
(2001) 11 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : CIMA No. 56 of 2000

Maroofa Begum and Others	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 06-11-2001

Acts Referred:

Citation : (2010) 4 JKJ 471

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.C. Gandhi, Judge

1. This 1st Miscellaneous Appeal has been preferred against the Award dated 16.01.2001 passed by the Presiding Officer, MACT, Ramban in a

Claim Petition seeking compensation of Rs. 21 lacs.

2. Noor Hussain, husband of Appellant No. 1 met with an accident on 14.2.1998 while he was proceeding to Udhampur on duty. Accident took

place at 148 Km on National Highway at Mehad with offending vehicle Gypsy No. 0297-JK02C belonging to the Govt. of J&K. Noor Hussain

as a result of the accident died on the spot. The claim petition came to be filed by the Appellant widow and her children. The deceased was of the

age of 43 years working as village level worker. He was drawing salary Rs. 5820/- per month. The Tribunal out of the pleadings of the parties

framed the following issue:-

(1) Whether Noor Hussain S/o Baja, aged 35 years who was working as VL. W. drawing Rs. 5856/- per month as salary, died as a result of

accident while on duty on 14th of February 1998 at Mehad", Tehsil Ramban

while traveling in Gypsy No. JK02C-0297, driven by Romesh

Kumar employee of the respondent holding valid driving licence as a result of rash and negligent driving of the concerned driver ? OPR

(2) To what compensation the petitioners are entitled to ?

3. On appreciation of the evidence led by the parties, the Tribunal has determined the income of the deceased as Rs. 5820/- per month. By

applying multiplier of 13, the Appellants have been held entitled to a sum of Rs. 6,98,400/- with interest @ 12% from the date of filing of the

objections by the respondents but deducted Rs. 4,88,880/- as income to the claimants being family pension available to the Appellants.

4. The appellants have challenged the impugned Award on the ground that the Tribunal was not justified in deducting the family pension out of the

Award amount. Appeal is admitted to hearing and taken up for final disposal as agreed by the learned counsel for the parties.

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

5. Mr. Thakur learned counsel representing the Appellants has submitted that the family pension available to the dependents of the deceased is not

incidental to the death, therefore, this would not have been deducted from the Award. In support of his submission he has relied upon the

Judgment of the Supreme Court delivered in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . In

rebuttal Mr. Kakkar, representing the respondents has submitted that in view of Para (bbb) of the J&K Family Pension-Cum-Gratuity Rules 1964,

the Tribunal was justified in deducting the amount as it is an enhanced pension and not a normal family pension. The tribunal with a view to justify

the deduction has recorded the following finding: -

all the petitioners are entitled to get the compensation. With the help of schedule 2nd of Motor Vehicles Act, 1988 (Central) the compensation due

to the petitioner is calculated in the amount of Rs. 6,98,400/- (Rupees Six lacs ninety eight thousand and four hundred). As per service rules the

petitioners are also entitled to full salary of the deceased Govt. employee for seven years since he had died in harness and this amount has to be

excluded from the amount of compensation. After doing so the petitioners are found to be entitled to a compensation of Rs. 2,09,520/- (Rupees

two lacs nine thousand five hundred twenty) plus rupees 2000/- funeral charges

and five thousand consortium to No. 1 petitioner.

6. Para (bbb) referred to above on which reliance has been placed for justification of deduction is also extracted below and reads: -

Notwithstanding anything contained in sub-clause (bb) above, where a government servant dies while in service after having rendered not less than

7 years continuous service, the rate of family pension admissible to the beneficiary of the deceased shall be equal to the pay last drawn by the

deceased officer before his death. Pension at the enhanced rates equal to the last pay shall be payable for a period of 7 years from the date

following the date of death of the government servant or for period up to the date on which the deceased government servant would have attained

the age of superannuation whichever is earlier. After having drawn family pension at such enhanced rates, it will be allowed at the rate equal to

50% of pay last drawn or twice sub-rule (ii) (aaa) whichever is less and the amount so admissible shall be payable for a period of 7 years from the

date the payment of enhanced pension as per preceding para ceases or till the deceased would have attained the age of 62 years whichever is

earlier.

Perusal of this provision of law reveals that it deals with entitlement and rates of pension in particular situation, keeping in view the length of service

rendered by the deceased. His plea is that since it is not a normal pension, therefore, it can be deducted. It is a social legislation to ensure that if a

public servant dies in harness his family's existing economical condition may not shatter abruptly. It is a condition of service having no nexus with

accidental death. It is strictly a pension available to the dependents accruable under service rules. It has no semblance or co-relation with the

compensation payable for negligence in driving vehicle causing injury or death.

7. The Supreme Court while dealing with such situation has held in Para No. 36 of the Judgment *Mrs. Helen C. Rebello and Others Vs.*

Maharashtra State Road Transport Corpn. and Another, that:-

Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the

tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is

certain to be received, while the amount under the Motor Vehicles Act is

uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two.

The court has further held while dealing with the deduction of the amount of Life Insurance Policy that:-

How could such an amount come within the periphery of the Motor Vehicles Act to be termed as ""Pecuniary advantage"" liable for deduction.

When we seek the principle of loss and gain, it has to be on similar and same plane having nexus interest between them and not to which, there is

no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the

compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation

under the act is on account of injury or death without making any contribution towards to it, then how can fruits of an amount received through

contributions of the insured be deducted out of the amount-receivable under the Motor Vehicles Act. The amount under this Act, he receives

without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under

the Life Insurance Policy is contractual.

In view of such proposition of law, the Tribunal was not justified in deducting the amount of the family pension from determined amount of Award.

The Appeal is accordingly allowed. The Award of the Tribunal is modified to that extent.