HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

Mac App No. 28/2023

Reserved on: .30.07.2026
Pronounced on: 05.08.2026
Uploaded on: 05.08.2026
Whether the operative part or Full Judgment is Pronounced: Full.

United India Insurance Company Limited

…..Appellant(s)

Through: Ms. Rifat Khalida, Advocate

V/s

Hajira Bano and others

….. Respondent(s)

Through: Ms Sabeena Naveed, Sr. Advocate with
Ms Shaila Rasool, Advocate

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI JUDGE

J U D G M E N T

1. The Insurance Company, appellant, has filed this appeal seeking to set aside the Award dated 02.05.2023 passed by the Motor Accidents Claims Tribunal, Srinagar, in case titled *Mst Hajira and others v. Sajad Ah. Bangroo and others*, whereby, the claim petition preferred by the respondents for awarding compensation in their favour being the dependents of a 37 years old lady Ms Aaliya Ali Mir D/o Ali Mohammad W/o Dr. Muzafar-ul-Sultan R/o Wanbal Rawalpora Srinagar, who died in a motor accident on 22.08.2015, has been allowed and the appellant has been saddled with the liability to pay compensation of Rs. 97,39,525/- along with simple interest @ 6% per annum from the date of presentation of claim till its final realization.

FACTUAL MATRIX

2. The deceased, Aaliya aged about 37 years at the time of the accident, was working as a Lecturer in DIET, Pampore, Pulwama, drawing a gross monthly salary of Rs. 53986/- as deposed by the Principal, DIET Pampore and the Branch Incharge United India Insurance Company. On 22.08.2015, the deceased was travelling in the offending vehicle (TATA 407 LP-Bus) bearing registration No. JK01N 5927 towards Dodpathri and upon reaching Khansahib, the driver of the vehicle lost control over the vehicle which turned turtle, the deceased sustained fatal injuries on account of the rash and negligent driving of the driver of the offending vehicle owned by respondent No. 1 before the Tribunal and insured with the appellant-Insurance Company vide Policy No. 1114033114P147590975 which was valid as on the date of the accident.

3. The Tribunal, on appreciation of the oral and documentary evidence, returned a finding that the accident occurred solely on account of the rash and negligent driving of the driver of the offending vehicle, and that finding has attained finality, not having been assailed before this Court. The sole controversy raised in this appeal pertains to the quantum of compensation awarded viz. the seven years.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Learned counsel for the appellant-Insurance Company does not dispute the multiplicand, the multiplier of 15 applied in view of the age of the deceased (37 years), or the addition of 50% towards future prospects, keeping in mind the law laid down by the Constitution Bench of the Hon'ble Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*,

(2017) 16 SCC 680. The limited grievance urged is that the deceased being a Lecturer in the DIET Pampore, Pulwama, a Government run Institution, the respondents/claimants, on account of the death-cum-retirement service benefits extended by the employer, have continued to or might receive the full salary of the deceased for a period of seven (7) years after her death, and that this amount, having accrued to the dependents as a direct consequence of the death, ought to have been deducted from the compensation payable, failing which the claimants would stand unjustly enriched with a double benefit for the very same loss of dependency.

5. It is accordingly submitted that the Tribunal committed an error in law in not adverting to this aspect and in failing to deduct the said amount while computing the compensation payable, and that the Award to that extent deserves to be set aside/modified.

6. In support of her submissions, the learned counsel referred to and relied upon the law laid down in the judgments delivered by the Supreme Court in cases titled *Reliance General Insurance Co. Ltd., v. Shashi Sharma & Ors*; reported as *AIR 2016 SC 4465*; *Krishna & Ors., v. Tek Chand & Ors*., reported as *2024 Livelaw (SC) 116*; *Reliance General Insurance Company v. Kanika* reported as *2026 Livelaw (SC) 196*; *National Insurance Company Ltd., v. Purna Devi and others* reported as *AIRONLINE 2020 J&K 458* and judgment of this Court delivered in case titled *Nasima Begum v. National Insurance Company Limited and others* bearing CMAM No. 116/2017 decided on 20.03.2019 read with its

review petition bearing RPC no. 04/2019 [RP no. 15/2019] decided on 03.07.2021.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

7. *Per contra*, learned counsel for the respondents/claimants supports the impugned Award and submits that the payment of salary/family pension or any compassionate benefit extended by the employer of the deceased to her dependents is referable to an independent service/statutory relationship between the employer and the deceased, has no correlation whatsoever with the tortuous liability of the owner and Insurer of the offending vehicle, and cannot be permitted to be set off against the compensation payable for the loss of dependency occasioned by the accident. It is submitted that the law on this point is well settled and does not admit of any different view.

