
(2018) 07 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.102 Of 2013, Miscellaneous Petition No.01 Of 2015 With Miscellaneous Appeal No.101 Of 2013, Miscellaneous Petition No.146 Of 2013 & 883 Of 2013

New India Assurance Co. Ltd. @APPELLANT@Hash Gulzara Bibi And Ors.

Date of Decision : 04-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0029

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. These two appeals are directed against the common award passed by Motor Accident Claims Tribunal, Jammu (hereinafter referred to as "the Tribunal") in two claim petitions, i.e, file No. 525/Claim and 123/Claim arising out of single motor vehicular accident. These appeals have been heard together and are being disposed of by this common judgment.

2. Briefly stated, the facts as gathered from the impugned award are that on 06.06.2009 two persons namely Rashid Hussain and Diwakar Singh were travelling from Srinagar to Jammu in a vehicle bearing No. JK02AA-0261 belonging to department of Fire and Emergency Services of the State. The said vehicle when reached near Company Market, National Highway, Nagrota was hit by another vehicle bearing No. PB-08-AR-5323, which was coming from opposite direction at a very high speed. As a result of this head on collision, both the aforesaid persons suffered fatal injuries. It is alleged that the accident was occurred due to rash and negligent driving of the vehicle bearing No. PB-08-AR-5323 (hereinafter referred to as "the offending vehicle") by its driver Sh. Mohinder Singh. It is stated that even the driver Mohinder Singh also died in the same accident. Two separate

claim petitions were filed by legal heirs of the deceased-Rashid Hussain and Diwakar Singh.

3. In response to the summons issued by the tribunal, the appellant-insurance company appeared and contested the claim petitions inter-alia on the

ground that the driver of the offending vehicle was not holding a valid driving licence at the time of accident and that there had been violation of terms

and conditions of the insurance policy. The amount claimed by the claimants was also resisted on the ground that it was exaggerated. The owner of

the vehicle Mr. Amarjeet Singh also filed its separate reply and claimed that the accident was caused due to negligence of the driver of departmental

vehicle in which the deceased were travelling and not due to negligence of the driver of the offending vehicle, i.e, deceased-Mohinder Singh. On the

basis of pleading of the parties, the tribunal framed four issues, which for facility of reference are reproduced hereunder:-

1. Whether an accident occurred on 6.6.2008 at Company Market NHW Nagrota due to rash and negligent driving of offending vehicle No. PB-

085323 in the hands of the erring driver consequent sustaining fatal injuries to deceased Rashid Hussain and Diwakar Singh? **Â** OPP.

2. If issue No. 1 is proved in affirmative whether petitioners are entitled to the compensation, if so, to what amount and from whom? **OPP.Â**

3. Whether driver of the offending vehicle at the time of accident was not holding a valid and effective driving licence and drove the vehicle in

violation of terms and conditions of insurance policy, if so how?**Â** OPR-1.

4. Relief.**Â** **Â** O.P. Parties.

On the basis of evidence on record, the tribunal decided the issue No. 1 in favour of the claimants holding that the death of Rashid Hussain and

Diwakar Singh was as a result of motor vehicular accident involving the offending vehicle, which was being driven by its driver rashly and negligently.

Issue No. 3 was also decided by the tribunal against the appellant-insurance company. The appellant-insurance company, it is noted by the tribunal,

could not lead any evidence to cast any doubt on the authenticity of the driving licence nor anything was brought on record to demonstrate that the

offending vehicle was being driven by the deceased driver in violation of any term and condition of the policy. The tribunal took issue No. 2 and 4

together for consideration. On the basis of the evidence led by the claimants in

the case of claim petition No. 525/Claim, the tribunal found that the claimants had succeeded in establishing that the gross monthly salary of the deceased at the time of death was Rs. 13,810 as demonstrated by the salary certificate of the deceased. The tribunal also found the age of the deceased 43 years. Applying the principles laid down by the Honâ??ble Supreme Court in Sarla Vermaâ??s case; AIR 2009 SC 3104, an addition of 30 % of the established salary was made towards his future prospects.

