(2021) 09 J&K CK 0052

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 579 Of 2010, IA No. 843 Of 2010

Reliance General Insurance Co. Ltd — APPELLANT

Vs

Reno Sharma & Ors — RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Citation : (2021) 09 J&K CK 0052

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Tashi Rabstan, J

1. This appeal is directed against the award dated 31.03.2010 passed by the learned Tribunal in File No.731/claim in case, titled as, Reno Sharma & ors. vs M/s Mahajan Enterprises & ors., whereby an amount of Rs.17,94,000/- along with interest @7.5% from the date of filing of claim petition till realization came to be awarded in favour of claimants-respondents 1 to 5 herein, and against the Insurance Company.

2. The facts-in-brief as projected in the award are that on the fateful date of 15.09.2007 deceased Chaman Lal, his daughter Anamika and wife Reno Sharma, respondent No.1 herein, were going from Sunderbani to their native place by a motorcycle and when they reached near Village Thanda Pani, a very speedy mini load carrier, bearing No.JK02AA-6861 being driven rashly and negligently by its driver came from opposite side and hit the motorcycle, as a result of which Chaman Lal and his daughter Anamika succumbed to the injuries, whereas Reno Sharma sustained grievous injuries. Three claim petitions came to be filed and in File No.731/claim, out of which the present appeal has arisen, the learned Tribunal has awarded a total sum of Rs.17,94,000/- in favour of claimants, respondents 1 to 5 herein, and against the insurance company, appellant herein.

3. As per the evidence led, the date of birth of deceased Chaman Lal was

02.04.1970 and the last pay drawn by the deceased was Rs.8711/-. Learned Tribunal while assessing the amount of compensation held that since the date of birth of deceased was 02.04.1970 and the accident occurred on 15.09.2007, therefore, it would be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death, rather future prospects of the deceased were required to be taken note of. Accordingly, the learned Tribunal while increasing the income by 50%, took the monthly income of deceased to Rs.13066/- (Rs.8711 + 4355). In all, the learned Tribunal has awarded an amount of Rs.17,94,000/- in favour of claimants and against the insurance company. Hence, the present appeal.

4. Learned counsel appearing for appellant argued that the learned Tribunal has committed grave illegality in arbitrarily increasing the income of the deceased by 50% on the basis of last pay drawn, thus the award impugned is required to be set aside. Further, it was argued that as per 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 learned Tribunal, which has resulted in award of exorbitant compensation. He lastly argued that while assessing the compensation by the learned Tribunal, the income tax, which was being paid by the deceased out of his salary, was liable to be deducted.

5. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the file.

6. Admittedly, the appellant has not disputed the factum of accident. As per evidence led, the deceased was 37 years plus, a Government employee and was getting Rs.8711/- per month at the time of accident.

7. Mainly, the argument of learned counsel for appellant is that the learned Tribunal has arbitrarily increased the income of deceased by 50% on the basis of last pay drawn and that the learned Tribunal was to exclude the amount received or receivable by the dependents of the deceased Government employee towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course.

8. The law on future prospects is no more resintegra. A Constitution Bench of the Hon'ble Supreme Court in case, titled as, National Insurance Company Ltd. Vs Pranay Sethi,(2017) 16 SCC 680, has held in paragraph-61(iii) that while determining income, an addition of 50% of actual salary to the income of the deceased towards future prospects has to be made where the deceased had a permanent job and was below 40 years. In the present appeal, since the deceased was 37 years of age and was a Government employee, therefore, in view of the Pranay Sethi case (supra), learned Tribunal has rightly made addition of 50% of actual salary towards future prospects.

9. With respect to the issue of deduction of seven years salary from the compensation, I find force in the argument of learned counsel for appellant in view of the settled legal position laid down in Mrs. Helen C. Rebello and ors. Vs

Maharashtra SRTC & anr., AIR 1998 SC 3191; Bhakra Beas Management Board vs Smt. Kanta Aggarwal & ors., (2008) 11 SCC 366 and Reliance General Insurance Co. Ltd. Vs Shashi Sharma, 2016 AIR (SC) 4465.

