

(2025) 10 J&K CK 1162
In the Jammu And Kashmir High Court
Case No : Mac App No. 150 Of 2024

Reliance General Insurance Co	Vs	APPELLANT
Santosh Devi & Ors		RESPONDENT

Date of Decision : 18-10-2025

Acts Referred:

Citation : (2025) 10 J&K CK 1162

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Himani Uppal, Jatinder Singh

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The appellant-Insurance Company has challenged award dated 10.08.2024 passed by Motor Accidents Claims Tribunal, Jammu (hereinafter to be referred to as "Tribunal") whereby claim petition filed by respondents No. 1 to 5 has been allowed and compensation in the amount of Rs. 42,54,900/- along with interest @ 7.5% per annum has been awarded in favour of respondents No. 1 to 5 (hereinafter to be referred to as "Claimants"), which has been made payable by the appellant-insurance company.

2. It appears that a claim petition was filed by the claimants before the Tribunal, seeking compensation in the amount of Rs. 1.85 crores along with interest on account of death of Sh. Vijay Kumar, who happened to be the husband of respondent No. 1, father of respondents No. 2 and 3 and son of respondents No. 4 and 5. In the claim petition, appellant-insurance company was impleaded as respondent No. 1 whereas, the owner of the offending vehicle (respondent No. 6 herein) was impleaded as respondent No. 2 and the driver of the offending vehicle (respondent No. 7 herein) was impleaded as respondent No. 3.

3. As per case of the claimants, deceased-Vijay Kumar was travelling on a

motorcycle bearing registration No. JK02BD-8597 on 13.09.2021 and when he reached near Gas Plant NHW Bari Brahmana, the Motorcycle was hit by a Swift car bearing registration No. JK02BC-3554, that was being driven rashly and negligently by its driver-respondent No. 7 herein. As a result of the said accident, deceased-Vijay Kumar received grievous injuries and later on succumbed to these injuries on 26.09.2021 after a prolonged treatment in the hospital.

4. It was pleaded by the claimants that the offending vehicle was owned by respondent No. 6 herein and it was insured with appellant-insurance company at the relevant time. It was further pleaded that the deceased-Vijay Kumar was 54 years old at the time of his death and he was drawing monthly pension of Rs. 32,000/- being an ex-serviceman of Indian Army and besides this, he was earning an amount of Rs. 30,000/- per month by running a chemist shop under the name and style of M/s Hardik Medical Centre at Satyam Colony, Extension Trikuta Nagar, Jammu

5. The claim petition was contested by appellant-insurance company by filing its reply whereas, the owner and driver of the offending vehicle did not contest the claim petition and they were set ex parte. The appellant-insurance company in its reply to the claim petition admitted the currency of policy of insurance of offending vehicle with it. It was contended that the accident was caused due to rash and negligent driving of the motorcycle by the deceased and not by the rash and negligent driving of the offending vehicle by its driver. It was further contended that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident, as such, there was breach of policy conditions, as a consequence whereof the appellant-insurance company is exonerated from its liability to indemnify the insured. It was further pleaded that the claimants have sought exorbitant amount of compensation to which they are not entitled.

6. On the basis of pleadings of the parties, the learned Tribunal framed the following issues:

(i) Whether on 13.09.2021, the offending vehicle (Swift Car) bearing registration No. JK02BC-3554 was driven rashly and negligently by respondent No. 3/driver and on reaching at Gas Plant NHW Bari Brahmana at about 9.30 pm, he could not control the vehicle and hit the motorcycle bearing registration No. JK02BD-8597 of the deceased and caused accident, due to which the deceased Vijay Kumar was seriously injured and he succumbed to the injuries sustained in the accident on 26.09.2021? OPP

(ii) In case issued No. 1 is proved in affirmative, whether the petitioners are entitled to receive the compensation, if yes, to what amount and from whom? OPP

(iii) Whether the offending vehicle was being driven at the time of accident in contravention of terms and conditions of the insurance policy and the driver was not holding a valid driving licence at the time of accident, as such, the

respondent insurance company is not liable to pay compensation to the petitioners? OPR-1

(iv) Relief? O.P Parties.

7. The claimants in support of their case examined claimant-Santosh Devi and PW Ram Murti as witnesses. No evidence was led by the appellant-insurance company before the learned Tribunal. After analyzing the material on record, the learned Tribunal came to the conclusion that the accident was caused due to rashness and negligence on the part of the driver of the offending vehicle and it was also found that the death of the deceased had taken place on account of the accident which was caused by the offending vehicle. The learned Tribunal further held that the driving licence of the driver of the offending vehicle was valid as on date of the accident and, therefore, there was no breach of policy conditions on the part of the insured.

8. While assessing the compensation, the learned Tribunal computed the monthly income of the deceased at Rs. 30,316/-from pension and Rs. 6,000/- per month from business. The total annual income of the deceased was, accordingly taken as Rs. 4,35,792/-. After deducting one-fourth towards the personal and living expenses of the deceased, the annual loss of dependency of the claimants was assessed at Rs.3,26,844/-. After applying multiplier of 11 by taking the age of the deceased as 54 years and 9 months, the loss of dependency to the claimants was worked out as Rs. 41,04,877/-. The learned Tribunal after addition of compensation under conventional heads like loss of consortium, funeral expenses and loss of estate, awarded total compensation of Rs. 42,54,900/- in favour of the claimants.

