

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

CIMA No. 44/2008
CMA No. 466/2012
Cross Appeal(C) No.1/2008

Date of Decision: 10.07.2012

National Insurance Co. Ltd.	v. Bimla Devi and ors.
Bimla Devi and ors.	v. National Insurance Co. Ltd and ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Appellant(s)	: Mr. D.S.Chauhan, Advocate.
For the Respondent(s)	: Mr. Vikas Mangotra, 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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Judgment

Romesh lal, a permanent employee of the Union of India and working as Regular Industrial Mazdoor with 259 Co ASC, died as a result of the injuries sustained in the motor vehicular accident when while riding his bicycle, he was hit by Truck No.JK02R-6595 driven rashly and negligently by Satish Kumar, its driver, on 17.01.2004 near CSD Depot Road Bari Brahmana Industrial Estate, Jammu.

His wife, two minor daughters, one minor son and widower father filed a Claim Petition with Motor Accidents Claims Tribunal, Jammu seeking compensation of Rs.40,30,000/- along with interest @ 18% per annum from the date of the accident, for the death of Romesh Lal.

The Claim was contested only by the appellant- Company, the insurer of the offending truck, because the owner and driver of the vehicle did not opt to contest the Claim.

The Tribunal put the parties to the following issues:-

“Issue No.1: Whether an accident took place on 17.1.04 at Bari Brahmna due to rash and negligent driving of offending vehicle No.6595 JK02R in the hands of erring driver in which declared Romesh Lal sustained fatal injuries?

OPP.

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

OPP.

Issue No.3: Whether driver of offending vehicle at the time of accident was not holding valid and effective driving licence and conditions of the insurance policy have been violated?

OPR-1.

Issue No.4: Relief.

O.P.Parts.

The claimants examined Sat Pal, Angrez Singh and Purneet Kumar, an official from 259 Co ASC, besides Bimla Devi, one of the claimants, as their witnesses to support their Claim. The Insurance Company, however, did not produce any evidence in rebuttal.

On the basis of the evidence produced by the claimants, the Tribunal came to the conclusion that Romesh Lal was drawing Rs.5,211/- and had to retire at the age of 60 years.

In recording the above finding, the Tribunal relied upon the statement of Purneet Kumar and the official records indicating the salary that the deceased would draw at the time of his death. Thus, taking Rs.5,211/- as the monthly income of the deceased and deducting 1/3rd therefrom as the expenses that he would have spent on him had he survived, the annual dependence of the claimants on the income of the deceased was worked out at Rs.41,688/-. Keeping in view the fact that the deceased was 36

years old at the time of death as was discernable from the official records, the Multiplier of 15 was adopted to determine the economic dependence of the claimants on the income of the deceased. Adding Rs.5,000 for funeral expenses and Rs.10,000/- for loss of love and affection to the minor children and of consortium to the widow, the total compensation payable to the claimants was determined at Rs.6,40,320/- by the Tribunal vide its Award dated 27.08.2007.

Dissatisfied with the quantum of compensation awarded by the Tribunal, the National Insurance Company Limited has come up in Appeal.

The Claimants too have filed Cross Appeal for enhancement of the amount of compensation awarded by the Tribunal.

Heard learned counsel for the parties, perused the records and considered their submissions in support of the Appeal and the Cross Appeal.

The appellant-Insurance Company's learned counsel's plea that the Tribunal had erred in taking the monthly income of the deceased at Rs.5,211/-, in that, only that amount was required to be taken into consideration for assessing compensation, which the deceased was actually drawing from the employer and not the deduction that the employer would make from the salary of the deceased, is found untenable because the deductions that the employer was making from the salary of the deceased were only temporary deductions and would not last long. In any case, to assess compensation payable to the dependents what is required

to be borne in mind is the salary to which the deceased was entitled to at the time of his death and not the deduction that the employer would make from the earned income of the employee for one or the other reasons. There is, therefore, no merit in the appellant's learned counsel's plea that the Tribunal had erred in taking the monthly income of the deceased at Rs.5,211/-.

