

(2018) 01 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : 57 of 2010

New India Assurance Co. Ltd

APPELLANT

Vs

Sunita Gill & Ors.

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Motor Vehicles Act, 1988, Section 170, Section 170, Section 166, Section 166 - Impleading insurer in certain cases - Application for compensation

Citation : (2018) 01 J&K CK 0003

Hon'ble Judges : Sanjay Kumar Gupta

Bench : Single Bench

Advocate : R.K.Gupta, Ratish Mahajan, Ajay Gandotra, Vishnu Gupta, Radha Sharma

Final Decision : Disposed Off

Judgement

1. By virtue of this common order I am deciding three appeals i.e. two appeals filed by Insurance Company for setting aside the award and one,,

has been filed by claimants- Pinki Khokhar and another, for enhancement of compensation.",,

2. In the memo of appeal (CIMA No.57/2010) appellant-Insurance Company has stated that the respondents Nos. 1 to 3 filed a claim petition,,

under Section 166 of M.V. Act before the M.A.C.T., Jammu for grant of compensation on account of the death of Shri Akash Gill who had died",,,

in a road traffic accident on 27.05.2005 at Sidhra Highway due to rash and negligent driving of the truck bearing registration No. JKS-9461. It is,,

further stated that the respondent Nos. 4 and 5 being the owner and driver of the offending vehicle were also impleaded as respondents in the,,

claim petition filed by respondents Nos. 1 to 3 before M.A.C.T., Jammu along with the appellant company being the insurer of the offending",,,

vehicle. The appellant company after its service filed objections to the claim petition by taking various defences available to it and denied its liability,,

to pay any compensation to the claimants in the case. One of the specific pleas raised by the appellant company in its objection was that the driver,,

Satnam Singh was not holding a valid and effective driving license at the time of accident and therefore, the appellant company had no liability to",,,

pay any compensation. It is further stated that the respondents No. 4 and 5 i.e. the owner and driver of the offending vehicle despite service did,,

not chose to appear and contest the claim petition. Accordingly, the appellant company filed an appeal under Section 170 of M.V. Act seeking",,,

permission to defend the claim petition on the defences available to owner/driver as well and the said application was allowed by the Tribunal.,,,

Learned M.A.C.T., Jammu vide its composite judgment dated 02.09.2009 rejected the defences raised by the appellant company and passed an",,,

award of Rs.11,92,300/- along with interest @ 7.5% per annum from the date of filing of the claim petition in favour of the respondent Nos.1 to 3",,,

and against the appellant company with liberty to recover the same from the owner of the offending vehicle. It is further stated that the Appellant,,

Company being aggrieved of the judgment/award impugned challenges its legality, validity and correctness on the following amongst other",,,

grounds:-,,

a) That the judgment/award impugned is ex facie bad, contrary to the facts of the case and law on the point and the same therefore, deserves to be",,,

set aside.,,,

b) That as per the claim petition filed by the respondents No. 1 to 3 and according to the FIR, the offending vehicle at the time of accident was",,,

being driven by the respondent No. 5 i.e. Satnam Singh. As per the photocopy of the license enclosed by the petitioners / respondents no. 1 to 3,,

along with their claim petition the driver Satnam Singh was holding a driving license no. 1276 issued by Licensing Authority Leh. The appellant,,

company on the verification of the said license from Licensing Authority Leh came to know that the driver Satnam Singh was holding a fake driving,,

