

(2020) 07 J&K CK 0083

In the Jammu And Kashmir High Court

Case No : Mac App No. 68 Of 2019, Civil Miscellaneous No. 4658, 8828 Of 2019, 3120 Of 2020

United India Insurance Co. Ltd

APPELLANT

Vs

Sureshta Kumari

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0083

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vishnu Gupta, Jagpal Singh

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. This appeal filed by the United India Insurance Co. Ltd (hereinafter referred to as the ?insurer?) is directed against the award dated 15.03.2019 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the ? Tribunal?) in file No. 10/claim titled "Sureshta Kumari vs United India Insurance CO. Ltd" whereby the insurer has been directed to indemnify the owner and pay compensation to the tune of Rs.5,550,356/- along with interest at the rate of 9% per annum till the final payment.

2. The impugned award has been assailed primarily on the ground that the award passed by the Tribunal is exorbitant, in that, the Tribunal has committed errors at more than one place in computing the fair and just compensation payable to the claimants.

3. Mr. Gupta, learned counsel appearing for the insurer has not disputed the income and the medical expenses etc. incurred in the treatment of the deceased, but vehemently submits that having regard to the fact that the deceased is survived by three dependents, the deduction on account of personal expenses ought to have been made at the rate of 1/3rd of the established income and not

1/4th as has been done by the Tribunal erroneously. He points out that the interest at the rate of 9% per annum is not justified on any count. No nationalized or scheduled bank is giving this rate of interest even on the fixed deposit. He also points out an error committed by the Tribunal in not subtracting a sum of Rs. 16853/- from the medical expenses.

4. Mr. Jagpal Singh, learned counsel for the claimants could not justify the applicability of the deduction at the rate of 1/4th as has been done by the Tribunal. The legal position in this regard is well settled in the case of Sarla Verma and others vs Delhi Transport Corporation and another, (2009)

6. SCC 121, which clearly provides that in case the dependents of the deceased are three in number, the deduction ought to be 1/3rd of the established income. To this extent, I am in agreement with the learned counsel for the insurer that the award needs adequate modification. I am also in agreement with the learned counsel for the insurer that an amount of Rs.16853/- is liable to be deducted from the medical expenses as it represents the amount which was refunded by the Hospital concerned i.e where the claimants had deposited a sum of Rs.5,78,000/- as medical expenses.

5. Similarly going by the trend and the present bank rate of interest, 7.5% interest per annum on the awarded amount would be justified.

6. For the foregoing reasons, the award stands modified to the following extent:

i. Loss of dependency Rs.47,62,824/-(Rs.54123-18041/-) (Rs.36082 x 12 x 11)

ii. Medical expenses and Transportation charges Rs.5,78,000/-

minus the amount received Rs.16853/-

Rs.5,61,147/-

Funeral Expenses Rs.15000/-

Loss of Estate Rs.15,000/-

Loss of spousal Consortium Rs.40,000/-

Loss of Parental Consortium Rs.80000/-

Total Rs.5473971/-

7. The aforesaid amount shall carry interest @ 7.5% per annum from the date of institution of the claim petition.

8. Accordingly, the appeal is allowed to the aforesaid extent. The excess amount, if any, shall be refunded to the insurer.