(2019) 04 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : MA No. 245 Of 2013

Oriental Insurance Company Ltd — APPELLANT

Vs

Asha Kumari And Others — RESPONDENT

Date of Decision : 25-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0018

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Sandeep Singh, G. S. Thakur

Final Decision : Disposed Off

Judgement

1. This appeal is filed by the appellant/Oriental Insurance Company Limited against the award dated 04.04.2013 passed in file No.104/Claim by the learned Motor Accidents Claims Tribunal, Jammu vide which the learned Tribunal had awarded a sum of Rs. 8,62,000/- as compensation to respondent Nos.1,3,4 & 5/ hereinafter referred to as claimants.

2. Factual matrix of this case is that, on 11.01.2008, deceased Mohan Singh, who was travelling in a Bus bearing registration No.JK02AC-5895 from Udhampur towards Jammu, died as a result of the accident which had occurred due to rash and negligent driving of the driver/respondent No.2 near Chaurian bridge Near Nandini (NHW) within the jurisdiction of Police Station Jhajjar Kotli as the Bus fell into a deep gorge. Respondent No.1, being widow, respondent Nos.2&3, being parents, and respondent Nos.4&5, being minor children have filed the claim petition. Revi Devi, unmarried sister of the deceased, was also a claimant but during the pendency of the claim petition, she has died, as such, her name has been deleted from the array of the petitioners in claim petition.'

3. Respondent No.1/owner filed the reply but thereafter did not contest the claim petition as also respondent No.2/driver of the offending vehicle was set ex parte, thus, the appellant/Insurance Company is only one who contested the claim

petition.

4. From the pleadings of the parties, the learned Tribunal was pleased to frame the following issues in the claim petition:-

(i) Whether an accident took place on 11.01.2008 at Chourian Bridge near Nandini NHW Jammu due to rash and negligent driving of Bus driver bearing No.JK02AC-5895 wherein deceased Mohan Singh sustained injuries ?

OPP

(ii) If issue No.1 is proved in affirmative whether petitioners are entitled to compensation, if so, to what extent and from whom ? OPP

(iii) Whether at the time of accident driver of the offending vehicle was not holding valid and effect DL and drove the vehicle in violation of terms and conditions of Insurance Policy ? OPP

(iv) Relief ?

O.P.Parties.

5. Appellant/Insurance Company has challenged the award on the ground that the learned Tribunal has wrongly increased the income of the deceased & future prospectus of the deceased by 30% and also that the multiplier of 13 on the age of 39 years has been applied on higher side. Another ground of appeal is that the claimants/respondents had agreed for listing the matter before the Lok Adalat wherein the claimants had admitted for a settlement to the tune of Rs.06 lac, however, this was not considered by the learned Tribunal while passing the award. The learned Tribunal while passing the award has held that although a settlement had arrived between the parties in Lok Adalat but it appears that it was not approved by the concerned authorities of the Insurer who vide its letter dated 18.04.2011 conveyed their decision to the learned Tribunal, therefore, an application which was filed on 01.01.2013 for execution of the award, claim petition was revived.

6. Respondents/claimants herein examined PWs Anju Devi, Harmeet Singh, Uma Devi, Rafaqat Ali and Rajesh Chand in support of their claim. They have stated in one voice that on 11.01.2008, they were travelling in Bus Bearing No.JK02AC-5895 and on reaching Nandini, the Bus suffered an accident due to the rash and negligent driving of its driver and due to said accident, 3-4 passengers suffered fatal injuries while they suffered grievous injuries. PW-Rajesh Chand, who was proceeding on his scooter reached at Nandini, stated that the deceased-Mohan Singh in an unconscious condition was carried to hospital and later he came to know the said Mohan Singh died. Considering the

statement of the witnesses, copy of the FIR which corroborated the version of the witnesses as well as post mortem report which stated that the deceased died due to carnio cerebral damage as a result of blunt trauma to his head sustained in a road traffic accident and there being no rebuttal from the appellant, therefore, Issue No.1, therefore, Tribunal has rightly decided this issue against the appellant and held that the deceased had died as a result of accident caused due to rash and negligent driving of the driver/respondent No. 2 of the offending vehicle.

7. So far as Issue No.3 is concerned, the onus of proof was on the Insurance Company to prove that the driver of the vehicle was not holding the valid and effective driving license. Since no evidence was lead by the appellant/Insurance Company and copy of the driving license of the driver was on record and according to which, he was authorized to drive a public vehicle as on date of the accident and therefore, the said Issue was also decided against the Insurance Company.