There, however, appears merit in the submission of the claimants' learned counsel that the Tribunal had erred in omitting to take into account the fact that the deceased being a permanent employee of the Central Government, who had to retire at the age of sixty years, had promotional prospects and would have thereby raised his salary until his retirement, had he survived the accident. His future prospects and addition in salary have, however, not been taken into consideration by the Tribunal while assessing the dependency of the claimants on his income. The Tribunal's refusal to consider the future promotional prospects of the deceased and raise in his salary in the years to come only on the plea that in view of the uncertainties of life, the promotional prospects of the deceased were not required to be taken into consideration to assess the dependency of the claimants, is unwarranted.

The issue as to whether future prospects of a person, who had permanent employment were required to be taken into consideration while assessing his monthly income to determine compensation payable for his death, is no longer *res integra* and stands concluded by the law laid down in *Sarla Verma and ors. versus Delhi Transport Corporation and anr.* reported as AIR

2009 SC 3104, where while dealing with the issue, the Supreme Court of India held as follows:-

“ In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

In view of the above settled legal position, 50% of the income of the deceased as ascertained by the Tribunal is required to be added on account of future prospects to determine the income of the deceased at the time of his death. The monthly income of the deceased would, therefore, be Rs.7,816/-.

As the number of dependents of the deceased is more than 4 besides his old father, one-fourth and not one-third of the above income was required to be deducted to determine the dependence of the family on the income of the deceased in terms of the law laid down in the judgment referred to herein above.

Thus calculated, the monthly dependence of the family on the income of the deceased would be Rs.5,862/- and the yearly dependence Rs.70,344/-. The Multiplier prescribed in the

judgment supra for the age group of persons between 36-40 being 15, the economic dependence of the family of the deceased on his income would, therefore, be Rs.10,55,160/-.

The next question that falls for consideration is as to whether the claimants were entitled to the amount awarded to them as compensation for funeral expenses and loss of love and affection to the minor children and consortium to the widow, may not detain us for further discussion on the issue, in that, the Apex Court of the Country has consistently been awarding compensation for Funeral Expenses and Loss of Love and Affection and Consortium in addition to the amount of compensation determined by applying the Multiplier method. In *Serla Verma*'s case too, in addition to the amount determined as compensation applying the Multiplier method, the Court had allowed Rs.5000/- under the head of loss of estate, Rs.5,000/- towards funeral expenses, besides Rs.10,000/- as loss of consortium.

The judgment referred to by the appellant's learned counsel in *National Insurance Company Ltd. v. Parsino Devi and ors.* reported as 2005(Supp) JKJ 397[HC] holding that in cases where compensation was claimed under Section 166 of the Motor Vehicles Act, any amount in addition to the one determined by Multiplier method was impermissible, cannot be adopted as precedent in view of the consistent approach of the Hon'ble Supreme Court of India to award compensation for funeral expenses and under other heads to determine just and equitable compensation in terms of the provisions of Section 168

of the Motor Vehicles Act, 1988.

The total compensation payable to the claimants for the death of Romesh Lal would, therefore, be Rs.10,70,160/- (i.e. $10,55,160 + 5,000 + 10,000 = 10,70,160$).

The findings of the Tribunal on Issue No.4 are, therefore, required to be modified.

Accordingly, modifying the findings of the Tribunal on Issue No.4, the claimants are held entitled to compensation of Rs.10,70,160/- (Rupees Ten Lac seventy thousand one hundred and sixty only) along with interest as allowed by the Tribunal.

In view of the above discussion, the Insurance Company's Appeal fails and the Claimants' Cross Appeal succeeds.

Both the Appeal and the Cross Appeal are accordingly disposed of modifying the Motor Accidents Claims Tribunal, Jammu's Award dated 27.08.2007 in File No.59/Claim as Award for Rs.10,70,160/- along with interest as allowed by the Tribunal.

The Insurance Company is directed to deposit the amount payable by it to the claimants in terms of the modified Award. The amount already deposited by the appellant be released in favour of the claimants.

**(J.P. SINGH)
JUDGE**

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