

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CIMA No. 171/2007

Date of Decision: 30.12.2010

United India Insurance Company Ltd. Vs Krishna Devi & Ors.

Coram:

Mr. Justice J. P. Singh, Judge.

Appearing Counsel:

For Appellant (s) : Mr. Vishnu Gupta, Advocate.

For Respondent (s) : Mr. Y.P.Kaushal, Advocate.

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| 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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Krishna Devi-respondent's Claim for compensation for the death of her son Raj Kumar, who, received head injury, besides other multiple injuries while sitting in his Autorikshaw near Cinema Hall, Katra, when hit by a rashly and negligently driven Bus No. DLIP-1521 on February 27, 1999, was allowed by the Motor Accidents Claims Tribunal, Reasi vide its Award of August 31, 2007, directing the United India Insurance Company Limited to pay her Rs.3,81,400/- along with interest, as compensation, finding that her son had died because of the injuries received in the accident, which had occurred as a result of the rash and negligent driving of Bus bearing registration No. DLIP-1521.

Aggrieved by the Award, the Insurance Company has appealed to this Court.

Appellant's learned counsel submitted that the quantum of compensation awarded by the Tribunal as payable to the respondent was excessive having been determined

adopting untenable method for assessment of compensation.

The finding of the Tribunal on the income of the deceased at the time of his death too has been assailed as unwarranted.

Relying on *Sarla Verma and others versus Delhi Transport Corporation and another*, reported as 2009 ACJ, 1298, learned counsel for the claimant submitted that the Award impugned in the Appeal, holds the claimant entitled to such amount of compensation which, by no stretch of reasoning can be termed as unjust, and even if the multiplier method, as suggested by the appellant's counsel, were to be adopted to assess the compensation, the same amount of compensation, as assessed by the Tribunal, would become payable to the claimant thus warranting no interference with the Award in Appeal.

Considered the submissions of learned counsel for the parties and perused the records.

The appellant-Insurance Company did not produce any evidence to rebut the evidence of the claimant, and the Tribunal had, therefore, to consider the claimant's evidence alone to determine the compensation payable to the claimant for the death of her son in the motor vehicular accident.

The Tribunal, assessed the monthly income of the deceased at Rs.4000/-, finding the claimant's plea that her son would earn Rs.6000/- per month, exaggerated, by adopting the Unitary system. The dependency of the mother on the income of the deceased was assessed at Rs.2700/- per month. Taking the

age of the deceased into consideration, the multiplier of 18 prescribed for the age group of persons between 25 to 30 years, has been scaled down by the Tribunal to 11 to assess the compensation payable to the claimant.

The finding of the Tribunal in assessing the dependency of the claimant on the income of the deceased is found untenable because the age of the mother and the number of years she was likely to survive, in the ordinary course, needing compensation for her sustenance, have not been taken into consideration by the Tribunal while assessing compensation.

Although the Tribunal has erred in assessing the compensation payable to the claimant yet keeping in view the fact that the accident had taken place more than 11 years ago, it would be appropriate for this Court to determine the compensation payable to the claimant, itself, in terms of Section 168 of the Motor Vehicles Act rather than directing the remand of the case.

The deceased was 26 years of age at the time of his death and was a driver by profession. He owned his own Autorikshaw from where he would earn for his own sustenance and for the sustenance of his mother.

In view of the law laid down in Sarla Verma's case, Rs.1500/- needs to be added towards the future prospects of the deceased in earning more in the years to come, in the income of the deceased. The finding of the Tribunal holding the income

of the deceased at the time of his death at Rs.4000/-, is supported by the evidence on records and in the absence of any evidence in rebuttal, no interference therewith may be warranted.

Thus calculating the dependency of the claimant, on the income of the deceased, including therein the future income of the deceased, the dependency of the claimant would come to Rs.2750/- deducting 50% out of the so ascertained income of the deceased that he would have spent on his own, had he survived.

According to the guidelines laid down in Sarla Verma's case, 11 is indicated as the appropriate multiplier for the age group of the claimant at the time of the accident. Which, according to her evidence, was less than 55 years.

Thus, in the circumstances, finding 10 as the suitable multiplier and taking Rs.2750/- as the monthly dependency of the claimant-mother on the income of her deceased son, the compensation payable to the claimant for the death of her son on whom she was wholly dependent comes to Rs.3,30,000/-. Adding Rs.10,000/- for loss of love and affection, Rs.10,000/- for loss of estate and Rs.5000/- for funeral expenses, the total compensation payable to the claimant would come to Rs.3,55,000/-.

The Award of the Tribunal, in view of the above findings, therefore, needs to be modified.

Accordingly, setting aside the findings of the Tribunal on the question of assessment of compensation, its Award is

modified as Award for an amount of Rs.3,55,000/- along with interest @ 6% per annum from the date of the filing of the Claim Petition.

This Appeal is, accordingly, disposed of with the above modification in the Award.

The amount which is in deposit in this Court in the Appeal shall be released in favour of the respondent-claimant in terms of the modified Award minus the amount already received by her during the pendency of the Appeal and the Claims Petition before the Tribunal.

(J. P. Singh)
Judge

JAMMU:
30.12.2010
Pawan Chopra*