

(2018) 07 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No.204 Of 2011, Miscellaneous Petition No.182 Of 2015 & 01 Of 2016

Reliance Gen. Ins. Co. Ltd. @APPELLANT@Hash Sita Devi And Ors.

Date of Decision : 02-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0008

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. On 08.02.2008, at about 7.20 p.m, a vehicular accident took place at National Highway GuraBaldrain in which deceased Romesh Lal, who was

proceeding towards his home was hit by a motorcycle bearing No. JK08A-8028, which was being driven by respondent No. 6 in a rash and

negligent manner. The deceased suffered multiple grievous injuries in the accident and ultimately succumbed to the injuries. The respondent Nos. 1

to 5 filed a claim petition before the Motor Accident Claims Tribunal, Kathua (hereinafter referred to as "the Tribunal") for compensation on

account of death of their father late Sh. Romesh Lal. Respondent No. 1 is wife, where as respondent Nos. 2 and 4 are minor daughters and

respondent Nos. 3 and 5 are minor sons of the deceased Romesh Lal. It is claimed that deceased at the time of his death was an employee working

in the Block Development Office, Hiranagar and was drawing monthly salary of Rs. 7200/- per month. The deceased was 45 years old at the time

of his death and had 13 more years to serve in the Government.Â

2. The appellant, who was respondent No. 3 in the claim petition alone contested the petition and filed its reply. On the basis of pleadings of the

parties, the tribunal framed following issues:-

1. Whether the accident took place on 08.02.2008 at GuraBaldrain Tehsil Hiranagar due to rash and negligent driving of the offending vehicle

bearing registration No. JK08A-8028 by respondent No. 1 as a result of which the deceased Romesh Lal sustained fatal injuries? OPP.

2. In case the issue No. 1 is proved in affirmative, to how much compensation the petitioners are entitled to? OPP.

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

violation of the terms and conditions of the insurance policy and as such, the insurance company is not liable to pay any compensation? OPR-3.

4. Relief.

3. The issue No. 1 was held proved and it was established that the accident had occurred due to rash and negligent driving of respondent No. 6.

With regard to issue No. 3, a categorical finding was recorded by the tribunal that the appellant though had taken the defence that respondent No. 6

was not holding a valid driving licence at the time of accident but could not prove so by leading any cogent evidence. In the absence of any cogent

evidence, the issue No. 3 too was held proved in favour of the claimants and against the appellant. With regard to issue Nos. 2 and 4 and the

amount of compensation payable to the claimant, the tribunal passed the following award:-

1. Loss of dependency : Rs. 12,16,800/-

2. Funeral expenses : Rs. 15,000/-

3. Consortium to widow : Rs. 15,000/-

Â Total : Rs. 12,46,800/-

Â The claimants were also held entitled to interest @ 7.5 % per annum.

4. The insurance company, i.e, Reliance General Insurance Company is in appeal against the aforesaid award passed by the tribunal and has

assailed the same inter-alia on the ground that the tribunal committed grave illegality in relying upon a salary certificate which was incomplete and

was not proved in accordance with law by recording the statement of the officer who had issued it. The appellant has also disputed the income of

the deceased which was taken as Rs. 7966/- per month and rounded off to Rs.

8,000/- per month and its further enhancement to a sum of Rs.

10,400/- on the ground that future prospects had neither been pleaded in the petition nor any evidence was led to prove the same. It is also alleged

that income tax component which was required to be deducted from the salary too was not considered by the tribunal. The other ground taken by

the appellant in this appeal is that the tribunal did not take into consideration the fact that under the service regulations, the claimants were entitled to

receive full salary of the deceased for a period of next seven years and that one of the dependent had also been provided the compassionate

appointment.Â

5. Having heard learned counsel for the appellant and Mr. H.C Jalmeria, learned counsel appearing for respondent Nos. 1 to 5, it may be noted that

compensation payable on account of death or injury suffered in motor vehicular accident has to be just and adequate as is necessary to compensate

for the loss occurred to a person in such accident. It cannot be aÂ windfall or largess. The courts, from time to time, have evolved several methods

for calculating the compensation on different heads. Despite the best efforts made by the Courts to provide a just, fair and uniform formula for

determination of compensation, there is still a lot of scope left for speculative assessment on certain heads, more so, when the claimants because of

their illiteracy and poverty are not in a position to lead proper evidence. The latest in the series of judgments is the pronouncement of the Supreme

Court in National Insurance Company Ltd. Vs. Pranay Sethi; 2017 ACJ 2700, wherein detailed guidelines have been issued for working out the

compensation payable on account of death in a motor vehicular accident.

6. In the light of the aforesaid authoritative pronouncement of the Supreme Court, the merits of grounds of challenge taken by the appellant are

required to be appreciated.

7. Admittedly, as is vehemently proved, the deceased at the time of death was working as Junior Assistant in the office of Block Development

Officer, Hiranagar and was drawing monthly salary of Rs. 7966/- per month and was 45 years old. The respondent No. 1 is wife, whereas

respondent Nos. 2 to 5 are minor children, who were wholly dependent upon the deceased. The tribunal after taking note of the legal position and

evidence that had come on record awarded a sum of Rs. 12,46,800/- on account

of loss of dependency. The aforesaid amount was arrived at by adding 30 % on account of loss of future prospects, which is in tune with the judgment of Pranay Sethi (supra) and therefore, cannot be found fault with. The plea of the appellant that deceased was a permanent employee and under the service rules governing him, the legal heirs of the deceased were entitled to receive full salary for a period of seven years also cannot be accepted in view of the fact that no such defence was ever taken by the appellant-company before the tribunal nor there is any evidence on record to show that under the service rules governing the employment of deceased, his legal representatives in fact were entitled to receive the full salary for a period of seven years. In order to sustain this ground, it was incumbent upon the appellant to take such plea specifically before the tribunal and prove the same by leading adequate evidence.

8. I have carefully gone through the objections filed by the appellant before the tribunal and the evidence led in the case and I do not find an iota of an evidence on the aforesaid aspect. In the absence of any such evidence led on the issue, it would not be possible for this Court to accept the plea raised by the appellant, that too, for the first time in this appeal. The argument of learned counsel appearing for the appellant that income tax component which the deceased had been paying on his salaried income was not taken note of by the tribunal is equally devoid of any merit for the simple reason that the appellant had not brought on record anything before the tribunal to show that the income received by the deceased was exigible to income tax nor there is an iota of evidence to show as to what was the amount which the deceased was reportedly paying on account of income tax. It is also not on record as to whether the employer of the deceased was paying salary after deducting income tax at source or not. In the absence of any such evidence on the issue, the tribunal was justified in not taking note of the aforesaid aspect. I am also not persuaded to permit the appellant to raise this plea for the first time in the appeal that too without supporting such plea by any evidence or material available on record.

9. The abstract question of law, i.e., whether the pecuniary advantage on account of salary received by the legal representatives of the deceased dying in vehicular accident for some period after death is required to be taken into consideration while computing the compensation

payable under Motor Vehicles Act? is purely an academic question in view of the reasons stated above and is therefore, not being decided in this case.

10. In view of the above, I find that the compensation awarded by the tribunal is just and fair and therefore, needs no modification.

11. Appeal is accordingly dismissed.Â