
(2019) 10 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 4006 Of 2013

National Insurance Company Ltd.

APPELLANT

Vs

Asha Verma

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Citation : (2019) 10 SHI CK 0064

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jagdish Thakur, Dibender Gosh, Y.P. Sood, P.S. Goverdhan

Final Decision : Partly Allowed

Judgement

Jyotsna Rewal Dua, J

1. Insurer is in appeal challenging the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Shimla, H.P. in MACT No.11-S/2 of 2009.

2. Facts may be noticed:

2(i) Claimants are parents of Sh. Vikas Sharma, who while traveling in bus bearing Registration No.HP-13B-0399, met with an accident on 10.8.2006. He remained admitted in Indira Gandhi Medical College w.e.f. 10.8.2006 to 14.8.2006. Deceased was 21 years old bachelor at the time of his death.

2(ii) Claim petition was preferred by the parents of the deceased, claiming Rs.15,00,000/- as compensation. Deceased was stated to be a student of Class +2 and earning income as a forwarding agent as well as from agricultural work. The monthly income of the deceased was claimed @ Rs.20,000/- per month.

2(iii) Learned Tribunal held that the accident had occurred due to rash and negligent driving of the vehicle in question. The claim petition was allowed. Compensation of Rs.6,32,000/- was awarded to the parents of the deceased alongwith interest @ 9% per annum from the date of the filing of petition till the

deposit of the amount.

2(iv) The finding in respect of rash and negligent driving of the vehicle has attained finality. The liability to pay the compensation was fastened upon the insurance company. Aggrieved, insurance company has preferred the instant appeal.

3 I have heard learned counsel for the parties and gone through the record. The only point urged in this appeal is in respect of income of the deceased determined by the learned Tribunal.

4. Income of deceased:

4(i) The claimants had alleged in the claim petition that their son use to earn Rs. 20,000/- per month from agricultural work, by working as forwarding agent and by getting commissions. However, learned Tribunal has not accepted this plea for want of any income certificate of the deceased from the competent authority. Learned Tribunal accordingly assessed the income of the deceased on the basis of Minimum Wages Act at Rs.4500/- per month.

4(ii) Mr. Jagdish Thakur, learned counsel for the appellant/insurance company contended that while assessing the income of the deceased under the Minimum Wages Act, it was not open for the learned Tribunal below to arrive at the figure of Rs.4500/-per month. He has produced on record the minimum wages notification in respect of unskilled labourers in Agriculture. According to this notification, the minimum rates of wages for unskilled worker were Rs.70/- per day or Rs.2100/- per month w.e.f. 15.8.2005. The argument of learned counsel for the appellant carries force that the learned Tribunal having come to the conclusion that income of the deceased was required to be assessed on the concept of Minimum Wages Act, was required to keep in mind the minimum wages notification of the relevant period. Thus, income of deceased has to be considered Rs.2100/- per month as per Minimum Wages Act. This is also in accordance with the law laid down in 2012(1) ACJ 28 titled Govind Yadav Vs. New India Assurance Co. Ltd. relevant segment is reproduced hereinafter:-

"A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as helper and was getting salary of Rs.4,000 per month. The Tribunal discarded his claim on the premises that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. Learned Tribunal then proceeded to determine the amount of compensation in lieu of loss of earnings by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned single Judge of the High Court assumed that while working as a cleaner, appellant may have been earning Rs.2,000 compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000 per month. Therefore, in the absence of other cogent evidence, Tribunal and the High Court should have determined the amount of compensation

in lieu of loss of earnings by taking the appellant's notional annual income as Rs.36,000 and the loss of earnings on account of 70 per cent permanent disability as Rs.25,200 per annum."

4(iii) By applying the law laid down by the Hon'ble Apex Court in 2017 ACJ 2700 titled National Insurance Co. Ltd. Vs. Pranay Sethi, 40% of the above income is required to be added towards future income prospects of deceased. Additionally Rs.15,000/-each under the conventional heads of funeral expenses and loss of estate, are to be granted to the claimants. Since the deceased was bachelor and was 21 years of age, therefore, 50% of his income is required to be deducted towards his personal expenses.

4(iv) Hon'ble Apex Court in 2018 (11) Scale 247 titled Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and Ors., elaborated the concept of filial consortium and held as under:-

"8.6 The MACT as well as the High Court have not awarded any compensation with respect to Loss of Consortium and Loss of Estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognised by the Constitution Bench in Pranay Sethi.

