

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
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1. CIMA No. 199/2008
2. CIMA No. 196/2008
3. CIMA No. 200/2008, CMP Nos. 42/2009 & 281/2008
4. Cross Appeal (C) No. 13/2009
5. Cross Appeal (C) No. 14/2009

Date of Decision: 08.12.2011

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| 1. Oriental Insurance Company Ltd. | v. | Smt. Malti Singh & ors. |
| 2. Oriental Insurance Company Ltd. | v. | Smt. Khusmati Devi & ors. |
| 3. Oriental Insurance Company Ltd. | v. | Smt. Indu Devi & ors. |
| 4. Indu Devi & ors. | v. | Amar Nath & ors. |
| 5. Smt. Khusmati Devi & ors. | v. | Amar Nath & ors. |
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Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Appellant(s) : Mr. Kamal Gupta, Advocate.

For the Respondent(s) : Mr. R. K. Bhatia, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |
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S/Sh. Hemant Kumar Singh, Ashok Kumar Yadav and Ajay Kumar Singh, who were serving Indian Army in Rashtriya Rifles, suffered injuries while travelling in Bus No. JK02D-1271 from Khellani to Jammu on October 28, 2003, when it turned turtle, near *Panchni Nallah*, as its driver, after an explosion of an Improvised Explosive Device inside the Bus drove it faster; but failed to control it. All the three persons, who were in the prime of their youth, succumbed to the injuries received in the accident.

Their dependents approached the Motor Accidents

Claims Tribunal, Jammu seeking compensation for their death. Their Claims were contested by the Oriental Insurance Company Limited with which the Bus stood insured at the time of accident.

The parties to the Claim Petitions were put to following issues:-

1. "Whether an accident took place on 28.10.2003 at Panchni Nallah near Khellani about 15 kms short of Doda town due to an Improvised Explosive Device exploded inside the offending bus in which Ashok Kumar Yadav, Ajay Kumar Singh and Hemant Kumar Singh sustained fatal injuries?

OPP.

2. If issue No. 1 is proved in affirmative whether petitioners are entitled to compensation; if so to what amount and from whom?

OPP.

3. Whether driver of offending bus at the time of accident was not holding valid and effective driving licence and the bus was being driven in violation of terms and conditions of insurance policy and also did not have route permit and fitness certificate etc?

OPR-3.

3-A Whether the claim petition is not maintainable as the accident has taken place due to I.E.D blast which is not covered under the provisions of MV Act?

OPR.

4. Relief.

O.P. parties"

On appreciation of evidence led by the parties on the issues aforementioned, the Tribunal decided Issue Nos. 1 and 2 in favour of the Claimants and Issue Nos. 3 and 3-A against the appellant-Insurance Company.

Accordingly, allowing the Claim Petitions, the Tribunal awarded Rs. 19,09,200/- in Claim Petition

Nos. 352 and 353 each and Rs. 18,01,200/- in Claim Petition No. 198, as compensation for the death of three Army men. Interest @ 7.5% p.a. too was allowed on the amount of compensation.

Aggrieved by the Awards dated 30.07.2008 of the Tribunal, the appellants have filed these Miscellaneous Appeals. The Claimants in Claim Petition Nos. 352 and 198 too have filed Cross Appeals seeking enhancement of compensation awarded by the Tribunal.

Heard learned counsel for the parties and perused the records.

Before considering the submissions advanced at the Bar, reference needs to be made to the dependents of the deceased.

Hemant Kumar Singh is survived by Smt Malati Singh, his mother, and Sh. Shivendra Kumar Singh, his father.

Ajay Kumar Singh is survived by Indu Devi, his wife, Kumari Sandhya, minor daughter, Rakesh Kumar Singh, minor son and Rameshwari Devi, the mother.

Ashok Kumar Yadav is survived by Khusmanti

Devi, his wife, Vikas Kumar Yadav and Rohit Kumar yadav, minor sons, Kumari Shikha, minor daughter, and Sarochhana Devi, the mother.

