
(2019) 04 J&K CK 0124

In the Jammu And Kashmir High Court

Case No : Cross Appeal (Civil) (CCROS) No. 9900008 Of 2013

New India Assurance Co. Ltd

APPELLANT

Vs

Lakhmi Chand And Others

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0124

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Udhey Bhasker, F.S. Butt

Final Decision : Allowed

Judgement

1. These cross objections have been preferred by the respondent Nos. 1 to 7 (hereinafter called the claimants) for seeking enhancement of the amount awarded by the Motor Accident Claims Tribunal (hereinafter called the Tribunal) on 28.4.2012 in File No. 05/Claim titled Lakhmi Chand and others Vs New India Assurance Co. Ltd. and others.

2. Before proceeding to consider the grounds on which the enhancement is claimed by the claimants, it would be necessary to note that against the aforesaid award, the appellant insurance company too, had filed appeal i.e. CIMA No. 11/2013 which was dismissed by the coordinate bench alongwith other connected matters on 09.12.2016 holding that the award passed by the Tribunal, was just and fair and did not call for any modification or reduction. Learned counsel for the appellant - insurance company at the outset raised objection with regard to the maintainability of the cross objections in view of the decision of the appeal on the ground that this court while disposing of the appeal has ready held the award just and proper and, therefore, the said judgment cannot be re-opened in the cross objections.

3. I have considered the issue raised by the appellant-insurance company with regard to the maintainability of this appeal but do not find it sustainable in view

of the settled legal position.

4. The cross appeal can very well, be considered independently of the judgment passed in main appeal. Needless to state that even if the main appeal is dismissed or is withdrawn, the cross objections can still be considered and decided on merits. The judgment of the Supreme Court in the case of Rekha Jain Vs National Insurance Co. Ltd. (2013 8 SCC 389) supports the view, I have taken. This brings me to the merits of the cross objections. The claimants seek the enhancement on the ground that the Tribunal committed grave illegality in taking income of the deceased who was Carpenter by profession as Rs.5,000/- per months. It is submitted that there was ample evidence brought on record by the claimants to prove that the deceased at the time of accident, was earning Rs.8000/- to 10,000/- per month. Relying upon judgments in the bcases of Sarla Verma Vs. Delhi Transport Corporation & Anr, 2009 (6) SCC 121 and National Insurance Co. Ltd vs Pranay Sethi, (2017) ACJ 2700, the claimants submit that the Tribunal ought to have added 40% of the established income on account of loss of future prospectus. But, the Tribunal conveniently omitted it do so and, therefore, committed an error in computing the just and fair compensation. The claimants also dispute operational multiplier of 16 applied by the Tribunal. It is stated that given the age of the deceased at the time of accident which was 18 years in terms of judgment in Sarla Verma's case approved by the constitution bench in Pranay Sethi's case, multiplier of 18 was applicable.

5. Per contra, learned counsel for the insurance company submits that the Tribunal has not committed any illegality in taking income of the deceased as Rs. 5000/- per month in view of non-availability of cogent and convincing evidence with regard to the income of the deceased brought on record by the claimants. He, however, could not justify the omission of the Tribunal to add 40% of the income towards future prospectus to the established income in view of the law laid down in Sarla Verma's case. He, however, points out that the Tribunal committed illegality in making deduction @ 1/3rd of the established income on account of personal expenses ; whereas, as per the guidelines laid down in Sarla Verma and Pranay Sethi's case, in case of bachelor, deductions should have been to the extent of fifty percent.

6. Having heard learned counsel for the parties and perused the record, I am of the view that the award passed by the Tribunal deserves to be enhanced so as to bring it in conformity with the law laid down by the Supreme Court.

7. So far as the income of the deceased is concerned, I am in agreement with the finding of fact recorded by the Tribunal that the claimants had miserably failed to bring on record cogent and convincing evidence that the income of the deceased at the time of accident was Rs.8,000/- to 10,000/- per month. In absence of cogent material available on record, the Tribunal was justified in taking the income of the deceased as Rs.5000/- per month. This, the Tribunal did by taking cue from several judgments passed by the Supreme Court on the issue. I am, however, in agreement with the learned counsel for the cross

objector that the Tribunal should have increased the income of the deceased by adding 40% by way of on account of future prospectus. The position of law has been made ample clear by the judgments rendered in the cases of Sarla Verma and Pranay Sethi.

8. The issue with regard to deduction which is required to be applied in the instant case on account of personal expenses of the deceased, has become bit debatable. The Tribunal has made deduction @ 1/3rd of the established income keeping in view the number of dependents of the deceased. The counsel for the appellant - insurance company however, joins the issue and submits that since the deceased was bachelor, as such the deduction to the extent of fifty percent was required to be made in view of legal position stated in Sarla Verma's case.

9. In the instant case, the deceased is survived by mother, father, four minor brothers and one minor sister. In view of the law laid down by the Supreme Court in its recent judgment titled Magma General

Insurance Company Limited Vs Nanu Ram Alias Chuhru Ram and Ors. Civil Appeal No. 9581 of 2018 decided on 18.09.2018, the deduction towards the personal expenses of the deceased to be applied in the instant case, has to be 1/3rd which has been correctly applied by the Tribunal. For facility of reference paragraph No. 8.2 of the aforesaid judgment which deals with the issue, is reproduced hereunder :

"8.2-With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor.

This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one third, as contribution to the family will be taken as two third.

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2 an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count".

10. The judgment of the Supreme Court aforesaid applies on all fours to the case in hand. That being so, I find no substance in the submission of the learned counsel for the appellant-insurance company.

11. Lastly, as argued by the learned counsel for the cross objector, the compensation awarded under the conventional head is also not in consonance

with law laid down in Pranay Sethi's case and the latest judgment of the Supreme Court in case titled Magma General Insurance Co.Ltd Vs Nanu Ram Alias Chuhru Ram and others.

12. For the foregoing reasons and the discussion made hereinabove, the award passed by the Tribunal is modified in the following manner:

(i)

Compensation on account of loss of dependency.

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Rs. 5000+2000-2330

Rs.4670x12x18

Rs. 10,08,720/-

(ii)

Funeral expenses

:

Rs. 15,000/-

(iii)

Loss of estates

:

Rs. 15,000/-

(iv)

Loss of parental consortium @ 40,000 each = 40,000x 2 =

:

Rs. 80,000/-

Total

:

Rs. 11,18,720/-

13. Accordingly, the cross objections are allowed and the awarded amount is enhanced to the extent aforesaid. Insurance Company shall deposit the enhanced amount in the Registry within two months. On such deposit, Registry shall disburse the same to the Cross-objectors /claimants in the manner provided

in the award.