The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant.

.....

8.7 A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

With respect to a spouse, it would include sexual relation with the deceased spouse. (Rajesh and Ors. vs. Rajbir Singh and Ors 2013 9 SCC 54) Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation. "(BLACK'S LAW DICTIONARY (5TH ed. 1979))

Parental consortium is granted to the child upon the premature death of a parent, loss of "parental aid, protection, affection, society, discipline guidance and training.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count(Rajasthan High Court in Jagmal Ram @ Jagmal Singh & Ors V. Sohi Ram & Ors 2017 4 RajLW 3368 (Raj); Uttarakhand High Court in Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors 2014 3 UC 1687; Karnataka High Court in Lakshman and Ors. v. Susheela Chand Chaudhary & Ors 1996 3 KarLJ 570 (DB)). However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi.

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium."

On the above analogy, the claimants are entitled to Rs.40,000/- each for loss of filial consortium.

4(v)(a) Sh. Dibender Gosh, learned Counsel for respondents No.1 and 2/ claimants has very fairly not opposed the above calculations and assessments. However, his contention is that:- amount earned by the deceased on account of agricultural/commissioning work was also required to be added towards his income; learned MACT has erred in not relying upon the statements of PW-3 Sh. Manu Ram and PW4 Sh. Bhumi Raj in this regard.

4(v)(b) PW-3 Sh. Manu Ram stated that; he was working as transporter since 1998 and is registered as such; he transported the vegetables and fruits etc. obtained from the farmers to different places; deceased use to work under him; deceased also transported his own vegetables and fruits etc; he use to pay commission to the deceased for work of forwarding agent carried out by the deceased; he, on an average paid Rs.7-8 thousand per month to the deceased as commission. The witness though was cross examined by respondents No.1 to 3 therein, but no cross examination was conducted on behalf of the insurance

company/appellant. In his cross examination conducted on behalf of respondents No.1 to 3, this witness admitted that he could not produce any document or record or any contemporary material to show payment of Rs.7-8 thousand per month to the deceased as commission.

4(v)(c) Similarly PW-4 Sh. Bhumi Raj, in his examination-in-chief stated that; deceased purchased vegetables from the villagers and transported the same to other places (vegetable markets). In his cross examination on behalf of respondents No.1 to 3, he admitted that the said transportation work could be carried out only for around six months in a year. No cross examination of this witness was conducted by the insurance company/appellant.

4(v)(d) Learned counsel for the claimants submitted that the learned Tribunal below was not justified in ignoring the above evidence and in not adding any amount to the income of the deceased from the agricultural/forwarding agent work. He also contented that it is open for the claimants to pray for addition to the income of deceased on this ground even though they had neither filed any appeal or cross objection.

It is not necessary to go into the larger question of right to seek additions to the income without filing cross objections/cross appeals as in my considered view also, the evidence led by the claimants in respect of deceased allegedly earning from the agriculture/forwarding agent work is not substantiated on the record. It will not be appropriate to go for guess work in absence of any cogent and reliable evidence in that regard.

4(vi). Multiplier:

Learned Tribunal though has taken the age of deceased at the time of accident as 21 years, however, multiplier of 17 has been applied. Learned counsel for the appellant/insurance company has fairly conceded that in view of the judgment passed by the Hon'ble Apex Court in 2009 (6) SCC 121, titled Sarla Verma Vs. DTC Limited, multiplier of 18 was required to be applied.

5. In view of the above discussion, the impugned award is modified in the following manner.

Sr. No

Heads

Amount

1

Income of deceased

Rs.2100 + 840 (40% addition) = Rs.2940/-

2

Dependency

Rs.2940-1470 (50% deduction)= Rs.1470/

3

Total dependency

Rs.1470x12x18= Rs.3,17,520/-

4

Funeral expenses

Rs.15,000/-

5

Loss of estate

Rs.15,000/-

6

Total compensation

Rs.3,47,520/-

7

Filial Consortium

Rs.80,000/-

8

Total modified amount

Rs.4,27,520/-

In view of the afore discussions, the present appeal is partly allowed and the impugned order passed by learned Motor Accident Claims Tribunal Shimla, is modified to the extent indicated above. Present appeal is accordingly disposed of, so also, the pending application(s), if any.