license as the Licensing Authority Leh had not issued any such license in the

name of Satnam Singh (driver). The certificate issued by the Licensing,,
 Authority was placed on the Court file where it was clearly stated that the license
 no. 1276 has not been issued in the name of Satnam Singh,,
 (driver) but in the name of one Mr. Toshi Narbo. On the basis of defence raised
 by the appellant company, an issue on the validity of the driving",,,
 license was framed by the Tribunal below. In order to prove the said issue, the
 appellant Company filed its list of witnesses and also deposited",,
 their diet expenses. The appellant company by leading evidence proved that the
 driver Satnam Singh was holding a fake driving license. The,,
 Tribunal on the basis of evidence led by the company held that the driver Satnam
 Singh was holding a fake driving license and had not been issued,,
 from the place where it has been shown. Despite holding that the driver was not
 holding a valid and effective driving license, the Tribunal below",,
 directed the appellant company to satisfy the award first with the liberty to
 recover the same from the owner of the offending vehicle. The finding of,,
 the Tribunal is wholly erroneous. Once Tribunal had decided the issue that the
 driver was not holding a valid and effective driving license at the time,,
 of accident, no liability of satisfying the award amount could have been fastened
 upon the appellant company. The award impugned thus being bad",,
 in the eyes of law, deserves to be set aside.",,,
 c) That the direction issued by the Tribunal that the award amount should be first
 satisfied by the appellant company and then granting the liberty to,,
 recover the same from the owner is without jurisdiction. The power of directing
 the Insurance Companies to satisfy the award first and then,,
 recover the same from the owner is vested with the Hon"ble Supreme Court of
 India alone under Article 136 and 142 of the Constitution of India,,
 as has been held by the Hon"ble Supreme Court of India in case reported as
 2007(7) SCC 56 and that of Bombay High Court reported in 2008,,
 (1) ACJ 213. No provision under Motor Vehicles Act empowers the Tribunal to
 issue such direction. The award impugned thus is wholly illegal,,
 and deserves to be set aside.,,
 d) That the award of Rs. 11, 92,300/- passed by the Tribunal below is excessive
 and inflated and does not conform to the guidelines laid down by",,
 the Hon"ble Supreme Court and various High Courts for granting compensation
 in such like cases and therefore, the award impugned being wholly",,

illegal and not sustainable in the eyes of law deserves to be set aside.,,

e) That the Tribunal below again erred in assessing the income of the deceased. The claimants had failed to prove the salary certificate as per the,,

requirements of law. As per the salary certificate, the gross salary of the deceased was Rs. 10,376/- which was never proved by leading any",,,

evidence. The law is settled that for the purpose of assessing compensation, the net salary / take home salary is to be considered by the Tribunal.",,,

The personal claims of the deceased were required to be deducted while assessing the income for the purpose of computing compensation.,,

However, the Tribunal has taken the gross salary of Rs. 10,376/- without considering the deductions and personal claims of the deceased for",,,

assessing the compensation which is not permissible under law.,,

f) That the Tribunal below again erred in applying the appropriate multiplier in the case. Admittedly, the deceased was government employee and",,,

as per the Government Order, the family of the deceased was entitled to full salary drawn by the deceased for the next 7 years. This factor was",,,

required to be taken note of while applying the multiplier in the case. The multiplier thus applied in the case is also on the higher side and not as per,,

the law laid down by the Hon"ble Supreme Court and other Courts of the Country and on this score also, the award impugned is bad in the eyes",,,

of law and requires to be set aside.,,

3. In the memo of appeal (CIMA No.72/2010) appellant-Insurance Company has stated that the respondent Nos. 1 to 3 filed a claim petition,,

under Section 166 of M.V.Act before the M.A.C.T., Jammu for grant of compensation on account of the death of Shri Dheeraj Mattoo who had",,,

died in a road traffic accident on 27.05.2005 at Sidhra Highway due to rash and negligent driving of the truck bearing registration No. JKS-9461.,,

It is further stated that the respondent's No. 4 and 5 being the owner and driver of the offending vehicle were also impleaded as respondents in the,,

claim petition filed by respondent Nos. 1 to 3 before M.A.C.T., Jammu alongwith the appellant company being the insurer of the offending vehicle.",,,

The appellant company after its service filed objections to the claim petition by taking various defences available to it and denied its liability to pay,,

any compensation to the claimants in the case. One of the specific plea raised by the appellant company in its objection was that the driver Satnam,,

Singh was not holding a valid and effective driving license at the time of accident and therefore, the appellant company had no liability to pay any",,,

compensation. It is further stated that the respondents No. 4 and 5 i.e. the owner and driver of the offending vehicle despite service did not chose,,

to appear and contest the claim petition. Accordingly, the appellant company filed an appeal under Section 170 of M.V. Act seeking permission to",,,

defend the claim petition on the defences available to owner/driver as well and the said application was allowed by the Tribunal. The another claim,,

petition being filed on 323/Claim titled ""Sunita Gill & Ors. V/s New India Assurance Co. Ltd. & Ors"" arising out of the same accident was also",,,

filed before the MACT, Jammu and both the claim petitions were clubbed together for joint trial. That the M.A.C.T., Jammu vide its composite",,,

judgment dated 02.09.2009 rejected the defences raised by the appellant company and passed an award of Rs. 7,42,900/- along with interest @",,,

