
(2019) 03 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : MA No. 132 Of 2016 IA No. 01 Of 2016, CCROS No. 16 Of 2018

Oriental Insurance Company Ltd

APPELLANT

Vs

Lata Kumari And Others

RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Haryana Compassionate Assistance To The Dependents Of The Deceased Government Employees, Rules 2006 — Rule 5(i), 5(5)(2)
Insertion Of Family Pension Cum Gratuity Rules 1964 — Rule 20(c)
Jammu And Kashmir Civil Service Regulations, 1956 — Article 249M(A)(a)

Citation : (2019) 03 J&K CK 0042

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D.S. Chauhan, Madan Lal, Vipin Gandotra

Final Decision : Disposed Off

Judgement

1. This appeal by the Oriental Insurance Company Ltd. is directed against the award dated 15th April, 2015 passed by the Motor Accident Claims Tribunal, Udhampur (hereinafter referred to as "the Tribunal") in file No.227/Claim titled Lata Kumari and others v. Baldev Singh and others, whereby the Tribunal has awarded a sum of Rs.36,57,000/- as compensation to the respondent Nos.1 to 3 in equal shares. The respondents/claimants have also been held entitled to simple interest @ 7.5% per annum from the date of claim petition till realization of the amount. The impugned award has been assailed on the ground that the assessment of compensation made by the Tribunal is not just and fair, inasmuch as while computing the compensation the Tribunal has overlooked the law laid down in the case of Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121 and also on the ground that for the purposes of working out the loss of dependency the Tribunal has erroneously taken into consideration the gross salary of the deceased employee instead of net salary. Referring to the provision of Article 249-M(A) (a) of the Jammu and Kashmir Civil Service Regulations, 1956 , it is urged that the Tribunal committed a serious

error in not deducting the family pension payable to the family of the deceased government employee equivalent to the last pay drawn for a period of seven years from the date following the date of death or for the period upto the date of the deceased government would have attained the age of superannuation. The applicability of multiplier of 13 instead of 11 has also been disputed on the ground that the same runs contrary to the prescription contained in the case of Sarla Verma (supra).

Before appreciating the grounds of challenge taken by the appellant to assail the impugned order, it would be advantageous to refer few facts relevant for the disposal of the instant appeal as well as the cross objections preferred by respondent No.4/owner of the offending vehicle.

On 1st March, 2011, Vijay Kumar, husband of respondent No.1 and father of respondent Nos. 2 and 3 while travelling on his Scooty/Moped was hit by the offending vehicle bearing registration No.0629/HP 48 at Wali Nallah near Udhampur. It was a fatal accident caused due to rash and negligent driving of the vehicle by its driver in which the deceased -Vijay Kumar sustained grievous injuries on his head and other parts of the body. He was admitted in the Command Hospital, Udhampur for treatment but he succumbed to the injuries on 11th March, 2011. Widow, respondent No.1 and two daughters of the deceased, respondent Nos. 2 and 3 filed a claim petition before the Tribunal claiming different amounts on different heads as indicated in the claim petition. The claim was contested by the appellant-Insurance Company only whereas the driver and owner were proceeded ex-parte. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether the deceased Vijay Kumar died in the road traffic accident which was caused on 01.03.2011 by respondent No.1 on account of the rash and negligent driving of offending vehicle No.HP-48-0629? OPP

2. If issue No.1 is proved in affirmative, whether petitioners are entitled to compensation, if so to what effect? OPP

3. Whether the driver respondent No.1 was driving the offending vehicle in violation of the terms and conditions of the insurance and was not holding a valid and effective driving license at the time of alleged accident and the vehicle was being plied without valid documents in violation of terms and conditions of insurance policy, if so to what? OPR-3

4. Relief. OP parties."

So far as issue Nos. 1 and 3 are concerned, there is no dispute raised by the appellant-Insurance Company. The appellant-Insurance Company is aggrieved of the manner in which the Tribunal has assessed the compensation payable to the claimants.

Having heard learned counsel for the parties and perused the record, I am of the view that the award of compensation made by the Tribunal does not represent

just and fair compensation. The law laid down by the Supreme Court in the case of Sarla Verma (supra) and National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680 and also the legal position settled in Mrs. Helen C. Rebello v. Maharashtra SRTC and anr, AIR 1998 3191, Bhakra Beas Management Board v. Smt. Kanta Aggarwal and ors., (2008) 11 SCC 366 and Reliance General Insurance Company Ltd. v. Shashi Sharma and ors., 2016 AIR (SC) 4465 has not been taken note of.

