
(2002) 11 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : CIMA 141/94

Seema Malik and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Citation : (2005) ACJ 1389 : (2003) 2 JKJ 113

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : D.S. Thakur, for the Appellant; S.S. Nanda, Sr. CGSC, for the Respondent

Judgement

Tejinder Singh Doabia, J.—Ashok Kumar Malik, a Science Graduate from D.A.V. College, Amritsar, Guru Nanak Dev University and

who had also obtained a Diploma in Textile Chemistry from Punjab State Board of Technical Education in Ist Division, met with an accident on

4.6.1985. He died. He left behind his widow and an infant child and parents, who had crossed the age of fifty. The deceased was going on a

motor -cycle bearing registration No. JKR 259, when he was near Tawi Bridge he was hit by an Army Truck No. 75-D 19212/W. The death

appeared to be instant. When the claim petition was preferred the plea taken was that the offending vehicle was being driven rashly and negligently.

Compensation was accordingly claimed. With a view to sustain the claim regarding the compensation, it was pleaded that the aforementioned

Science Graduate with a Diploma in Textile Chemistry was carrying on his business of cloth merchant. This was from a shop located in Jammu. His

income was put across at Rs. 5000/- by two of the witnesses and Rs. 6000/per month by another witness. He was found to be paying a sum of

Rs. 800/- as rent for residential accommodation and in this manner the Tribunal observed, "His income could not have been less than Rs. 3000/-.

This figure was taken note of. The personal expenses of the deceased and his widow were taken to be around 2/3rd and the dependency of the

infant was put around Rs. 500/-. So far as parents are concerned, it was concluded that he must be contributing about Rs. 250/- for meeting the

expenses which could have been incurred by the mother. As such, the dependency of the mother and the infant was fixed at Rs. 750/-. The annual

dependency was calculated at Rs. 9000/-. The multiplier of "15" was applied and the amount of compensation was accordingly awarded. The fact

that the widow had remarried was taken note of and therefore, no benefit of this was given to the minor. It was precisely for this reason an

observation was made that the amount which the deceased must be spending on himself and the widow is required to be taken note of. Now this

decision given by the Tribunal is subject matter of challenge in this appeal.

2. So far as the issue regarding negligence is concerned, this need not to be gone into as Union of India has not filed the appeal. Thus the only

material issue is issue No. 2, which is with regard to quantum of compensation. This would also require determination of the question as to whether

a widow on remarriage dis-entitles herself to claim compensation on account of death of her husband.

3. As indicated above, it has come on record that the deceased was a Science Graduate. He was having proficiency in Textile Chemistry. Instead

of opting for a job, he opted to carry on his own business.

4. PW Janak Kumar Khorana stated that the income of the deceased was around Rs. 5000/- per month. Nasib Singh is another witness, who

gave the same figure. Krishan Chand PW stated that the deceased was earning Rs. 6000/- PM. He stated that the deceased was contributing Rs.

4000/- to his family. Dr. J.N. Raina, PW stated that the deceased was paying rent for the residential accommodation. This was to the tune of Rs.

800/- PM. If the figure as given by these witnesses is taken note of then the reasonable way of looking at would be to take into consideration the

average of the two figures i.e. Rs. 5000/- and Rs. 6000/-. The average of this would come to Rs. 5,500/-. The Tribunal took note of the fact that

the deceased was paying Rs. 800/- PM as rent and therefore, his income could

not be less than Rs. 3000/- It was this figure which was taken note of. The evidence led by the claimants in the shape of statements of two witnesses is that the deceased was having an income of Rs. 5000/- and one witness has stated that he was having an income of Rs. 6000/- per month. Thus, if the totality of the evidence is taken note of then a finding can be recorded that the deceased must be earning Rs. 5500/-. He was paying Rs. 800/- as rent for residential accommodation and was also maintaining a Motorcycle. Therefore, to repeat it would be apt to hold that the deceased was having income of Rs. 5500/- P.M. If out of this amount of Rs. 5500/- a sum of Rs. 800/- is deducted as rent for residential accommodation then the figure would come to Rs. 4700/-. Out of this amount the deceased would incurring one third amount on himself. If amount spent on petrol and other small expenses is taken note of then Rs. 1700/- can be said to be the amount which deceased must have been spending upon himself. Thus the deceased must be contributing a sum of Rs. 3000/- to the family. Therefore, this is the figure which is required as contribution to the family to be taken note of. As a matter of fact this is the figure indicated by the Tribunal also, but the Tribunal has come to the conclusion that out of this the deceased must be spending 2/3rd of the income on himself and on his wife. This conclusion in my opinion is not apt. The deceased was a Science graduate and had attained proficiency in Textile Chemistry. The modern trend to take care the children is a factor which cannot be ignored. Therefore, it would be apt to hold that the deceased was having income of Rs. 5500/-. After paying rent of Rs. 800/- for hiring residential accommodation, he was having the balance of Rs. 4700/-. Rs. 1700/- excluded out of this amount. The deceased was thus contributing a sum of Rs. 3000/- for the family. The annual dependency of the family would come to Rs. 36,000/-. The deceased was of the age of 33 years. It is thought apt to apply a multiplier of '16'. In this way the total amount of compensation which would come would be Rs. 5,76,000/-. Thus the enhancement to the extent of Rs. 4,41,000/- is made. On this enhanced amount the rate of interest would be 9%. with effect from the date of institution of the application.