7.5% per annum from the date of filing of the claim petition in favour of the respondent Nos. 1 to 3 and against the appellant company with liberty,,

to recover the same from the owner of the offending vehicle.,,,

4. All the grounds taken in another appeal, same have been taken in this appeal.",,,

5. I have heard and considered the grounds taken in the memo of appeals.,,,

6. The Law is very much clear that quantum of compensation cannot be challenged in appeal unless it is perverse in nature. I have carefully gone,,

through the law applied by Tribunal below while assessing the compensation. Perverse means that award has not been passed on correct,,

appreciation of evidence produced by parties. In CIMA 57/2010 titled NIA V. Sunita Gill, there is no such perversity of facts or law in",,,

assessment of compensation. So far assessment of compensation in CIMA 72 /2010 is concerned, I will discuss it along with CIMA 96/2010",,,

titled Pinki Khokhar v NIA (enhancement of compensation),,,

7. Now coming to ground taken by appellant/insurance company that tribunal should have exonerated the company from paying the compensation,,

as driver was not holding valid and effective licence, is concerned, it is not tenable in view of the law relied by the tribunal below in impugned",,,

award. Relevant para in this regard reads as:-,,

The onus of this issue was on the respondent No. 1 and in this respect

respondent has produced RW A.K.Pandita Adm. Officer who has stated",,,
that the offending vehicle was insured with their company and the owner of the vehicle was Dheeraj Singh. The vehicle was insured with effect from,,
21.10.2004 to 20.10.2004. He has brought the certified copy of the policy and as per the policy the vehicle can only be driven by a person who,,
had a valid driving license and in case he does not have driving license the insurance company has no liability. In cross-examination by the counsel,,
for the petitioner stated that he had received the record of the RTO where he had mentioned and the record of the RTO has been annexed with,,
the file.,,

On the basis of this evidence the respondent has produced a certificate issued by the RTO, Leh where he has sent a Photostat copy of the driving",,,
license No. 1276 which has been issued on the name of Toshi Narbo not on the name of Satnam Singh who is reported to have driven the vehicle,,
at the time of accident. The company in such like circumstances has successfully proved that the licence of the driver was fake and had not been,,
obtained from the place where it has been shown. The counsel for the petitioner produced a ruling of the Hon"ble Supreme Court in AIR 2008,,
S.C. 1073, where it has been held:",,,

(A) ""Motor Vehicles Act (59 of 1988), S. 149 - Liability of insurer - Driver having fake licence---Not by itself sufficient to absolve insurer of",,,

liability---It has to further prove that owner was aware or noticed that license was fake and still permitted driver to drive.,,

(B) Motor Vehicles Act (59 of 1988), s. 149-- constitution of India, Art. 136-- Liability of insurer--Driver, brother of owner of motor vehicle",,,

Holding fake licence at time of accident Insurer is not liable to pay compensation However, insurer directed not to recover amount already paid by",,,

I from claimants---Such amount instead to be recovered from owner of vehicle- Rest of amount to be recovered by claimants from owner and,,
driver of motor vehicle.""",,,

The Insurance Company has to further prove that the owner was aware of the licence that it was fake. However in such like circumstances,,

company cannot be made liable however in peculiar circumstances of the case the order of pay and recover can be implemented. In this view of,,

the matter I am guided by the authority reported in 2008 ACJ 949 Hon"ble High

Court of Madhya Pradesh in case titled Daljeet Kaur and others,,

vs. Fakru and another held:,,

Motor Vehicle Act, 1988, section 149(a)(ii) - Motor insurance - Driving licence - Fake licence - Liability of insurance company - Fake licence",,,

duly renewed from time to time - Insurance company seeks to avoid its liability for death of driver on the ground that his driving licence was fake--,,

