
(2023) 04 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 465, 466 Of 2009, CCROS No. 1, 5 Of 2010,
IA No. 1 Of 2018

Oriental India Insurance Co. Ltd

APPELLANT

Vs

Lakshman Dass And Others

RESPONDENT

Date of Decision : 13-04-2023

Acts Referred:

Citation : (2023) 04 J&K CK 0022

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : D. S. Chouhan, Damini Singh, R. K. Bhatia

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

1. By virtue of the common award/judgment dated 20.07.2009 passed by the Motor Accidents Claims Tribunal, Jammu (for short 'the Tribunal'), two claim petitions titled "Dharam Singh and others Vs. M/s Avtar Transport Service and another" bearing file No. 826/Claim and "Lakshman Dass and others Vs. M/s Avtar Transport Service and another" bearing file No. 827/Claim were decided by the Tribunal.

2. In claim petition "Dharam Singh and others Vs. M/s Avtar Transport Service and another" bearing file No. 826/Claim a sum of Rs. 11,54,200/- along with interest at the rate of 7.5 percent per annum from the date of filing of the petition till its realisation was awarded in favour of the claimants/parents of the deceased, whereas in

"Lakshman Dass and others Vs. M/s Avtar Transport Service and another" bearing file No. 827/Claim a sum of Rs. 9,78,900/- along with interest at the rate of 7.5 percent per annum from the date of institution of the petition till its realisation was awarded in favour of the parents of the deceased/claimants. This award dated 20.07.2009 forms the subject matter of the two appeals filed by the

appellant-Insurance Company and two cross appeals filed by the claimants.

3. The appellant-Insurance Company has impugned the award on the ground that the learned Tribunal has wrongly assessed the compensation, as the deceased in both the claim petitions were un-married.

4. In cross appeals, the claimants have assailed the award on the ground that just compensation has not been awarded to the claimants.

5. As in all these appeals, the only dispute is with regard to the quantum of compensation, so it may not be relevant to reproduce the factual aspects of the case except to the extent that the deceased in both these cases were un-married boys and serving in Army. Both of them were having same salary i.e. Rs. 6,489/ per month.

6. MA No. 465/2009

CCROS No. 5/2010

In this case, the claim petition was filed by the parents, two sisters and brother of the deceased namely Kulvinder Singh. A perusal of the award reveals that the Tribunal has deducted 1/4th of his earnings on account of personal expenses and further the multiplier has been applied on the basis of age of the claimants. As per decision of

Hon'ble the Apex Court in 'Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another' reported in (2009) 6 SCC 121, the multiplier is required to be fixed taking into consideration the age of the deceased. In the instant case, age of the deceased was 21 years, therefore, the multiplier applicable would be 18. Further the Tribunal has enhanced the monthly income of the deceased at the rate of 50 % which is in accordance with decision of Hon'ble the Apex Court in 'National Insurance Company Ltd. Vs Pranay Sethi and others' reported in (2017) 16 SCC 680. The Tribunal has deducted 1/4th of the earnings of the deceased on account of personal expenses of the deceased. The deduction is required to be made at the rate of 50% as per Sarla Verma's judgement (Supra). More so, as per Magma General Insurance Co. Ltd. Vs. Nanu Ram and others reported in (2018) 18 SCC 130, sum of Rs. 40,000/- each is required to be granted on account of loss of filial consortium to both the parents, two minor sisters and minor brother of the deceased. Thus the total compensation payable by the appellant to the claimants/respondent Nos. 1 and 2, minor sisters and brother of the deceased would be as under:

1. Loss of dependency	Rs. 10,51,218/-
2. Funeral expenses	Rs. 15,000/-
3. Loss of estate	Rs. 15,000/-
4. Filial Consortium	Rs. 2,00,000/-
Total	Rs. 12,81,218/-

Thus, the total amount payable to the claimants/parents would be Rs. 11,61,218/- /- and the balance amount shall be shared equally by the respondent Nos. 3-5. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the cross-appeal. The award impugned is modified accordingly.

7. MA No. 466/2009/

CCROS No. 1/2010

In this case also, the deceased-Harpal Singh was working as a sepoy in the Army and as per the salary certificate, he was getting Rs. 6,489/-per month. He was of 21 years of age. The claimants are the parents, and the two minor sisters of the deceased. In this case also, the sum of Rs. 40,000/each is required to be paid to each of the claimants on account of filial compensation. Since the salary, age and status of the deceased is same like in MA No. 465/2009, so on the same analogy, the total consortium payable by the appellant to the claimants/respondent Nos. 1 and 2 and to minor sisters would be as under:

1. Loss of dependency	Rs. 10,51,218/-
2. Funeral expenses	Rs. 15000/-
3. Loss of estate	Rs. 15000/-
4. Filial Consortium	Rs. 1,60,000/-
Total Rs.	12,41,218/-

Thus, the total amount payable to the claimants/respondent Nos. 1&2 would be Rs. 11,61,218/- and balance amount shall be shared equally by the respondent Nos. 3-4. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the cross-appeal. The award impugned is modified accordingly. The appeal filed by the Insurance Company are dismissed and Cross-objections/appeals filed by the claimants are allowed.