

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

CIMA No. 432/2009

Date of Decision: 26.04.2012

Union of India

Vs.

Rajni Gill and ors.

Coram:

Mr. Justice J.P.Singh.

Appearing counsel:

For Appellant(s) : Ms. Deepika Mahajan, CGC.

For Respondent(s) : Mr. G.S.Sarkaria, Advocate.

i) Whether to be reported
in Press/Media : **Yes/No**

ii) Whether to be reported
in Digest/Journal : **Yes/No**

Judgement

Mr. Vinod Gill succumbed to the injuries received while travelling as pillion rider on Motor Cycle bearing registration No.JK02P-7324 when it was hit by an Army vehicle bearing No.03C-068611M type Tata 265 near Narwal Ordnance Depot, Jammu on 15.03.2004 at 7.45 a.m. He was working as Sweeper with the Jammu and Kashmir State Financial Corporation and earning Rs.1000/- per month therefrom. In addition he was working in Tata Industries, Gangyal Jammu too where he would polish furniture. His earning therefrom was Rs.300/- per day. Rajni Gill, his widow, Rixon Gill, his minor son aged 1 ½ years, and Taj Bibi, his mother, lodged Claim for compensation of

Rs.17,50,000/- for his death with the Motor Accidents Claims Tribunal, Jammu.

Relying on the evidence led by the claimants, the Tribunal passed an Award for Rs.6,78,000/- along with interest @ 7.5% per annum against the Union of India.

Aggrieved by the Motor Accidents Claims Tribunal, Jammu's Award dated 29.09.2008, the Union of India has come up in Appeal to this court.

Questioning only the quantum of compensation awarded by the Tribunal to the respondents-claimants, the appellant's learned counsel would submit that the Tribunal has erred in assessing the monthly income of the deceased at Rs.4,500/- without there being any documentary evidence in support thereof and selecting 18 as Multiplier to assess the compensation payable for the death of Vinod Gill.

Supporting the Award of the Tribunal, learned counsel for the claimants-respondents, on the other hand, submitted that their being no evidence by the appellant to disprove the case set up and proved by the claimants, the findings of fact recorded by the Tribunal may not warrant interference.

I have considered the submissions of learned counsel for the parties and gone through the evidence led by the claimants.

The claimants' plea that the deceased was working as a part time sweeper in the State Financial Corporation gets established by the oral evidence produced by them as also by the Certificate issued by the Jammu and Kashmir State Financial Corporation which certifies that Vinod Masih

Sweeper was working in LBOJ and drawing enhanced wages of Rs.1,000/- per month w.e.f. 01.09.2000.

Although there is no documentary evidence to prove that the deceased would polish furniture at Tata Industries Gangyal, yet the statement of the claimants' witness Gurmeet Singh who has testified that the deceased was polishing furniture in the Tata Industries Gangyal and earning Rs.170/- per day therefrom cannot be disbelieved, in that, it has stood the test of cross-examination.

In these circumstances, when the appellant had not led any evidence to disprove the case set up by the claimants and the evidence produced by the claimants was tested on the touch stone of cross-examination, no fault can be found with the finding of the Tribunal taking the monthly income of the deceased who was proved to have been working at two places as part time worker at the time of his death, at Rs.4,500/-. Even otherwise, the notional income of a non-earning person for assessing compensation for his death being taken by the Courts at Rs.3000/- per month, the finding of the Tribunal on the income of the deceased cannot be said to be unjustified when he was proved by the claimants to have been working at two places to run the affairs of his family at the time of his death.

So far as the selection of Multiplier is concerned, the Tribunal has erred in selecting 18 as the Multiplier whereas the deceased being 27 years of the age at the time of death, 17 was required to be taken as Multiplier in view of the law laid down by Hon'ble Supreme Court of India in *Sarla*

Verma & ors. v. Delhi Transport Corporation and anr.
reported as (2009)6 SCC 121.

The finding of the Tribunal on Issue No.2, therefore, needs modification.

Deducting 1/3rd from the assessed income of the deceased, which he would have otherwise spent on him had he remained alive, the loss of dependency of the claimants on the income of the deceased is assessed at Rs.6,12,000/- taking 17 in place of 18 as the Multiplier and monthly dependency of the claimants on the income of the deceased at Rs.3,000/-. Adding Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of consortium to the widow, the total compensation payable to the claimants, as apportioned by the Tribunal would be Rs.6,42,000/-.

This Appeal, therefore, succeeds and is, accordingly, allowed modifying the Motor Accidents Claims Tribunal, Jammu's Award dated 29.09.2008 as Award for Rs.6,42,000/- along with interest as allowed by the Tribunal.

The amount payable to the claimants in terms of the modified Award be paid to them minus the amount already received by them during the period of the litigation. Excess amount be returned to the appellant by Payees' Account Cheque.

(J.P.Singh)
Judge

Jammu:
26.04.2012
Vinod.

