(2008) 05 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : CIMA No. 100 Of 2005 and CMP No. 132 Of 2005

New India Assurance Co. APPELLANT

Vs

Bansi Lal & Ors. RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Citation : (2009) 3 JKJ 601

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : O.P.Sharma, R.K.Gupta, Advocates appearing for the Parties

Judgement

1. New India Assurance Company Limited has questioned Motor Accidents Claims Tribunal Rajouri's award of May 5, 2005, for an amount of

Rs. Rs.6,20,556/ along with interest, at the rate of 6% per annum from the date of filing of the claim petition till its realization, in favour of

respondent nos. 1 and 2 for the death of their unmarried son Sanjay Kumar in a motor vehicular accident caused by rash and negligent driving of

vehicle no. JK02M5807 by respondent no. 4 Kuldeep Singh, its driver, on the ground that compensation awarded by the Tribunal was excessive.

2. Learned counsel for the appellant Mr. R.K. Gupta submits that the Tribunal had adopted a higher multiplier besides committing an error in

deducting 1/3rd amount out of the income of the deceased rather deducting 2/3rd from the income of the deceased to determine the dependency

of the claimants on the income of the deceased.

3. Learned counsel for the claimants, on the other hand, justified the award of the Tribunal, saying that the amount awarded by the Tribunal

represents just compensation and the Tribunal had not erred in adopting the multiplier.

4. I have considered the submissions of learned counsel for the parties and gone through the records of the case.

5. While assessing the monthly income of the deceased at Rs. 5500/, the Tribunal appears to have erred in adding an amount of Rs. 500/ per

month to the proved income of the deceased, in that, without having set up or proved any case for presumptive prospective increased income of

the deceased, the claimants were not entitled to claim increase in the income of the deceased.

6. I would, accordingly, while modifying the findings of the Tribunal regarding assessment of deceased's monthly income, assess his monthly

income at Rs. 5000/.

7. Age of the mother of the deceased being 40 years and that of his father as 50 years, I would take the multiplier prescribed for the age group of

4045 years for selecting a suitable multiplier. Multiplier prescribed for this age group being 15 in the second schedule published under Section

163A of the Motor Vehicles Act, I do not find any error in Tribunal's selecting 14 as the suitable multiplier.

8. Appellant's contention that the Tribunal had erred in deducting 1/3rd out of the income of the deceased rather than deducting 2/3rd, is found to

be well founded, in view of the law laid down by Hon'ble Supreme Court of India in Donat Louis Machado & Ors vs. L. Ravindra and ors,

reported as 1999 ACJ 1400.

9. Finding of the Tribunal, deducting 1/3rd out of the income of the deceased to determine the dependency of the claimants on his income,

therefore, needs to be modified and 2/3rd is required to be deducted from his income, at the time of his death.

10. In view of the above finding, the compensation payable to the claimants by adopting multiplier method, which has by now been accepted by

Hon'ble Supreme Court of India to be the best method for determining just compensation for death/injuries to those who become victim of the

motor vehicular accidents, the compensation payable to the claimants would come to Rs. 3,20,600/, break up whereof would be as follows:

1.

Yearly dependency of the claimants on the income of the deceased

: Rs. 20,400/

2.

Multiplier selected for capitalization

: 14

3.

Compensation for Loss of love and affection

: Rs. 15,000/

4.

Compensation for Loss of estate

: Rs. 15,000/

5.

Compensation for amount spent on Funeral & other incidental expenses connected therewith

: Rs. 5,000/

11. Rate of interest awarded by the Tribunal, however, appears to be on lower side and going by the trend which had been followed by Hon'ble

Supreme Court of India in recent judgments, it is considered just and proper to award interest at the rate of 7.5% per annum as against 6% as

awarded by the Tribunal.

12. Modifying the findings of the Tribunal, as indicated hereinabove, its award is modified to be an award for an amount of Rs. 3,20,600/ along

with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. Rest of the terms of the award shall,

however, remain same.

13. This appeal is, accordingly, allowed on above terms. Registrar Judicial shall release the awarded amount in favour of the claimants in terms of

this judgment, minus the amount already received by them. Remaining amount, alongwith interest accrued thereon, which is in deposit with the

registry of this Court shall be released in favour of the appellantcompany by a payees account cheque.