Since the deceased-Rashid Hussain was survived by six dependents, accordingly, an amount to the extent of 1/4th of the income of the deceased was deducted towards his personal and living expenses. Applying the multiplier of 12 as laid down in paragraph 21 of the judgment in Sarla Verma(supra), following amount of compensation was worked out.Â

1. Loss of dependency- Rs. 19,39,000/-
2. Funeral expensesÂ Â Â Â - Rs. 5,000/-
- 3.Loss of estateÂ Â Â Â Â Â Â Â Â Â - Rs. 10,000/-Â
- 4.Loss of consortium to petitioner No. 1Â Â Â - Rs. 10,000/-
- Â TotalÂ - Rs. 19,64,000/-.
- Â The claimants were also awarded interest @ 7.5 % per annum.Â

5. In the other claim petition, i.e, claim petition No. 123/Claim, on the basis of evidence led, the tribunal found that the claimants had succeeded in establishing that the deceased Diwakar Singh at the time of his death was 35 years old and was getting a monthly salary of Rs. 11,891/-. Going by the age of the deceased and applying the principles laid down by the Supreme Court in Sarla Vermaâ??s case (supra), an addition of 50% of the established salary was made towards future prospects of the deceased. Since the deceased was survived by three dependents, accordingly, a sum equivalent to 1/3rd of the income of the deceased was deducted towards his personal and living expenses. By applying the multiplier of 14 in terms of paragraph 21 of the Sarla Vermaâ??s case (supra), the following amount of compensation was held payable to the claimants:-

1. Loss of dependencyÂ Â Â Â - Rs. 19,98,000/-
2. Funeral expensesÂ Â Â - Rs. 5,000/-
3. Loss of estateÂ - Rs. 10,000/-

4. Loss of consortium to petitioner No. 1 - Rs. 10,000/-

Total - Rs. 20,23,000/-

In both the petitions, the tribunal awarded interest @ 7.5 % per annum from the date of filing of the claim petition till its realization. The insurance

company is in appeal against the impugned award awarding compensation in the aforementioned two claim petitions. The common ground of challenge

in both the appeals that was seriously pressed before this Court is that both the deceased namely Rashid Hussain and Diwakar Singh, the victims of

fatal motor vehicular accident were permanent government employees serving in Fire and Emergency Service Department of the State. As a result of

vehicular accident, both died in harness. Deceased-Rashid Hussain was 43 years old, whereas, deceased Diwakar Singh was 35 years old. Both had

more than 07 years to go before superannuation. It is submitted by the learned counsel that as per the service regulations governing the deceased, the

legal heirs were entitled to full salary for seven years and this aspect has not been correctly appreciated by the tribunal, which has resulted in award

of exorbitant compensation. Learned counsel for the insurance company Sh. Rupinder Singh vehemently urged that in view of the settled legal position

laid down in Mrs. Helen C. Rebello and ors Vs. Maharashtra SRTC and anr; AIR 1998 SC 3191, Bhakra Beas Management Board Vs. Smt. Kanta

Aggarwal and ors.; (2008) 11 SCC 366 and the latest being Reliance General Insurance Company Ltd. Vs. Shashi Sharma and ors.; 2016 AIR (SC)

4465, the full salary that claimants were entitled to receive for seven years on account of death in harness of the deceased was required to be

deducted while awarding compensation. It is further submitted that the tribunal though considered the issue, but could not appreciate the ratio of the

two judgments referred before it, i.e, Mrs. Helen C. Rebello (supra) and United India Insurance Company Limited Vs. Patricia Jean Mahajan and

others; 2002 AIR (SC) 2607.

6. Per contra, learned counsel appearing for the claimants would submit that the full salary, which legal heirs of the deceased employee are entitled to

receive for seven years is not a pecuniary advantage relatable to the accidental death. He submits that the aforesaid amount is payable to an

employee even in the case of a natural death of an employee while in service. He, therefore, supports the view taken by the tribunal in this regard.

