(2019) 03 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : MA No. 18 Of 2018 IA No. 01 Of 2018, CCROS No. 4 Of 2018

New India Assurance Co. ltd — APPELLANT

Vs

Madhu Bala And Others — RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Citation : (2019) 03 J&K CK 0040

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Udhay Bhaskar, Salathia, Amarjeet Singh

Final Decision : Disposed Off

Judgement

1. This is an appeal by the New India Assurance Company Limited against the award dated 22nd September, 2017 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as "the Tribunal") in file No.145/C titled Madhu Bala and others v. New India Assurance Co. Ltd. and ors., whereby the Tribunal has awarded a sum of Rs.20,26,000/- to the respondent-claimants. The appellant has assailed the impugned award only on the question of quantum.

2. It is urged by the learned counsel for the appellant that the Tribunal has erroneously taken the monthly income of the deceased as Rs.10,000/-, more so when there was no evidence brought on record by the claimants to substantiate the same. The amount awarded by the Tribunal on account of loss of consortium, loss of love and affection and funeral expenses have been challenged on the ground that the same are not in tune with the law laid down by the Supreme Court in the case of National Insurance Company Limited v. Pranay Sethi and others; AIR 2017 SC 5157.

3. The cross objections have been preferred by the claimants for enhancement of the award amount. The only plea taken for enhancement of the award amount by the cross objectors is that the Tribunal has not awarded any sum on account of loss of future prospects. In the instant case going by the age of the deceased

which is 32 years, there should have been increase in the annual income by 40%, as provided in the case of Pranay Sethi (supra).

4. Having heard learned counsel for the parties and perused the record, I am of the view that both the appeal as well as cross objections are liable to be allowed to the extent hereafter mentioned.

5. So far as income of the deceased is concerned, there is solitary statement of the wife of the deceased who has stated that the deceased had been contributing Rs.15,000/- per month towards household expenses. The Tribunal in the impugned award has itself conceded that apart from the aforesaid statement of the wife of the deceased, there is no further evidence either oral or documentary regarding income of the deceased. The Tribunal has, however, taken Rs.10,000/- per months as potential income of the deceased and this the Tribunal appears to have done purely as a guess work.

6. I have gone through the award as well as evidence on record. There is no cogent evidence brought on record by the claimants to prove the income of the deceased.

7. Learned counsel for the appellant relies upon a judgment of the Supreme Court rendered in the case of Rani and others v. National Insurance Company Ltd. and others; 2018 (8) SCC 498 to urge that in such situation where there is no evidence on record to prove the income of the skilled employee, it should have been taken between Rs.3000 to 6000/-.

8. Per contra, learned counsel for the claimants-respondents has relied upon the decisions of the Supreme Court rendered in the cases of Syed. Sadiq Etc. v. Divisional Manager, United India Insurance Co.; 2014(2) SCC 735, Chanderi Devi and anr. v. Jaspal Singh and others; 2015 (11) SCC 703 and Neeta W/o Kolhappa Kadolkar and othes etc. v. Division Manager, MSRTC, Kolhapur; 2015(2) 2015 (3) SCC 590. Submits, learned counsel for the claimants, that the Tribunal was correct in assessing the monthly income of the petitioner as Rs.10,000/-.

9. In the give facts and circumstances, where cogent evidence with regard to the monthly income of the deceased is lacking, the Court is left only to determine the amount by taking into consideration all relevant factors. Admittedly, the deceased was a photographer and a skilled worker and was working in the township of Ramgarh which is a tehsil headquarter. Taking cue from the judgments relied upon by the learned counsel for both the sides, it can fairly be concluded that the income of a skilled worker, like photographer, cannot be anything less than Rs.8,000/-. As rightly contended by the learned counsel for the cross-objectors, the income has to be increased by 40% towards future prospects. This would make the monthly income of the deceased as Rs.8000 + 3200= Rs.11,200/-. Deducting 1/4th on account of personal expenses of the deceased the monthly loss of dependency would come to Rs.8,400/-. The annual loss of dependency would come to Rs. 8400 x 12= 1,00,800/-. Adopting the multiplier of 16, the total loss of dependency would come to Rs.1,00,800/- x 16

= 16,12,800/-. However, so far as the amount payable under conventional heads like, funeral expenses, loss of estate, loss of consortium is concerned, the same has to be brought in tune with the judgment rendered in the case of Pranay Sethi (supra) and Magma General Insurance Co. ltd. v. Nanu Ram alias Chuhru Ram and others; 2018 (9) JT 195. Therefore, the amount payable to the claimants on account of loss of dependency and conventional heads shall be in the following manner.

Loss of dependency : Rs.16,12,800.00

Funeral expenses : Rs.15,000.00

Loss of estate : Rs.15,000.00

Loss of spousal consortium : Rs.40,000.00

to respondent No.1 (wife)

Loss of filial consortium payable : Rs.80,000.00

to parents, i.e. respondent Nos.2 & 3

@ Rs.40,000/- each

Loss of parental consortium : Rs.80,000.00

Payable to respondent Nos. 4&5

Payable @ Rs.40,000/-

Total : Rs.18,42,800.00

10. The award of the Tribunal is modified accordingly. The claimants/respondents are held entitled to the compensation in terms of the modified award along with interest as has been awarded by the Tribunal.

The appeal and cross objections stand disposed of in the above terms.