

(2020) 07 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 270 Of 2009, IA No. 82 Of 2011, CCROS No. 32 Of 2010, Civil Miscellaneous No. 799 Of 2020

National Insurance Company Limited

APPELLANT

Vs

Paramjeet Kour And Others

RESPONDENT

Date of Decision : 16-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0066

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D. S. Chauhan, R.K. Bhatia

Final Decision : Disposed Off

Judgement

Sanjeev Kumar, J

CM No. 799/2020

1. The parents of the deceased, respondent Nos. 4 & 5 in the appeal, are stated to have died during the pendency of this appeal and this application has been moved to take on record their legal representatives by stating that the deceased Nos. 4 & 5 are survived by only three legal representatives, who are already party respondent Nos. 1 to 3 in the appeal and cross objector Nos. 1 to 3 in the cross appeal.

2. Accordingly, the factum of death of respondent Nos. 4 & 5 is taken on record. Since the legal representatives of the deceased-respondents/cross objectors are already on record, as such, there is no formal requirement of substitution. The appeal as also the cross objections shall proceed qua the surviving respondents/cross objectors.

MA No. 270/2009

1. This is an appeal filed by the National Insurance Company Limited (hereinafter "the Insurer") against the award dated 30.01.2009 passed by the Motor

Accidents Claims Tribunal, Jammu (hereinafter "the Tribunal") in file No. 12/ Claim titled "Paramjeet Kour & Ors. Vs. Rakesh Singh & Ors." whereby the Tribunal has held respondent Nos. 1 to 5 entitled to compensation of ₹ 20,21,760/- along with interest @ 7.5% per annum from the date of institution of the claim petition till realization. The appeal by the Insurer is solely on the quantum.

2. It is contended by Mr. D.S. Chouhan, learned counsel for the insurer, that the Tribunal has committed a serious error in computing the just and fair compensation and has, in the process, ignored the settled guidelines issued for computation of compensation for Motor Vehicle Accidents by the Supreme Court from time to time. It is urged that, as per the evidence on record and accepted by the Tribunal, the monthly salary of the deceased at the time of accident was ₹ 7,898/- per month and the deceased was 27 years old.

3. Going by the age, it is contended, there ought to have been given the increase of 50% towards loss of future prospects and the applicable multiplier as laid down in "Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & anr. 2009 (3) Supreme 487", case was 17. He further submits that having regard to number of dependents i.e., five, the deduction to be applied was 1/4th of the income of the deceased.

4. Mr. D.S Chouhan, learned counsel for the appellant, therefore, submits that the total loss of dependency would come to Rs 1,812,540/- whereas the Tribunal has erroneously awarded ₹ 20,21,760/- under this head. He has raised no other objection to the impugned award.

5. On the other hand, Mr. R.K. Bhatia, learned counsel for the respondents-claimants, who have also filed cross objections, submits that the impugned award deserves to be enhanced. He submits that in view of the law laid down by the Supreme Court in the case of "Sureshchandra Bagmal Doshi and another Vs. New India Assurance Company Limited and others" (AIR 2018 Supreme Court 2088), the increase in income by way of future prospects should have been given by 100%.

6. Having heard learned counsel for the parties and perused the record, I am of the view that the impugned award deserves some variation, so as to bring it in accord with the settled legal parameters laid down by the Supreme Court for assessment of the compensation under Motor Vehicles Act.

7. Admittedly, the monthly income/salary of the deceased, who at the relevant point of time was serving in Indian Army as L/Naik, was ₹ 7,898/-. Being a Government employee, aged 27 years, ordinarily his monthly income was entitled to be increased by 50%. This appears to have been done by the Tribunal but there appears to be some calculation mistake. Since the deceased was survived by five dependants, the applicable deduction on account of personal expenses of the deceased as provided in Sarla Verma's case (supra) and reiterated in "National Insurance Company Limited Vs. Pranay Sethi & Ors.

(2017) 16 SCC 680" was 1/4th and not 1/3rd as applied by the Tribunal. The Tribunal has also erroneously applied the multiplier of 16, when the appropriate multiplier to be applied in the instant case was 17.

The sums awarded under the conventional heads are not in consonance with the law laid down in Pranay Sethi's case (supra). Accordingly, the compensation payable to the claimants is reworked as under:

Loss of dependency = Rs 8,885×12×17 = Rs 1,812,540/-

Funeral expenses = Rs 15,000/-

Loss of estate = Rs 15,000/-

Loss of spousal consortium to (respondent No. 1/wife) = Rs 40,000/-

Loss of parental consortium to respondent Nos. 2 & 3 (minor sons) Rs 40,000/- each = Rs 80,000/-

Total = Rs 1,962,540/-

8. The aforesaid amount, as provided by the Tribunal, shall be paid with interest @ 7.5% per annum from the date of filing of the claim petition till its payment. The compensation shall be disbursed in the manner provided in the impugned award. Appeal is disposed of and the award is modified to the aforesaid extent.

CCROS No. 32/2010

1. In the cross objection, the only additional plea taken is that in the instant case, the increase of income by way of future prospects should have been by 100%.

2. Mr. R.K Bhatia, learned counsel for the cross objectors/claimants relying upon the judgment of Sureshchandra Bagmal Doshi (supra) submits that having regard to the evidence on record, it is evident that the deceased had a very bright future and would have in due course risen to the level of Captain in the Indian Army.

3. I have considered the submissions of learned counsel for the cross objectors/claimants and the evidence on record and find that there is no substantial evidence led by the claimants to show that the deceased L/Naik serving in the Army had a very bright future and was sure to reach the rank of Captain in the Indian Army. Other than an oral statement by the wife of the deceased, nothing substantial has come on record. The official witness from the Indian Army has also not proved any such thing. In the face of evidence available on record, it is difficult for this Court to say with certainty that the deceased had a very bright future and would have risen to the rank of Captain and above in the Indian Army. He was L/Naik serving in the Army would have got usual promotions as are available to a Government employee.

4. The judgment relied upon by learned counsel is, thus, clearly distinguishable

on facts. In the aforesaid case, the claimants had placed on record two certificates to indicate that future income of the deceased would have doubled, such is not the case in hand. Other short grievances of the cross objectors have already been taken note and redressed hereinabove, while disposing of the appeal filed by the Insurer.

5. The cross objections are, therefore, disposed of accordingly, and no other amount except what has given hereinabove while disposing of the appeal of the Insurer can be allowed in favour of the cross objectors.