5. Another issue which is required to be taken note of is with regard to the rights of a widow to claim maintenance even if she re-marries. The

judicial opinion is to the effect that simply because a widow has remarried, is not to be made a ground for declining her compensation. In *Hariram and Others Vs. Commissioner for Workmen's Compensation*, the view expressed was that the widow on remarriage cannot be deprived of her right of getting compensation. In the above case the argument put across was that as the widow had re-married, therefore, the entire amount be given to the father of the deceased. It was held that this legal proposition cannot be sustained. The reasoning given was that the inheritance never remains in abeyance and, therefore, rights of a widow are to be taken and recognised on the date when her husband dies. Therefore, she cannot be deprived of her right of getting compensation.

6. The Rajasthan High Court in the case reported as *Regal Sports Vs. Mohd. Siddique and Others*, held that widow cannot be declined compensation on her remarriage. The amount awarded was Rs. 66,420/-. This was reduced in appeal to Rs. 50,000/-. What is sought to be pointed out is that the widow was held entitled to claim amount of compensation. In *Rajasthan State Road Transport Corporation and Others Vs. Kiran Lata and Others*, the view expressed was that to deny compensation on the ground of possibility of remarriage of the widow would be enforcing a view which is against the public policy and would be violative of Section 23 of the Contract Act. It was accordingly observed that the question of possibility of remarriage would not come in the way at all and compensation is not to be based by taking into consideration the question of marriage or possibility of remarriage. In another decision of the Rajasthan High Court, reported as *Vimla Devi and Others Vs. Chaman and Others*, it was held that the denial of compensation is not to be on account of possibility of re-marriage of the widow of the deceased. Some other decisions dealing with this aspect of the matter are *Rajinder Kumar and Ors. v. Soma Devi and Ors.* 2001 ACJ 311; *Chandan v. Kanwarlal* 1989 ACJ 816; *Khairullah and Another Vs. Anita and Others*, ; *Nankuram Sarajdin v. Member MACT, Thane* 1994 (2) TAC 346 and *Halki Bai and Another Vs. New India Assurance Co. Ltd. and Others*, . The learned Judges in these cases have consistently held that remarriage of a widow would not dis-entitle her to claim compensation.

7. Another reason which re-enforces the above conclusion that on re-marriage of

a widow the social stigma which stood imposed earlier is not completely washed of. Some negative factors continue to exist and are taken note of in the case of re-marriage of a widow. She may on re-marriage may not enjoy the same status and frame of mind. Re -adjustment when widow has an infant, creates other social problems and she has to provide some security to the child or children from the first husband. The factor has to be taken note. As such a widow on re-marriage cannot be deprived of the compensation.

8. The mother of the minor had stated that the amount of compensation was required to be spent on educating and bringing up her minor son.

According to her, that much amount which she would have got would have been spent on the up-keep of the minor. Her counsel has stated that

whatever amount she becomes entitled to now be given to her son, so that this monetary relief be of some solace for the fatherly love which he was

unable to enjoy. As the appeal has been preferred by the son and mother of the deceased, the awarded enhanced amount shall go to the son.

9. The amount which was found payable by the Tribunal was invested in Kisan Vikas Patras. These were renewed from time to time. These

accounts were being maintained by the grand parents. The grand parents, however, made a statement on 25.7.2000 that these Kisan Vikas Patras

be got renewed. In pursuance of the directions given by this Court, the amounts were re-invested and the amount thus invested and the enhanced

amount would be available to Sh. Abhishekh Malik, minor. It is directed that he would be given this amount on his attaining the age of majority. As

this Court was taking care of the interest of the minor, the age of majority in this case would be taken as 21 years. However, if the minor makes an

application in this regard for the release of any amount at the earlier date, then that prayer can be considered by this court. As the enhancement of

the compensation has been claimed by only two persons i.e. son and mother and as the mother has stated that the entire awarded amount of

compensation be given to the minor, it is directed that the entire amount would be payable to the minor. On the enhanced amount the rate of

interest would be 9% p.a. The Union of India would deposit the entire amount within three months, failing which amount of interest would be the

same as allowed by the Tribunal. The entire amount would be deposited in a FDR

with a scheduled bank and be made available to Abhishekh Malik in terms of the directions given in this order.