(1999) 01 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : LPA(C) No. 11/1995

William Riberio Dr.and others — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) KashLJ 260

Hon'ble Judges : Bhawani Singh, C.J and R.C.Gandhi, J

Bench : Division Bench

Advocate : Raghu Mehta, Advocates appearing for the Parties

Judgement

Bhawani Singh, Chief Justice.

Through this Letters Patent Appeal, claiments have assailed the decision of learned Single Judge dated April 28,1995 passed in CIMA No. 84/94,

whereby the appeal of the respondents against the award of Motor Accidents Claims Tribunal, Jammu dated February 8,1994 has been modified

by reducing the amount of compensation from Rs.' 5.01 lac to Rs. 2.40 lac with interest @12% p.a from the date of filing of the application till

payment. The cross appeal No. 102/94 preferred by the claimants urging for enhancing the multiplier to 15 from 9. has been dismissed.

Before adverting to the question advanced before us, it is desirable to make a mention of material facts of the case.

The claiment, Dr. William Riberio is the husband of the deceased while Master Mohd Fayaz Riberio is the minor son. It is submitted that the

deceased was lecturer in Govt. M. A. M College, Jammu drawing Rs. 3599 p. m. by way of salary. She died in an accident when the vehicle owned by the respondents and negligently driven by the driver, struck the vehicle in which she was traveling. This happened on June 18,1991 at

about 1.30 p. m. Compensation of Rs. 10.00 lac has been claimed in this case. Respondents have taken the plea that the vehicle was not involved

in this accident it was the deceased who was at fault.

4. On the pleadings of the parties, following issues were framed :

Whether accident involving death of the deceased was due to the negligent driving of the alleged offending vehicle by the 2nd respondent? OPP

In case issued No.1 is proved what is the dependancy of the petitioners or to what amount of compensation is payable to them ? OPP

Relief.

5. All the issues have been decided in favour of the claimants. So far as the question of compensation is concerned, the tribunal after referring to

the evidence on record and particularly reliance on Apex Court decision reported in 1994 ACJ, 1 (General Manager Kerala State Road Transport

Corporation Trivondrum Vs. Mrs. Sushma Thomas and others), assessed the compensation at Rs. 4.86 lac after adding Rs. 15.000 towards loss

of concortium, total compensation of Rs. 5,01,000, has been made payable to the claiments.

6. On appeal before the Single Judge of this Court, the amount has been reduced to the extent stated above. Claimants, no satisfied with this

division of learned Single Judge, have preferred this appeal.

7. Shri Raghu Metha, learned counsel for the appellants submitted that the trial court has considered the quantum of compensation quite

comprehensively. It has been determined in terms of Apex Court decision in Sushma Thomas's case, therefore, the Single Judge has not decided

the matter appropriately, as a result of which, just compensation has not been settled in this case. It is also contended that crossappeal filed by the

appellants has been dismissed erroneously although facts of the case clearly demonstrate that in cases of this nature higher multiplier should have

been applied.

In any case, the compensation deserves to be enhanced even if the simpler method of calculating the same are made applicable in terms of latest

decision of the Supreme Court in U. P. State Road Transport Corporation and others Vs. Trilok Chandra and others (1996 ACJ, 931).

Specifically learned counsel has invited our attention towards para 15 of the judgement (supra) which reads thus :

15. We thought it necessary to reiterate the method of working out 'just1 compensation because, of late, we have noticed from the awards made

by Tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method

based on the subjectively of the Tribunal/Court has surfaced, introducing uncertainty and tack of reasonable uniformity in the matter of

determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation awardable to the victim

of an accident which must be propotionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines

for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, (1942) AC 601, the loss has to be

ascertained by first determining the monthly income of the deceased, then deducing there from the amount spent on the deceased, and thus

assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an

appropriate multiplier. Let us illustrate : X.mala aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His

monthly income was 3,500/. First, deduct the amount spent on X every month. The rough and ready method .hitherto adopted where no definite

evidence was forth coming was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make

2+2=4 units and each minor one unit, i.e 3 units in all, totalling 7 units. Thus the shareper unit works out to Rs. 3,500/7 = Rs. 500 per month. It

can thus be assumed that Rs. 1000/ was spent on X. Since he was a working member some provision for his transport and out of pocket expense

has to be estimated. In the present case we estimate the outof pocket expense at Rs. 250/. Thus the amount spent on the deceased X works out to

Rs. 1,250/ per month leaving a balance of Rs. 3,500/ 1,250/ = 2,250/ per month. This amount can be taken as the monthly loss to X's

dependants. The annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss

to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs. 27,000/ x 15 4,05,000/. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3,000/ but now having regard

to the fall in the value of the rupee, it can be raised to a figure of not more than Rs. 10,000/. Thus the total comes to Rs. 4,05,000/ + 10,000/ =

4,15,000/.

In this case there is definite evidence that the deceased was earning Rs. 3,599/ say 3600/ p.m. Dr. William Riberio (husband) has specifically

stated that the deceased was spending Rs. 500/ p.m on herself. This way, the annual dependancy comes to Rs. 37,200/ by taking monthly

dependancy at Rs. 3100. Now the question is what multiplier should be applied in this case. Learned counsel for the appellants submits that

appropriate multiplier in this case should be 15 and not as 9 as held by the learned Singly Judge. Taking assistance from the Apex Court decision

in Trilok Chandra's case (supra) we are of the considered opinion that appropriate multiplier in this case should be 11. This way (Rs. 3100 x 12 =

37,200 x 11 = 4,09,200), thus compensation payable is Rs. 4,09,200. To this conventional figure of Rs 15,000/ towards concortium is to be

added taking the compensation to Rs. 4,24,200/.

What emerges out of the aforesaid discussion is that this appeal is allowed. Judgement of the learned Single Judge is modified to the extent that the

respondents shall pay compensation of Rs. 4,24,200/ to the appellants in equal shares with interest @ 12% p.a from the date of claim petition till

deposit/payment. The respondents are directed to pay/deposit the amount of compensation with the Motor Accidents Claims Tribunal, Jammu

within a period of six weeks from today. 12. Shri Raghu Metha, learned counsel submits that some amount in this case has been deposited in the

Registry of this court which has been invested by way of Fixed deposit in the name of Registrar Judicial. Let the amount alongwith interest that has

accrued thereon be released in favour of the claimants.