CIMA No. 199/2008:

Questioning the Award of the Tribunal, the appellant's learned counsel submitted that in assessing compensation for death of Hemant Kumar Singh, the Tribunal has erroneously taken as monthly income of the deceased as Rs. 8700/- when even on the evidence of the claimants, the monthly income of the deceased would not be more than Rs. 7468/-. He further submitted that the Tribunal was required to deduct one half of the amount from the presumptive income of the deceased which he would have spent on his own had he survived, to assess compensation payable for his death, and the omission of the Tribunal so to do has resulted in awarding huge amount of compensation to the claimants to which they were not entitled in terms of the provisions of Section 168 of the Motor Vehicles Act.

Respondents-claimants' learned counsel did not contest the appellant's learned counsel's submission, and rightly so, because the evidence on records would not support the Tribunal's taking the monthly income of the

deceased at Rs. 8700/-. Tribunal's deducting only one-third from the income of the deceased to assess compensation payable to the claimants too is found untenable in view of the law laid down by Hon'ble Supreme Court of India in *Sarla Verma and ors. v. Delhi Transport Corporation and another*, reported as 2009 ACJ 1298, in terms whereof, in case of death of Bachelors, one-half of their income would be deduct-able to assess compensation payable to their parents, unless, however, the number of the dependents was more.

In view of the statement of the claimants' learned counsel and the law laid down in *Sarla verma's* case, compensation assessed for the death of Hemant Kumar Singh needs to be assessed taking his monthly income at Rs. 7468/-. Adding Rs. 3734/- thereto, i.e., on account of future prospects of the deceased in service, had he remained alive, the income of the deceased for assessing compensation needs to be taken as Rs. 11,202/-. Deducting 50% therefrom in terms of the law laid down in *Sarla Verma's* case, the monthly dependence of the claimants on the income of the deceased would be Rs. 5601/- and the annual dependency Rs.67,212/-. The multiplier indicated for the persons in the age group of 46

to 50 years, in terms of the judgment supra, is 13. The age of the mother of the deceased is indicated 48 years at the time of the death of the deceased. Accordingly, adopting 13 as the multiplier, the capitalized value of the multiplicand would come to Rs. 8,73,756/-. Adding Rs. 15,000/- for funeral expenses and Rs.15,000/- for loss of love and affection, the total compensation payable for death of Hemant Kumar Singh, adopting the multiplier method for assessing compensation, would come to Rs. 9,03,756/-. If invested in a Fixed Deposit, the above amount would generate near about the same amount as monthly interest, which the deceased had been spending on the claimants for their sustenance. Rs. 9,03,756/- would, therefore, be just and reasonable compensation to the claimants.

In view of the above discussion, the findings of the Tribunal on Issue No. 3 are, therefore, modified holding the claimants entitled to compensation of Rs. 9,03,756/- as against Rs. 19,09,200/-.

This Appeal, therefore, succeeds and is, accordingly, allowed modifying the Tribunal's Award as Award for Rs.9,03,756/- along with interest as allowed by the Tribunal. The amount deposited be released in favour of

the claimants in terms of the modified Award minus the amount already received by them.

CIMA Nos. 200/2008 and 196/2008:

To support the appellant's challenge to the Awards questioned in these Appeals, appellant's learned counsel referred to *Sarla Verma's* case to urge that the Tribunal had erred in selecting 18 as multiplier and determining monthly income of the deceased taking into account his future prospects, which, according to him, was impermissible.

Learned counsel for the claimants, on the other hand, submitted that the compensation awarded to the claimants was not just and reasonable, in that, the Tribunal had erred in deducting one-third from the income of the deceased even when the number of dependents was more than three. He, therefore, prayed for enhancement of compensation in terms of the law laid down in *Sarla Verma's* case.

I have considered the submissions of learned counsel for the parties in the light of the law laid down in *Sarla Verma's* case *supra*.