7. Having heard learned counsel for the parties and perused the record, I am of the view that the awarded amount passed in both the claim petitions

needs to be modified for the reasons given here in after.Â

8. The award has been assailed by the appellant-insurance company inter-alia on the single ground that salary, which the legal heirs of the deceased

government employees are entitled to receive for seven years is required to be deducted from the compensation payable to them. No other ground has

been taken or urged to assail the award. It may be noted that the witness produced by the claimants to substantiate and prove the salary certificate

pertaining to both the deceased categorically stated during crossexamination that the legal heirs of the deceased were entitled to full salary for seven

years. This has come in the statement of PW Avtar Krishan Pandita, Section Officer in Fire and Emergency Service Department, where both the

deceased had been serving prior to their death. This piece of evidence that had come on record has not been rebutted by the claimants by leading any

contrary evidence. Even before me, the aforesaid fact has not been disputed. In the face of this admitted factual position on record, the only question

that needs determination in these appeals is:

whether the income/pecuniary advantage derived by legal representatives of the deceased government employee by way of full salary for a period of

seven years after the death of the deceased employee under the relevant service rules is liable to be deducted from the total amount of compensation

payable to the legal heirs of such a deceased employee under the provisions of Motor Vehicles Act, 1988.Â

9. This precisely is the issue which is debated by the learned counsel appearing for the parties before me. The tribunal has relied upon Mrs. Helen C.

Rebello and Patricia Jean Mahajan(supra)to deny the claim for deduction raised by the appellant-insurance company, whereas, the appellant-insurance

company is strongly banking upon the case of Bhakra Beas Management Board (supra). Both the decisions are rendered by the two judgesâ??

Bench of the Supreme Court. The apparent conflict of opinion between the Co-ordinate Benches of the Supreme Court was highlighted before the

Supreme Court on behalf of Reliance General Insurance Co. Ltd. in the case of Reliance General Insurance Company Ltd. Vs. Shashi Sharma and

ors.The Honâ??ble Supreme Court after discussing the aforesaid judgments

found that there was essentially no conflict in opinion of the Coordinate Benches which had decided the aforesaid cases. It was, thus, held that in the decision rendered in the case of Bhakra Beas Management Board(supra), the correctness of dictum in Mrs. Helen C. Rebello and Patricia Jean Mahajan(supra) had not been doubted at all. While discussing the principle expounded in Mrs. Helen C. Rebello's case(supra), Hon'ble Supreme Court in paragraph 16 of Shashi Sharma's case(supra), held thus:-

16. The principle discernable from the exposition in Helen C. Rebello's case (supra) is that if the amount which would be due to the dependents of the deceased even otherwise, the same shall not be deductible from the compensation amount payable under the Act of 1988. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the Act of 1988. The component of quantum of loss of income, inter alia, can be pay and wages which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006 to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the Act of 1988.

In the aforesaid case, Hon'ble Supreme Court was confronted with the death of an employee of Haryana Government in the motor vehicular accident whose legal heirs were entitled to compensation from the Government equivalent to the salary last drawn by the deceased for a period of seven years in terms of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, Rules 2006 (Rules of 2006 for short). Hon'ble Supreme Court after discussing Rule 5(i) which provided for payment of financial assistance to the family of the deceased employee equivalent to pay and allowances that was last drawn by the deceased employee in normal course without raising a specific claim for a

specified period depending upon the age of the deceased employee at the time of his death, and straightening the law on the subject in paragraph 22 of

the judgment held thus:-

“22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims

Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by

the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim

and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of

pay and allowances in the form of exgratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the

Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not

expressly enable the dependants of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because

of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act

of 1988, therefore, is to exclude the amount received or receivable by the dependants of the deceased Government employee under the Rules of 2006

towards the head financial assistance equivalent to “pay and other allowances” that was last drawn by the deceased Government employee in the

normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of

the Rules, is the total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other

benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is

not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2)

to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be

deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.

Rebello and Patricia Jean Mahajan's cases (supra) is

It may be noted that decision of the Supreme Court in the case of Shashi Sharma's case (supra) is rendered by three judges Bench and is latest on the point of law.