9. The appellant-insurance company has challenged the impugned award by contending that while computing the income of the deceased, the learned Tribunal has not taken into account the fact that respondent No. 1-the widow of the deceased is now receiving family pension after the death of her husband. It has been submitted that the amount of pension which the widow is getting, is eligible to be deducted while assessing the loss of dependency to the claimants. It has also been contended that there is no documentary evidence on record of the Tribunal to show that the deceased was running a chemist shop or that he was earning any income from the said business and, therefore, it was not open to the Tribunal to add Rs. 6,000/- per month on account of income from business.

10. I have heard learned counsel for the parties and perused record of the case.

11. A perusal of Pension Payment Order of the deceased, which is available in the record of the Tribunal, shows that the monthly basic pension of the deceased was fixed as Rs. 2,660/- in the year 2005 whereas, his family pension was fixed as Rs. 1913/-There is material on record in the shape of bank statement, which shows that deceased was getting a monthly pension of Rs. 30,316/- as the said amount was credited in his account as pension on 27.09.2021. Even the claimant Santosh Devi while making her statement has confirmed this fact which stands

unrebutted during her cross-examination. Thus, the learned Tribunal has rightly assessed the pensionary income of the deceased as Rs. 30,316/-.

12. The deceased had retired from Army and according to the claimants, he was operating the business of chemist shop. It is correct that there is no documentary proof with regard to income of the deceased from the said business. However, the claimants have placed on record of the Tribunal a copy of certificate issued by J&K Pharmacy Council according to which the deceased was registered as Pharmacist. Another document evidencing the renewal of certificate of registration as Pharmacist has also been placed on record. A copy of communication addressed by Food and Drugs Control Department to the deceased, who is shown to be proprietor of M/s Hardik Medical Centre, informing him that his inward application has been approved is also available on record. Besides these documents, the claimant Santosh Kumari while making her statement has clearly deposed that her deceased husband was running a medical shop. She has reiterated the same in her cross-examination. Thus, there is no doubt in holding that the deceased after his retirement from Army, was running a chemist shop. However, there is no material on record to assess his actual income from the said business. The learned Tribunal has, on the basis of guess work, assessed the income of the deceased from business of running a chemist shop as Rs. 6,000/- which, having regard to the locality in which the deceased was operating his business,

cannot be termed as excessive.

13. That takes us to the contention of the appellant that the amount of family pension which respondent No. 1, the widow of the deceased is drawing is eligible to be deducted while computing the loss of dependency to the claimants. It has been submitted that claimant Santosh Devi is admittedly drawing family pension amounting to half of the pension that was being drawn by the deceased, therefore, the said amount has to be deducted while computing the loss of dependency to the claimants.

14. I am afraid the contention raised by the learned counsel for the appellants is without any substance. The Supreme Court of India in "Helen C. Rebello (Mrs) and Ors Vs. Maharashtra State Road Transport Corporation & Ors", (1999) 1 SCC 90 has dealt with the issue as to whether the amounts received by the deceased by way of provident fund, pension, life insurance policies or pecuniary advantages received by the heirs on account of death of the deceased are liable to be deducted from the compensation. The Court held that these pecuniary advantages have no co-relation with the compensation receivable by the dependants under Motor Vehicles Act. The relevant observations of the Supreme Court are reproduced as under:

"Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount

irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

15. Again in "Bhakra Beas Management Board Vs. Kanta Aggarwal (Smt) and Ors", (2008) 11 SCC 366, the Supreme Court took a similar view. Again in the case of "Sebastiani Lakra & Ors Vs. National Insurance company Ltd & anr" (2019) 17 SCC 465, the Supreme Court, after taking note of its earlier precedents on the issue, observed as under:

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled

to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tort-feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

16. Recently, the Supreme Court in the case of "Hanumantharaju B (Dead) by L.R Vs. M. Akram Pasha & Ors", AIR 2025 SC 3283 has reiterated and re-affirmed the aforesaid view. In the said case, the Supreme Court has held that while computing the loss of income, it would not be permissible to deduct the pensionary amount and that for the purpose of computing the loss of income, the monthly salary has to be accepted without deducting the pension amount.

17. In the face of aforesaid consistent legal position on the issue, the family pension drawn by the claimant Santosh Devi after the death of her deceased husband is not eligible to be deducted while computing the loss of dependency of the claimants due to the death of the deceased. The contention of the appellant-insurance company in this regard is without any merit and deserves to be rejected.

18. For the foregoing reasons, I do not find any ground to interfere in the award passed by the learned Tribunal. The appeal lacks merit. The same is, accordingly, dismissed. The awarded amount, if deposited, with the Registrar Judicial of this Court shall be released in favour of the claimants in accordance with the terms

and conditions mentioned in the impugned award passed by the Tribunal.