-Insurance company produced endorsement by the licensing authority that licence is forged as no such licence was issued by it---Objection that,,

insurance company has not examined any one from the licensing authority and contention of insurance company cannot be accepted ---Insurance,,

company pleaded that certificate issued by the licensing authority is a public document and is admissible in evidence without examining some,,

official---Renewal cannot transform a fake licence as genuine---Whether insurance company is liable, Held: no: insurance company is entitled to",,,

recover the amount of compensation paid by it from owner of vehicle."""",,,

The Hon"ble Supreme Court in case reported in 2008 ACJ 776 titled Prem Kumari & Others vs Prehlad Dev and others held:,,

Motor Vehicles Act, 1988, section 149(2)(a)(ii) and 140-Motor insurance---Driving licence---Fake licence---No fault liability---Liability of",,,

insurance company---Tribunal held that driver who is brother of owner of offending vehicle did not possess a valid and effective licence on the,,

date of accident and exonerated the insurance company from liability---High Court upheld the finding of the Tribunal---Whether insurance,,

company is liable---Held: no; however claimants need no refund the amount of Rs. 50,000/- paid by insurance company as no-fault liability but",,,

insurance company permitted to recover this amount from the owner of vehicle by initiating proceedings before the executing court without filing,,

suit; and claimants may recover the rest of the amount from owner and driver of the vehicle."""",,,

The law laid down in both the cases is for social benefit of the petitioner because normally it is the experience of the court that the execution against,,

the private person is difficult for the petitioner to get it executed whereas the insurance company is directed to make the payment and then recover,,

is only mean to say that immediately the relief is required to be given to the claimants. On the basis of the evidence and law discussed hereinabove,,

issue No. 3 is decided against the petitioners and in favour of the respondent-company."",,,

8. Counsel for the appellant/ insurance company has failed to rebut this law which has been relied upon by the court below.,,

9. In view of the above, I do not find any merit on this ground in the appeals filed by appellant-insurance company and are dismissed accordingly.",,,

10. So far as appeal-CIMA No.96/2010 for enhancement of compensation filed by claimants Pinki Khokkar is concerned, learned counsel for the",,,

appellants has stated that the award of the Tribunal is against the facts and record of the case and is also against the settled position of law. The,,

Tribunal had erred while taking the salary of the deceased as Rs. 5569/- despite the fact that the petitioners placed on record the deceased's Last,,

Pay Certificate which showed that the deceased was getting salary of an amount of Rs.6847/- per month and proved the same by recording the,,

statement of Sh. Rajinder Khokkar, who produced the record on the basis of which the certificate was prepared and he identified the signatures of",,,

the Commandant on the said document. The Tribunal failed to appreciate the evidence led by the petitioner in this regard as such the awarded,,

amount is required to be enhanced. It has been further stated that the Tribunal arbitrarily scaled down the appropriate multiplier to 16 whereas the,,

multiplier provided is 18 under the second schedule of the Motor Vehicles Act for the persons falling under the age group of 25-30 years. The,,

Tribunal had further erred as it has not taken into consideration that the claim petition has been amended by the Tribunal vide its order dated,,

28.09.2006 by virtue of which the son of the appellant i.e. appellant No. 2 was made party petitioner as a consequence whereof the Tribunal had,,

failed to appreciate the claim of the son i.e. appellant No. 2 who was in womb when his father died. This aspect was not taken into consideration,,

while passing the impugned Award/Judgment in the Claim Petition by the Hon"ble Tribunal. The Judgment and the Award impugned herein is,,

further against the settled position of law as the respondent No. 4 being the father of the deceased was a Government employee and was not,,

dependent on the deceased as is being proved.,,

11. I have considered the arguments of the counsel for the appellants/claimants and Insurance Company. The relevant para of finding of Tribunal,,

below in this regard reads as under:-,,

So far as assessment of compensation is concerned, the income of the deceased Dheeraj Mattoo has been shown at Rs. 5569/- PM which has",,,

been proved by the petitioners by producing the salary certificate which is fixed as his basic income. Out of the monthly income 1/3rd is to be,,

deducted towards the personal expenses of the deceased leaving behind sum of Rs. 3713/- PM and Rs. 44556/- PA as loss of dependency. Now,,