8. The only issue which remained was regarding compensation, to which claimants were entitled and from whom. Although the claimant-Asha Kumari had stated that the deceased-Mohan Singh was working as a Carpenter at Sidhra on a furniture shop and his monthly income was Rs.14,000-15,000, PW-Munishwar Singh had also deposed that the deceased was also working in his shop and he was paying him Rs.7,500/-per month but in cross-examination, he has stated that there was no record relating to the salary of the deceased being maintained in his shop and subsequently, he stated that he was getting Rs.250/- per day as wages. Thus, after considering all the statements, Tribunal rightly held that since there is no record of the salary of the deceased and fact that PW Munishwar Singh has stated in his cross-examination that he was paying Rs. 250/- per day to the deceased, therefore, the income of the deceased, was taken at the rate of wages of skilled worker and his monthly income was taken to be at Rs. 5,500/- per month.

9. Appellant is also aggrieved of 30% addition of his income towards future prospects. In view of the law laid down by the Hon'ble Apex Court in case titled National Insurance Company Limited Versus Pranay Sethi and ors. '2017 (16) SCC 680, the Hon'ble Apex Court has held that in case the deceased was self employed or a fixed salary, an addition of 40% of the established income of the deceased would be the warrant where the deceased was below age of 40 years. Since admittedly the deceased was 37 to 38 years old, therefore, increase in his future prospectus would be 40%.

10. While considering the dependency of the deceased, since the deceased had left his widow, parents and two minor children, as such, there are five dependents and as per the principle laid down by the Hon'ble Supreme Court in case titled Sarla Verma & ors. vs. Delhi Transport Corporation & anr. AIR 2009 SC 3104, 1/4th of the income of the deceased is to be deducted towards his personal and living expenses since had had left behind five dependents/family

members. Since the age of the deceased at the time of death is to be taken as 38 years and keeping in view the age of the deceased as 38 years, appropriate multiplier in this case would be 15, therefore, dependency of the claimants would be as follows; (Rs. 5500+Rs. 2200 = Rs. 7700 - Rs. 1925 = Rs. 6775 and Annual dependency as Rs. 6775 x 12 x 15 = Rs. 12,19,500/-).

11. In terms of the Apex Court judgment in Pranay Sethi's case (Supra), claimants are also entitled to Loss of estate = Rs.15,000/-; Loss of Consortium to respondent No.1/wife = Rs. 40,000/- and Funeral Expenses = Rs. 15,000/-. The Apex Court in Magma General Insurance Co. Ltd v Nanu Ram Alias Chuhru Ram and others in Civil Appeal No. 9581 of 2018 has held that the loss of consortium includes filial consortium, that is the right of the parents to be compensated in case of the death of the child. The amount awarded to the parents is compensation for loss of love, affection, care and companionship of the deceased child. Thus both the parents are entitled to Rs. 40,000/- each on loss of love and affection. Thus, the claimants are entitled to the total compensation as follows:-

12. The award of the learned Tribunal is modified to the above extent with interest at the rate of 6% per annum from the date of filing of the petition till its realization except the interest part of one year as has been held by the Tribunal.

Loss of Dependency

-

Rs.12,19,500/

Funeral Expenses

-

Rs. 15,000/

Loss of Estate

-

Rs. 15,000/

Loss of consortium to respondent No. 1-

-

Rs. 40,000/-

Loss of Filial Consortium

-

Rs. 80,000/- (Rs. 40,000 payable to each of the parents)

Total

-

Rs. 13,69,500/-

13. Out of the said amount i.e., Rs. 13,69,500/-, a sum of Rs. 1,00,000/- including the loss of filial consortium shall be paid to respondent No. 3/mother of the deceased as she is entitled to compensation in terms of Sarla Verma's case (supra). An amount of Rs. 40,000/- as loss of filial consortium shall be paid to respondent No. 2/father of the deceased in terms of Magma General Insurance's case (supra). An amount of Rs. 3,00,000/- each shall be paid to respondent Nos. 4 and 5 i.e., children of the deceased, which shall be kept in a fixed deposit till they attain the age of majority and the rest of the amount i.e., Rs. 6,29,500/- including loss of consortium i.e. Rs. 40,000/- shall be paid to respondent No. 1/ wife of the deceased.

14. For the aforesaid reasons, the award is modified to the extent stated above. The appeal is disposed of in the aforesaid terms.

15. Registry to disburse the amount, if deposited by the appellant, to the claimants accordingly after proper verification by their engaged counsel.