10. What is held by the Apex Court in paragraph-22 in the case of Reliance General Insurance (supra), is reproduced hereunder:

"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 ex-gratia 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 dependents 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 dependents 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)."

11. Thus, the measure of compensation must be just and fair and, secondly, no double benefit should be passed on to the claimants. The compensation is not intended to be a bonanza, largesse or source of profit. If any amount is due to the dependents of the deceased even otherwise, the same shall be deductible from the compensation payable under the Motor Vehicles Act. One of the major head under which the compensation is claimed by the family of a deceased

Government employee is loss of income, i.e., pay and wages, which the deceased employee would have been earned while in service, had he been alive. In case the employer compensates an employee for a particular period on account of loss of salary, to grant the same benefit while assessing the compensation under the Act cannot be permitted. Claim on account of loss of pay and wages can be made against the insurer. However, once that very amount is being paid by the employer, it will not be justifiable to calculate and pay that amount as compensation under the Motor Vehicles Act.

12. As regards the argument of deduction of income tax from the salary of deceased while calculating the compensation to be paid to the claimants, the record reveals that the deceased was getting only Rs.8711/- as a salary, out of which Rs.200/- he was saving as a GPF. No where it has come on record that the department was deducting the income tax from the salary of deceased or that the income was deceased was in the taxable range. Even the Last Pay Certificate annexed with the file of learned Tribunal nowhere discloses that the department was deducting the income tax from the salary of deceased. Further, the appellant herein had failed to produce even a single witness in rebuttal. Therefore, I do not find any force in the argument of learned counsel for appellant that while calculating the compensation to be paid to the claimants; the learned Tribunal was required to deduct the income tax from the salary of deceased.

13. In view of the above discussion, I deem it proper to partly allow the appeal and modify the award in the following manner:

i. As per the Last Pay Certificate, the deceased was getting Rs.8711/-per month. Now an addition of 50% of actual salary to the income of the deceased towards future prospects has to be made, which comes to Rs.13066/- per month. Out of the monthly income, 1/4th is to be deducted towards the personal expenses of the deceased, leaving behind a sum of Rs.9800/-. Thus, Rs.1,17,600/- per annum comes as the loss of dependency. When multiplier 15 is applied, the amount comes to Rs.17,64,000/-. The salary received by the claimants for seven years is required to be deducted. Here it is to be seen that Rs.1,17,600/- per annum has been calculated to be the loss of dependency, in which ratio the insurance company has to pay the compensation. Thus, applying the said ratio, the loss of dependency for seven years comes to (1,17,600 × 7) Rs.8,23,200/-. Accordingly, the amount awarded in favour of claimants-respondents 1 to 5 comes to (17,64,000 - 8,23,200) Rs.9,40,800/- on account of loss of dependency. Also, in view of the para 61 (viii) of Pranay Sethi's Case (Supra), the claimants are also entitled to Rs 15000 as loss of estate, Rs 15000 as funeral expenses and Rs 40000 as Loss of consortium Thus, the claimants have been found entitled to compensation on account of death of deceased Chaman Lal under the following heads:

i. For loss of dependency - Rs.9,40,800/-

ii. For funeral expenses - Rs.15000/-

iii. Consortium to widow - Rs.40000/-

iv. Loss of Estate - Rs.15000/-

14. The claimants are, thus, held entitled to a compensation of Rs.10,10,800/- (rupees ten lacs ten thousands and eight hundred only) along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. Ordered accordingly. Let the awarded amount along with interest, minus the amount already paid, be released in favour of claimants-respondents 1 to 5 herein in terms of the award after proper verification/identification. The excess amount, if any, be released in favour of the insurance company. Connected IA, accordingly, stands disposed of.