Admittedly, the deceased at the time of accident was 52 years of age and as per his pay certificate, as receiving gross salary of Rs.26,549/- per month with deduction on account of GPF and SLI Rs.2,000/- and Rs.49/- per month. As concluded by the Tribunal, the deceased was receiving a net salary of Rs.26,000/- per month. To this extent no default can be found with the conclusion so arrived at by the Tribunal.

Keeping in view the age of the deceased and as per Sarla Verma (supra), multiplier of 11 was applicable and the same too has been applied correctly by the learned Tribunal. In terms of the judgments of the Supreme Court in the cases of Sarla Verma (supra) and Pranay Sethi (supra), addition on account of future prospects would be 15% of the actual salary. The Judgment in Pranay Sethi (supra) further clarifies that the salary of a government employee which would be taken into consideration is the one which is actual salary less income tax. The deceased in the instant case is survived by three dependents and therefore in view of the law settled in Sarla Verma (supra), deduction to be applied on account of personal expenses should be 1/3rd. This is how the loss of dependency is required to be worked out, but with a view to arrive at the actual loss of dependency, we need to take note of the law laid down by the Supreme Court in the case of Mrs. Helen C. Rebello (supra) and Reliance General Insurance (supra). Para 16 of the judgment of the Supreme Court in the case of Shashi Sharma's case (supra) needs to be noticed and is, therefore, reproduced hereunder:-

16. The principle discernable from the exposition in Helen C. Rebello's case (supra) is that if the amount "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)"

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)."

Accordingly, taking note of the law laid down by the Supreme Court in the judgments aforementioned and the judgments relied upon by the learned counsel for the appellant-insurance Company, I have come to the conclusion that the following would be the fair and just compensation payable to the claimants:-

Loss of income/dependency is Rs.26,000/- .Adding 15% on account of loss of

future prospects, monthly income comes to Rs.29,900/-. Deducting 1/3rd, the net monthly loss of dependency comes to Rs.19934.00, therefore, annual loss of dependency comes to Rs.2,39,208/-. Adopting the multiplier of 11, the total loss of dependency comes to Rs.26,31,288/-. In view of the above settled legal position, the amount receivable or received by the claimants by way of family pension in terms of Article 249-M(A) (a) of the Jammu and Kashmir Civil Service Regulations, 1956 is required to be deducted. The Government vide SRO 94 dated 15th April, 2009, inserted a proviso to clause(c) of Rule 20 below Note-4 of the Family-Pension-cum-Gratuity Rules providing that the government servant who may die while in service after having rendered not less than seven years continuous service, the family pension on enhanced rates equal to 50% of the last pay drawn shall be payable to the family of such government servant for a period of ten years without any upper age limit. The amount to be received or receivable by the claimants in terms of the amendment in the J&K CSR comes to fifty percent of the last pay drawn i.e., Rs.13,000.00 x 12 x 10 = Rs.15,60,000/- Accordingly, the claimants would be entitled to Rs, 26,31,2088.00 - 15,60,000.00 = Rs.10,71,088 on account of loss of dependency.

Apart from the aforesaid, the claimants are also held entitled to the following sum under conventional heads:-

Loss of dependency = Rs.10,71,088/-

Funeral expenses = Rs.15,000/-

Loss of spousal consortium to respondent No.1 = Rs.40,000/-

Loss of parental consortium to respondent = Rs.80,000/-

Nos. 2 and 3 @ Rs.40,000/- each

Loss of estate = Rs.15,000/-

Total= Rs. 12,21,088/-

The respondent No.4 (owner of the offending vehicle) has also filed his Cross-objections for setting aside the award of the Tribunal insofar as it grants liberty to the appellant-Insurance Company to recover the award amount from respondent No.4.

Insofar as, findings of the Tribunal on issue No.3 are concerned, same are tentative and the Tribunal has not been able to come to a definite conclusion. I have gone through the record and find that the plea that the respondent-driver was not holding valid and effective driving license has not been sufficiently proved and the issue No.3, therefore, shall be deemed to have been decided against the appellant-Insurance company. Accordingly, the cross objections filed by the respondent No.4/owner are allowed.

That being so, the Insurance Company is liable to indemnify the owner and shall have no right to make any recovery from the owner of the offending vehicle.

The award of the Tribunal stands modified to the above extent. The claimants shall be entitled to the above said amount along with interest as has been awarded by the Tribunal. The appeal of the appellant-Insurance is disposed of in the above terms.