8. The learned senior counsel also referred to SRO 391 of 1983 to indicate that the full salary that was being made available to the dependents of the employee dying in harness has ceased to exist in terms of Rule 20 (bb) inserted in the CSR vide SRO 391 dated 15.7.1983.

9. The learned senior counsel for the respondents/ claimants referred to and relied upon the judgment delivered by the Supreme Court in case titled *Sarla Verma and others v. Delhi Transport Corporation and ors*, reported as MANU/SC/0606/2009

ANALYSIS:

10. Heard learned counsel for the parties, perused the record of the Tribunal, including the impugned Award and considered the submissions made.

11. The short question that falls for consideration is whether the salary/family pension or other terminal or compassionate benefits paid by the employer of the deceased to her dependents, consequent upon her death, are liable to be deducted from the compensation awarded under the Motor Vehicles Act, 1988, for the loss of dependency suffered on account of the accident.

12. In the present case, the receipt of the benefit of salary for seven years is disputed by the learned counsel for the respondents/ claimants. The learned senior counsel would submit that no such benefit is available to the respondents/ claimants in terms of the Rules. She would submit that the dependents of the deceased are only entitled to receive enhanced pension and not salary as claimed by the learned counsel for the appellant and such enhanced pension is independent of the compensation granted in terms of the Motor Vehicles Act.

13. It is by now well settled that compensation payable under the Motor Vehicles Act is in the nature of pecuniary damages for the loss of dependency caused to the family of the deceased by reason of a wrongful act, namely, the accident caused by the negligence of the offending vehicle. The liability of the owner and the Insurer to pay such compensation arises independently of, and is unconnected with, any benefit that the dependents may receive from source collateral to the tortfeasor, such as the employer of the deceased.

14. The Hon'ble Supreme Court, in ***Helen C. Rebello v. Maharashtra SRTC, (1998) 1 SCC 90***, has authoritatively held that amounts received by the dependents of a deceased from sources such as provident fund,

pension, insurance and the like are not liable to be deducted from the compensation payable under the Motor Vehicles Act, as such amounts do not flow from the tortfeasor but accrue to the dependents by virtue of a separate contractual or statutory relationship, and are intended to benefit the dependents in addition to, and not in substitution of, the compensation payable for the accidental death.

15. This principle has been consistently reiterated by the Hon'ble Supreme Court, including in ***Vimal Kanwar v. Kishore Dan, (2013) 7 SCC 476***, wherein it was held that family pension is a statutory benefit flowing from the rules governing the service of the deceased and cannot be equated with compensation payable for the wrongful act of the tortfeasor; the source and object of the two payments being entirely distinct, one cannot be set off against the other.

16. Applying the aforesaid settled position, the fact that the employer of the deceased, out of its own service rules or compassionate policy, chose to continue paying the salary of the deceased to her dependents for a period of seven years, which however does not appear to be correct as no Rule has been shown or placed on record by the appellant in this behalf, does not alter the character of that payment. Such payment is referable to the conditions of service between the deceased and her employer and is collateral to, and independent of, the wrong committed by the driver of the offending vehicle. It cannot, therefore, be permitted to reduce the liability of the tortfeasor, namely, the Insurer of the offending vehicle, who is obliged to make good the loss of dependency, regardless of any benefit the dependents may receive from an independent, collateral

source. The plea taken by the learned counsel for the appellant, thus, does not hold good and is unsustainable. To hold otherwise would be to allow the appellant to take advantage of the statutory/contractual benefit flowing to the dependents from a source wholly unconnected with the accident, thereby indirectly reducing its own liability towards the victims of the vehicular accident, a result which the law does not countenance.

17. The position does not get changed even if the plea/submission of the learned counsel is considered in light of the applicable service rules as well. The Rule position, governing the subject, therefore, is desirable in the first instance. Rule 20 (bb) referred to by the learned senior counsel as inserted in CSR vide SRO 391 dated 15.7.1983 is taken note of herein:

> *"20 (b)….(bb) Where a Government servant dies while in service on or after 1-1-1983 after having rendered not less than 7 years continuous service, the rate of family pension payable to the family of the deceased shall be equal to 50 per cent of the pay last drawn or twice the family pension admissible under sub-rule (ii) (aaa) whichever is less and the amount so admissible shall be payable from the date following the date of death of the Government servant for a period of seven years or for a period up to the date on which the deceased Government servant would have attained the age of 62 years had he survived, whichever is less. The pension payable thereafter will be at the rates laid down in sub-rule (ii) (aaa)."*

18. Subsequently, the Government has issued SRO 310 of 1986 dated 8.5.1986, whereby, Rule 20 (bbb) was introduced which provides as under:

> *"20 (b)….(bb)….(bbb) Notwithstanding anything contained in sub-clause (bb) above, where a Government servant dies while in service after having rendered not less than seven years continuous service, the rate of family pension admissible to the beneficiary of the deceased shall be equal to the pay last drawn by the deceased officer before his death. Pension at the enhanced rates equal to the last pay shall be payable for a period of seven years from the date following the death of the Government servant or for period up to the date on which the deceased Government servant would have attained the age of superannuation whichever is earlier.*
>
> *After having drawn family pension at such enhanced rates, it will be allowed at the rate equal to 50% of pay last drawn or twice the family pension admissible as per sub-rule (ii) (aaa) whichever is less and the amount so admissible shall be payable for a period of seven years from the date the payment of enhanced pension as per preceeding para ceases or till the deceased would have attained the age of 62 years whichever is earlier.*
>
> *Thereafter, the family pension will be payable at the ordinary rates laid down in sub-rule (ii) (aaa).*
>
> *These rules shall be deemed to have come into effect from 1-1-1986."*

19. Thereafter, one more SRO was issued i.e., SRO 94 of 2009 dated 15.4.2009, which mandated as follows:

"8. The following shall be inserted as proviso to clause (c) of Rule 20 below Note- 4 of the Family-Pension-cum-Gratuity Rules (Schedule XV) :

Provided that in respect of a Government servant who may die while in service on or after 1.7.2009 after having rendered not less than seven years continuous service, the family pension on enhanced rates equal to 50% of the last pay drawn shall be payable to the family of the Government servant from the date of death of the Government servant for a period of ten years without any upper age limit. Thereafter, the family pension shall be payable at the ordinary rates.

Note:- Cases already settled in terms of the rules in force immediately before 1.7.2009 shall not be re-opened."

20. Having regard to the Rule position, as taken note of hereinbefore, this Court is of the considered opinion that the instant case is covered by the provisions of SRO 94 of 2009 dated 15.4.2009, which provides that beneficiaries of the deceased Government servant shall be paid enhanced family pension @ 50% of the last pay drawn for a period of ten years and not the full salary for a period of seven years, as is being projected by the learned counsel for the appellant, as the deceased Government employee, in the instant case, had died in the year 2015. Thus the refuge being sought by the learned counsel for the appellant in SRO 310 of 1986 dated 8.5.1986, though having not been specifically referred to, is of no help to the appellants. Similarly, the SRO 391 of 1983 dated 15.7.1983, is also held to be not applicable for having outlived its life by the time the deceased Government employee, in the instant case, has

died and SRO 94 of 2009 dated 15.4.2009 had come into effect and was governing the field.

21. This Court, therefore, finds no infirmity in the approach of the learned Tribunal in declining to deduct the amount of compensation on account of alleged salary likely to be received by the respondents/claimants from the employer of the deceased while computing the compensation payable. The contention urged on behalf of the appellant-Insurance Company is accordingly rejected.

22. As regards the computation of compensation, the deceased was aged 37 years at the time of her death, and in view of *Pranay Sethi (supra)*, the Tribunal has correctly applied a multiplier of 15 and granted an addition of 50% towards future prospects on the established monthly income of Rs. 53988/-. After deducting $1/4^{th}$ as the living expenses of the dependents, having regard to the number of dependents, the annual and total loss of dependency has been correctly worked out. The husband having remarried, this court finds that except for the spousal consortium, the conventional heads, namely, loss of estate, loss of consortium (parental/filial) and funeral expenses, have also been correctly awarded in terms of the ratio prescribed in *Pranay Sethi (supra)*. This Court does not find the quantum awarded by the Tribunal to be either excessive or arbitrary; on the contrary, it is a just and fair estimate of the loss of dependency suffered by the respondents/claimants, arrived at strictly in accordance with settled principles. The Tribunal is seen to have taken care of every aspect fairly and deductions made appear to be quite just.

CONCLUSION

23. For the reasons recorded above, this Court finds no merit in the appeal. The Award dated 02.05.2023 passed by the learned Motor Accidents Claims Tribunal, Srinagar, in Claim Petition No. MACP/349/2018, granting compensation of Rs. 97, 39, 525/- (Rupees Ninety-Seven Lakh thirty nine thousand five hundred and twenty five only) with interest @ 6% per annum, is hereby upheld except for the modification made in respect of the spousal consortium.

24. The appeal is disposed of with the aforesaid modification in the impugned award. The amount, if any, deposited by the appellant-Insurance Company towards the statutory pre-deposit under Section 173 of the Motor Vehicles Act, 1988, together with accrued interest, shall be released in favour of the respondents/claimants, in the proportion and manner indicated in the impugned Award upon their identification by the learned senior counsel for the respondents/ claimants. The share of the younger daughter, who appears to be minor even as on date, shall be kept in the FDR till she attains the age of majority.

25. Pending application(s), if any, stand disposed of.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR
05.08.2026
Mohammad Yaseen, PS

Whether the judgment is speaking: Yes.
Whether the judgment is reportable: Yes/No