the learned Tribunal.",,,

21. Record of the Tribunal be remitted back along with a copy of this judgement.,,,