for assessing compensation a suitable multiplier has to be selected. The Tribunal is guided by 2nd Schedule of Motor Vehicles Act. The deceased,,

was at the age of 26 years at the time the accident took place and thus falls in the age group of 25-30 years and multiplier of 18 is provided under,,

the 2nd Schedule. However, because of uncertainties of life the multiplier is slashed and multiplier of 16 is applied. When Rs. 44556/- is multiplied",,,

by 16 the amount comes to Rs. 44556X16=Rs. 712896/-. A sum of Rs. 15000/- is also awarded for funeral expenses and Rs. 15000/- for,,

consortium to the widow of the deceased.,,,

Thus the petitioners have been found entitled to the compensation of death of deceased Dheeraj Mattoo under the following heads:,,

1.For loss of dependency Rs. 712896/-,,

2.For funeral expenses Rs. 15000/-,,

3.Loss of consortium to widowRs. 15000/-,,

Total Rs. 7,42,896/- in round figure say Rs. 7,42,900/- (Rupees eight lacs, forty-two thousands and nine hundred only)""",,,

12. Bare perusal of this finding of tribunal it is evident, there is perversity in taking the monthly income of deceased Dheeraj Mattoo; he was a govt.",,,

Employee working as constable in police; his monthly income has been mentioned in petition is Rs.5569 pm; at the time of death he was survived,,

by parents and wife. During pendency of petition one son namely Sweetson was born and accordingly an application for bringing on record him as,,

petitioner was filed; that application was allowed on 28.9.200. It is worthwhile to mention here that two claim petitions were filed on account of,,

death of two people in same accident and were clubbed together and decided jointly.,,,

13. During proceeding of case, original pay certificate of Dheeraj Mattoo was produced and was exhibited as EXP/RNB and last pay drawn by",,,

deceased was found to be Rs.6847/-p.m. as on 27.5.2005. PW Rajinder Nath Bhan, Accountant, appeared and proved the certificate and",,,

categorically stated that pay of deceased as Rs.6847/-pm. Further, no future prospects have been taken into consideration. So I will independently",,,

re-assess the compensation in case titled Pinki Khokhar Vs. N.I.A. As per evidence, the pay of deceased -Dheeraj Mattoo was Rs.6847/- p.m.,",,,

in round figure it is taken as 6850/- p.m.,,,

14. A constitution bench of Supreme court in SPECIAL LEAVE PETITION (CIVIL) NO.25590 of 2014 National Insurance Company Limited.,,,

Vs. Pranay Sethi and Ors. decided on 31.10.2017 has held that while determining the income, an addition of 50% of actual salary to the income of",,,

the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The",,,

addition should be 30%, if the age of the deceased was 48, between 40 to 50 years. In case the deceased was between the ages of 50 to 60",,,

years, the addition should be 15%. Actual salary should be read as actual salary less tax.",,,

15. So total salary of deceased including future prospects per month is taken as Rs.6850/- plus Rs 3425/- (fifty % increase) = Rs 10,275/ pm, as",,,

age of deceased was 26 years at the time of death. The annual dependency, therefore, comes to Rs.1,23,300/- PA.",,,

16. The Hon"ble Supreme Court in a case titled Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. reported as 2009 (3) Supreme 487,,

has given a new dimension for the standard deduction of personal expenses of the deceased for computation of the loss of dependency to the,,

dependants. Para 14 and 15 of the judgment are relevant and are reproduced as under:-,,

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok",,,

Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decision of this Court, we are of the view",,,

that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the",,,

number of dependent family members is 2 to 3, one forth (1/4th) where the number of dependant family member is 4 to 6, and one-fifth(1-5th)",,,

where the number of dependent family members exceeds six.,,

15. Where the deceased was bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors,",,

normally, 50% is deducted as personal living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even",,,

otherwise, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting",,,

married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the",,,

contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a",,,

1.,Loss of dependency:-,"Rs. 15,72,075/-.

2.,Loss of consortium :-,"Rs. 40,000/-

3.,Funeral Expenses :-,"Rs. 15,000/-

4.,Loss of Estate :-,"Rs. 15,000/-

,Total=,"Rs. 16,42,075/-