

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

CIMA No.194/2006, CMP No.228/2006

Date of Order : May 15, 2008

Oriental Insurance Co. Ltd. Vs. Balbir Singh & Ors.

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Hon'ble Mr. Justice Virender Singh

Appearing counsel:

For appellant(s) : Mr. Baldev Singh, Advocate.
For Respondent(s) : Mr. P.S. Parmar, Advocate,

- i) Whether approved for reporting
in Press/Journal/Media : **Yes/No.**
ii) Whether to be reported in
Digest/Journal : **Yes/No.**
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Respondents-1 to 3 (hereinafter to be referred to as claimants) are the legal representatives of deceased Aminder Kour, who died in a vehicular accident on 05-04-2004. She at the time of the death was of the age of 35 years and working as Multipurpose Health Worker at salary of Rs.7545/- per month. It was a Government job. Respondents-1 to 3, being her husband and two minor sons, put up their claim petition before learned Motor Accidents Claims Tribunal, Jammu for Rs.25.00 lacs. A sum of Rs.10,61,904/- along with interest @ 7.5% per annum has been awarded in their favour as per following break-up:

1.	Loss of dependency	Rs.10,43,904/-
2.	Loss of consortium	Rs. 15,000/-
3.	Funeral expenses	Rs. 03,000/-
		<u>Rs.10,61,904/-</u>

Dissatisfied with the amount of compensation, Appellant, Oriental Insurance Company Limited, (the insurer of the offending vehicle), has preferred the instant appeal.

The appeal stands admitted vide order dated 10th of July, 2006 and out of the total awarded amount, a sum of Rupees three lacs has already been ordered to be released in favour of Balbir Singh, claimant, the husband. The amount awarded in favour of the minor children is still intact.

Record reveals that post-admit service upon respondent-4 is not effected till date. Mr. Baldev Singh very fairly states that he need not be served for the reason that the Insurance Company is aggrieved of the quantum of compensation only and is not challenging the award on any other issue. Ordered accordingly.

Heard learned counsel for both the sides and perused the record of the learned Tribunal.

Mr. Singh submits that the learned Tribunal has considered prospective average income of the deceased to the extent of Rs.14,500/- and then reduced the same by half of it. This approach, according to him, is not correct. He submits that for assessing the dependency, had the learned Tribunal taken into account the salary of the deceased, it would have made a lot of difference in the amount of compensation. Therefore, the award is *prima facie* bad.

Mr. Singh then submits that the monthly income of the deceased after deducting 50% of her income, has been assessed at Rs.5437/- and thereafter by applying multiplier of 16, the loss of dependency is calculated at Rs.10,43,904/-. According to him, if monthly salary of the deceased is to be assessed as her original income (Rs.7245/-), which for proper calculation can be taken as Rs.7500/-, and thereafter another 50% of her income is deducted for her personal expenditure, the net amount would come to Rs.3,750/- per month. Taking from this angle, the annual loss of dependency comes to Rs.45,000/-. This changes the entire complexion.

Mr. Singh then submits that the other flaw committed by the learned Tribunal is with regarding to taking into account the gross salary of the deceased for the purposes of calculating the monthly loss, whereas the carry home salary was to be considered. If one goes by the salary slip produced by the claimants, the carry home salary is on a lesser side. If 50% is deducted from carry home salary, the annual dependency will slash down even more.

Mr. Singh lastly submits that even the multiplier of 16, as adopted by the Tribunal, is also on the higher side. He submits that if one goes by the Second Schedule of the Act, the maximum multiplier should have been 12 in the present case and not beyond that.

Mr. Singh thus submits that compensation as awarded by the learned Tribunal (Rs.10,61,904/-) in favour of the claimants/respondents calls for reduction to a considerable extent.

Per contra, Mr. Parmar contends that the amount of compensation is absolutely just in all respects and does not call for any alteration to reduce it. He has drawn the attention of the Court to the finding arrived at by the learned Tribunal on Issue No.2 dealing with the quantum of compensation.