10. From the aforesaid discussion and the position of law elaborately explained by the Supreme Court in Shashi Sharma's case (supra), following conclusions can be drawn:-

(i) The pecuniary advantage received by the legal heirs of the deceased employee which has no correlation to the accidental death is not deductible

from computation of compensation under the Motor Vehicles Act. The pecuniary advantage resulting from a death other than a motor vehicular

accident death like assets, movable, immovable, shares, bank accounts, cash and every amount receivable under any contract cannot be taken to be a

pecuniary advantage which is liable to be deducted for computation of compensation payable to the legal heirs of the deceased under the provisions of

the Motor Vehicles Act. Similarly, the pecuniary advantage received by legal representatives of the deceased government employee like gratuity,

pension, provident fund, etc. including the social security amount like LIC is the pecuniary advantage which is received by the legal representatives

even in case of a death other than an accidental death caused in a motor vehicular accident. Such amounts which have no correlation with the death

of the deceased in a motor vehicular accident are not required to be deducted or taken into consideration while computing the compensation payable

under the provisions of the Motor Vehicles Act.

(ii) Under the provisions of the Motor Vehicles Act, the amount of compensation payable to the legal heirs/claimants must be just, fair, adequate

and reasonable and should not be a bonanza, largess or source of profit. It is true that the claimants would have been entitled to full salary for a period

of seven years as per service rules governing the deceased, even if the deceased would have died due to natural death. Strictly speaking there may

not be any correlation between the pecuniary advantage received by the legal heirs of the deceased employee equivalent to the salary for a period of

seven years and the death of the deceased occurred in a motor vehicular accident but at the same time, while calculating the loss of income happened

due to the death of the deceased in the motor vehicular accident, the fact that

the legal heirs/claimants would receive full salary for a period of seven years and that there would be no loss of income during the said period cannot be ignored. Though the other benefits like family pension, LIC, provident fund etc. would remain unaffected and could not be allowed to be deducted in view of the principle laid down in Helen C. Rebello's case and Patricia Jean Mahajan(supra).

11. In view of the above settled legal position, I am inclined to accept the appeals to the extent that from the total amount of compensation awarded by the tribunal in each case, the salary received or receivable by the claimants for a period of seven years shall be deducted. Accordingly, these appeals are allowed only to the extent of the amount received or receivable by the claimants/LRs of the deceased government employees for a period of seven years. It has come on record that the monthly salary last received by the deceased-Rashid Hussain was Rs. 14,000/- and that of deceased-Diwakar Singh was Rs. 11,891/-. The seven years' salary of the deceased-Rashid Hussain would come to Rs. 11,76,000/-. In the case of deceased-Diwakar Singh, it would come to Rs. 9,98,844/-. The increase in salary on account of increments etc. however, has not been taken into consideration nor do I feel the case deserves remand for determination of the aforesaid amount. Accordingly, the amount awarded in favour of the legal heirs/claimants of the deceased-Rashid Hussain is Rs. 76,300/- and that of Diwakar Singh is Rs. 9,99,156/- on account of loss of dependency.

The claimants, however, shall be entitled to funeral expenses to the extent of Rs. 15,000/-, loss of estate to the extent of Rs. 15,000/-, loss of consortium to respondent No. 1 to the extent of Rs. 40,000/-.

12. The amount of compensation payable to the claimants in claim petition No. 525/Claim titled Gulzar Bibi and ors Vs. The New India Assurance Co.

Ltd and anr. shall be in the following manner:-

1. Loss of dependency - Rs. 76,300/-
2. Funeral Expenses - Rs. 15,000/-
3. Loss of estate - Rs. 15,000/-
4. Loss of consortium to respondent No. 1 (wife of the deceased) - Rs. 40,000/-
- Â Total - Rs. 1,46,300/-

13. The amount of compensation payable to the claimants in claim petition No. 123/Claim titled Kiran Kumari and ors. Vs. The New India Assurance

Co. Ltd Vs. Anr shall be in the following manner:- 1.Loss of dependency - Rs. 9,99,156/-

2. Funeral Expenses - Rs. 15,000/-

3. Loss of estate - Rs. 15,000/-

4. Loss of consortium to respondent No. 1

(wife of the deceased)- Rs. 40,000/-

Total - Rs. 10,69,156/-

14. As directed by the tribunal, the aforesaid amount shall also carry interest @ 7.5 percent per annum from the date of filing of the claim petition till

its realization and the awarded amount shall be dealt with in the manner provided by the tribunal.

15. The award passed by the tribunal in both the cases aforesaid is modified to the extent stated above.

16. Both the appeals are accordingly disposed of.