

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

1. CIMA No. 323/2009
CMA Nos. 483/2011 & 463/2009
2. CIMA No. 312/2009

Date of Decision: - 11.07.2012

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1. IFFCO TOKIO General Insurance Co. Ltd. V. Sumit Verma & ors.
2. IFFCO TOKIO General Insurance Co. Ltd. V. Sumit Verma & ors.
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Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Appellant(s) : Mr. Baldev Singh, Advocate.
For the Respondent(s) : Mr. Asheesh Singh Kotwal, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes/No. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No. |
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Judgment

Salvinder Paul Verma, a Medical Practitioner registered with the State Council of Ayurvedic and Unani Medicines was travelling on his Motor Cycle on 09.12.2008 with his Wife Veena Devi, a business woman, when the Motor Cycle was hit by Truck bearing Registration No. HR61/1202 near *Chhalan More*, Ramkot at 1740 pm. Both of them died on spot because of the injuries sustained in the accident. Their Son Sumit Verma and Daughters Anita Verma and Preetika filed two Claim Petitions claiming compensation for the death of their parents who had died because of the rash and negligent driving of Truck No. HR61/1202 by Surinder, its driver.

Allowing the Claim Petitions, the Motor Accidents Claims Tribunal, Kathua awarded them Rs.8,94,240/- and

Rs. 8,99,968/- as compensation for the death of their father and mother respectively. In awarding the compensation for the death of their deceased father, his annual income was taken at Rs.87,624/- whereas the annual income of their mother, who was doing business under the name and style of M/s Guru Ashirwad Boutique at Phinter Tehsil Billawar, was taken as Rs.82,685/-.

While computing the monthly income of the deceased at the time of their death, the Tribunal took into consideration the Income Tax Returns filed by them for the assessment year 2005-2006.

Aggrieved by the Awards dated 02.05.2009 of the Motor Accidents Claims Tribunal, Kathua, the IFFCO TOKIO General Insurance Co. Ltd., the insurer of the offending Truck, has filed these two Appeals questioning the Awards.

Appearing for the appellant, its learned counsel, Mr. Baldev Singh submitted that the findings of the Tribunal regarding monthly income of the deceased were unsustainable because the last Income Tax Returns of the deceased having not been produced by the claimants, the income of the deceased could not be determined on the basis of the Income Tax Returns for the assessment year 2005-2006 and that the selection of 15 and 16 as multipliers to determine the economic loss caused to the claimants because of the death of their father and mother by the Tribunal, was unjustified.

Justifying the Awards of the Tribunal, Mr. Asheesh Singh Kotwal appearing for the claimants urged that in the absence of

any rebuttal to the evidence of the claimants that the deceased were Income Tax Payees at the time of their death by the appellant-Insurance Company, non-production of last Income Tax Returns, would not affect, in any manner, the determination of compensation, for, the Income Tax Returns of the year 2005-2006 filed by the deceased were germane to determine the income of the deceased at the time of their death. He submitted that the compensation awarded by the Tribunal was just compensation in terms of Section 168 of the Motor Vehicles Act and no interference with the Award may be warranted, in that, the Tribunal had not committed any error in selecting 15 and 16 as multipliers to determine the dependency and economic loss caused to the claimants.

Considered the submissions of the learned counsel for the parties and perused the evidence and material produced by the claimants before the Tribunal.

The appellant's learned counsel's plea that the Tribunal had erred in computing the monthly income of the deceased on the basis of the Income Tax Returns pertaining to the assessment year 2005-2006, needs mention only for its rejection, for, the Income Tax Returns of the deceased pertaining to the assessment year 2005-2006, cannot, by any stretch of reasoning, be said irrelevant to determine the income of the deceased because the appellant-Company had not led any evidence to rebut the claimants' plea about the income of the deceased and their status as Income Tax Payees at the time of their death. In the absence of any evidence or suggestion by the

appellant-Company regarding either any decrease in the income of the deceased in the year they passed away or their having ceased to be the Income Tax Payees, the Income Tax Returns placed on records for the assessment year 2005-2006 could not be ignored consideration.

The evidence produced by the claimants on the income of their parents having thus remained un-rebutted, the computation of the income of the deceased at the time of their death by the Tribunal cannot be faulted.

There is, however, merit in the appellant's learned counsel's next submission that the Tribunal had committed an error in selecting the multipliers to determine the claimants' dependency on the income of the deceased. This is so because while selecting the multiplier, the Tribunal appears to have omitted to take note of the observations of Hon'ble Supreme Court of India made in *Smt. Sarla Verma and others versus Delhi Transport Corporation and another*, reported as 2009 (3) Supreme, 487 where multipliers for different age groups have been suggested to ensure uniformity in selection of the multipliers by the Tribunals.

In view of the age of the claimants' mother as 38 years and father as 42 years at the time of their death, the multipliers of 15 and 14 were required to be adopted in terms of the law laid down by the Hon'ble Supreme Court in the judgment referred to hereinabove.

The findings of the Tribunal in both the Awards on Issue No.2 are, therefore, required to be modified and loss of

dependency of the claimants on the income of the deceased determined afresh.

After deducting $1/3^{\text{rd}}$ from the annual income of the mother of the claimants, as determined by the Tribunal, the annual dependency of the claimants on the income of their mother would be Rs.55,123/-. Multiplying the annual income with 15, the selected multiplier, the loss of dependency of the claimants on the income of the deceased would be Rs.8,26,845/-. Adding Rs.15000/- for loss of love and affection and estate and Rs.3000/- for funeral expenses, the total compensation payable by the appellant to the claimants would be Rs.8,44,845/-.

The Award of the Tribunal made in Claim Petition No. 24/2008 is accordingly modified as Award for Rs.8,44,845/- along with interest @ 7.5% per annum.

Similarly, deducting $1/3^{\text{rd}}$ from the annual income of the father of the claimants, as determined by the Tribunal, the annual dependency of the claimants on the income of their father would be Rs.58,416/-. Multiplying the annual income with 14, the selected multiplier, the loss of dependency of the claimants on the income of the deceased would be Rs.8,17,824/-. Adding Rs.15000/- for loss of love and affection and estate and Rs.3000/- for funeral expenses, the total compensation payable by the appellant to the claimants would be Rs.8,35,824/-.

The Award of the Tribunal made in Claim Petition No. 25/2008 is accordingly modified as Award for Rs.8,35,824/-

along with interest @ 7.5% per annum.

These Appeals are, accordingly, allowed modifying the Awards of the Tribunal as indicated above. The amount payable to the claimants in terms of the modified Awards be released in their favour minus the amount already received by them and rest of the amount be released to the appellant by Account Payees Cheque.

(J. P. SINGH)
JUDGE

JAMMU:
11.07.2012
Pawan Chopra