The expression 'just' for the purpose of fixing the compensation should be given its logical meaning. It cannot be a bonanza or a source of profit but what would be just and equitable, all facts and circumstances must be taken into account. It is so held in a latest judgment of Hon'ble Supreme Court rendered in **National Insurance Co. Ltd. Vs. Indira Srivastava and Ors., AIR 2008 SC 845.**

No doubt, the approach adopted by the learned Tribunal in fixing the dependency is somewhat faulty, but, in my view, the ultimate outcome with regard to the amount would be nearing the same and on the basis of that, if this Court feels that the amount is 'Just', the award need not be disturbed for the reason that it is the approach, which is changed only without disturbing the amount of compensation.

Admittedly, the net monthly income of the deceased was Rs.7245/- as is evident from the documentary evidence. It is rounded to Rs.7250/. I am taking the same and not the carry home salary as said by Mr. Singh, as all the deductions made in the salary were beneficial to the family. Amount of personal expenditure is to be deducted from it.

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In a case of about 37 years of the age of the deceased, the Apex Court made the deduction of 1/3rd for personal expenditure. I refer to case titled **New India Assurance Co. Ltd. Vs. Charlie and another, (2005) 10 SCC 720** in this context. The deduction for personal expenditure should be less in case of a lady that too when she has to feed minor children. In normal course, a lady would spend very less amount on herself keeping in view the smooth running of the family, so that it has not to face any financial crisis. In the case on hand, the deceased was having two minor children to be fed and if the general formula of 1/3rd deduction for personal expenditure is applied in this case, the monthly dependency would come to Rs.4834/- per month. In case the monthly expenditure is reduced by another Rs.500/- to Rs.600/-, i.e., calculating the

monthly personal expenditure about Rs.1800/-, the dependency would be nearing the same, as calculated by the learned Tribunal. Even if it makes a difference of some meagre amount this side or that side, that factor by itself would not call for modification/alteration of the award. I, therefore, hold that the compensation already awarded by the Tribunal (Rs.5437/-) per month is just compensation which need not be disturbed. The annual calculation, thus, would be the same, i.e., Rs.65,244/-.

I now advert to the multiplier adopted by the learned Tribunal as 16. In my view, it is correct. In fact, this also depends upon the facts and circumstances of each case. The celebrated judgment on this aspect rendered by Hon'ble Supreme Court in **UP State Road Transport Corpn. Vs. Trilok Chandra, 1996 (4) SCC 362**, in which their Lordships while referring to Second Schedule to the Act, noticed that the same suffers from many defects. It was pointed out that it can serve as a guide, but cannot be said to be invariable ready reckoner. However, the highest multiplier was held to be 18 within the age of 21 years to 25 years when an ordinary Indian citizen starts independent earning. The Apex Court in a case **Kanhaiyalal Kataria & Ors. Vs. Mukul Chaturvedi & Ors., 2007 ACJ 1972**, applied 17 years multiplier in case of age of 32 years of the deceased. In the case on hand, it is 16

at the age of 35 years. So I do not find that the multiplier to be on higher side. At the same time, interest awarded by the Tribunal is also appropriate.

The net result is that there is no substance in the appeal filed by the Insurance Company and the same is hereby dismissed.

**(Virender Singh)
Judge**

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After that deduction, the dependency comes to Rs.4834/- per month. The learned Tribunal has calculated it as Rs.5437/- per month and annual loss as Rs.65,244/-. No doubt, if one goes by the calculation strictly, it makes the difference of Rs.603/- per month, but in my considered view, this difference would not call for modification/alteration of the impugned award, especially when the deceased has left behind two minor children to be fed. I, therefore, hold the compensation already awarded by the learned Tribunal as Rs.5437/- per month as just compensation. The annual calculation, thus, would again be the same, i.e., Rs.65,244/-.

There is hardly any difference. So I take the loss to estate as calculated by learned Tribunal to be correct but in the manner now calculated

In support of his contentions, he has relied upon another judgment of Hon'ble Supreme Court rendered in case **The Managing Director, TNSTC Versus Sripriya & Ors., 2007 (5) Supreme 301**