The question that falls for consideration in these Appeals is as to what suitable multiplier should be adopted

and how much deduction was required to be made from the income of the deceased, to assess just and reasonable compensation for death of Ajay Kumar Singh and Ashok Kumar Yadav to their dependents in terms of Section 168 of the Motor Vehicles Act, 1988.

It is admitted case of the parties that number of dependents in both these cases is more than four. Such being the case, one-fourth and not one-third is permissibly deduct-able from the income of the deceased to determine dependency of the claimants on his income in view of the legal position settled in this behalf in Sarla Verma's case, where while dealing with the issue on deductions, the Supreme Court held as follows:-

“Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3; one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6; and one-fifth ($1/5^{\text{th}}$) where the number of the dependent family members exceed six.”

The Tribunal is, therefore, found to have erred in assessing compensation deducting one-third from the presumptive income of the deceased.

The compensation payable to the claimants, thus, needs to be assessed deducting one-fourth from the

income of the deceased.

As proved by the claimants, the monthly income of Ajay Kumar Singh is Rs.8,648/-. Adding Rs.4,324/- thereto, his presumptive income, taking into account his future prospects in life and service, would be Rs.12,972/- . Deducting one-fourth therefrom as personal expenses of the deceased, the monthly dependency of the family on the income of the deceased would be Rs.9,729/- and the annual dependency Rs.1,16,748/-.

In view of the age of the deceased and claimants being less than 30 years, 17, in the circumstances, needs to be adopted as Multiplier. This is so because if the amount calculated on the basis of the above Multiplier, was kept in a Fixed Deposit, it would generate such monthly income which would take care of the financial needs of the family as it was being taken care of by the deceased during his life time from his earnings.

The total dependency of the family of the deceased on the income of the deceased would, therefore, be Rs. 19,84,716/-. Adding Rs.15,000/- for loss of consortium and Rs.15,000/- as funeral expenses, the total compensation payable to the claimants would be Rs.20,14,716/-.

Compensation payable to the dependents of Ashok Kumar-deceased, too needs to be determined on the analogy of the view taken in CIMA No. 200/2008.

As proved by the claimants, the monthly income of Ashok Kumar Yadav is Rs.8,189/-. Adding Rs.4,094/- thereto, the presumptive income of the deceased, taking into account his future prospects in life and service, would be Rs.12,283/-. Deducting one-fourth therefrom for his personal and living expenses, the monthly dependency of the family of the deceased would be Rs.9,212/- and the annual dependency Rs.1,10,544/-.

Taking 17 as the Multiplier as the age of the deceased and dependents was less than 30 years at the time of the accident, the total dependency of the family on the income of the deceased would be Rs.18,79,248/-. Adding Rs.15,000/- for loss of consortium and love and affections, besides Rs.15,000/- for funeral expenses, the total compensation payable to the claimants for death of Ashok Kumar Yadav would be Rs.19,09,248/-.

The appellant's plea that the Tribunal had erred in taking future prospects of the deceased into consideration while assessing their monthly income, is found without merit in view of the legal position settled in Sarla Verma's

case (supra), in that, in view of the permanent employment of the deceased in Army and their assured promotion prospects, the prospective income of the deceased was necessarily required to be taken into consideration to assess their monthly income for determining fair and reasonable compensation in terms of Section 168 of the Motor Vehicles Act.

In view of the above discussion, CIMA Nos. 196/2008 and 200/2008 are dismissed and Cross Appeal Nos. 13/2009 and 14/2009 allowed. The Awards of the Tribunal in Claim Petition Nos.352 and 198 are modified as Awards for an amount of Rs.20,14,716/- and Rs.19,09,452/- respectively along with interest as allowed by the Tribunal.

The amount deposited by the appellant be released in favour of the claimants in terms of the modified Awards minus the amount already received by them. Appellants to deposit the remaining amount payable to the claimants in terms of the modified Awards within six weeks.

(J.P. SINGH)
JUDGE

JAMMU
08.12.2011
Tilak, Secy.