

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No.126/2008

c/w

CIMA No.146/2008

Date of order:-11/08/2016

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|---------------------------------|-----|--------------------------|
| 1. Meena Devi and ors. | Vs. | Manvinder Singh and ors. |
| 2. New India Insurance Co. Ltd. | Vs. | Meena Devi and ors. |
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Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Appellant (s) :	Mr.R.K.Bhatia, Advocate.
For the respondent(s) :	Mr.R.K.Gupta, Sr., Advocate.
	(Appellant in CIMA No.146/2008)

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| (a) | Whether approved for reporting in Digest/Law Journal-Net | : Yes/No |
| (b) | Whether approved for reporting in Press/Media | : Yes/No |
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1. The Insurance Company as well as the Claimants have filed the appeals challenging the award of the Tribunal. The accident in this case happened on 04.10.2003. One Brijesh Yadav, 27 years old, Lance Naik in Indian Army, died in the accident. When he travelling on motor cycle, he was hit due to the rash and negligent driving of the driver of the bus insured with the appellant Insurance Company. On his death, his wife aged 26 years, three minor children (aged 6 years, 2 years and 1 year) and father aged 50 years filed a claim petition. They claimed a sum of Rs.45.00 lacs. In support of the claim, the salary certificate was marked as Exhibit A1 and oral evidence was tendered by the wife as

well as Hawaldar Sreejithk to speak about the income of the deceased.

2. The issue in relation to negligence on the part of the driver of the bus who caused the accident and the liability of the driver, owner and insurance company to compensate the dependents is not seriously disputed. Both the Insurance Company as well as the claimants are appealing only in relation to quantum while the Insurance Company's plea is for reduction, the claimants seek enhancement.
3. On the issue of compensation, the Tribunal based on the testimony of the wife of the deceased and PW- Hawaldar Sreejithk came to hold that the deceased was 27 years of age and he was drawing a gross salary of Rs.7761/- per month. The Tribunal, however, took the basic pay, DA and CEA alone for the purpose of determining the pecuniary loss to the dependents. Therefore, the income at the time of death was taken as Rs.5908/- per month and considering the future prospects, applying the decision of *Sarla Dixit and anr. Vs. Balwant Yadev and ors., 1996 ACJ 581*, the pecuniary loss of dependency for the purpose of determining compensation was fixed at $\text{Rs.}5908 \times 3 \div 2 = \text{Rs.}8862/-$ of which $1/3^{\text{rd}}$ was deducted as personal expenses of the deceased resulting in determining the pecuniary loss at Rs.5908/- per month and thereafter, applying multiplier 16, the compensation determined is as follows:

Loss of dependency	Rs.11,34,336/-
Loss of consortium to wife	Rs.5000/-
Funeral Expenses	Rs.2000/-
Total	Rs.11,41,336/- with 7% interest.

By some error, the Tribunal came to hold that interest will not be applicable to future income from the date of institution of the claim petition till its realization which finding, on the face of it, is erroneous because all the above amounts are entitled to interest as such.

4. Coming to the issue on hand, the counsel for the claimants seeks enhancement of compensation primarily contending that the deductions made by the Tribunal on several heads is erroneous particularly, PMHA (Physical Maintenance Hygienic allowance) Rs.30/- per month, LRA (Leave Ration Allowance) Rs.173/- per month, Classification Allowance = Rs.50/-, SCCIA (Special Compensatory Counter Insurgency Allowance) Rs.1150/- per month, and CILQ(compensation in Lieu of Quarter) Rs.450/- per month. According to counsel for the claimants, this amount should not have been deducted. This amount, according to counsel for the respondents, has rightly been deducted as it goes with the posting.
5. The Supreme Court in *National Insurance Co. Ltd. v. Indira Srivastava* (2008) 2 SCC 763, has observed that:

“9. The term ‘income’ has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

....

‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost [in view of] death of the deceased. It is in the nature of compensation for future loss towards the family income.

.....

The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the

statutory amount of tax payable thereupon must be deducted.”

(emphasis supplied)

6. In the case on hand, the amounts deducted by the Tribunal from the gross salary of the deceased form part of the perks and in the light of the decision of the Supreme Court, referred supra, the same should be included as part of the monthly income of the deceased. The gross salary of the deceased was Rs.7761/-. In this case, the question of deduction of income tax would not arise, going by the quantum of income. 27 years old deceased would have future prospects and therefore, that should have been considered as a part component for determining the compensation. If so, 50% of Rs.7761/- has to be taken, and it will be $7761 \div 2 = \text{Rs.}3880/-$. Total figure comes to $\text{Rs.}7761 + \text{Rs.}3880 = \text{Rs.}11641/-$. So far as deduction towards personal expenses is concerned, the claimants are five in number and, therefore, $1/4^{\text{th}}$ should have been deducted which will come to $\text{Rs.}11641 \div 4 = \text{Rs.}2910/-$. The balance monthly dependency will be $\text{Rs.}11641 - \text{Rs.}2910 = \text{Rs.}8731/-$.
7. Considering the age of deceased, applying multiplier of 17 in terms of judgment passed by the Supreme Court in *Sarla Verma and ors. Vs. Delhi Transport Corporation and anr.*, 2009 ACJ 1298 is appropriate. Therefore, the pecuniary loss will come to $\text{Rs. } 8731 \times 12 \times 17 = \text{Rs.}17,81,124/-$. Meager

amount has been granted for loss of consortium. No amount has been granted for loss of love and affection to the father and children and meager amount has been granted for funeral expenses.

8. Considering all the above, the award stands modified as under:

Loss of dependency	Rs.17,81,124/-
Loss of consortium	Rs.30,000/-
loss of love and affection to the minor children	Rs.30,000 x 3 = Rs.90000/-
loss of love and affection to the father	Rs.20,000/-
Funeral expenses	Rs.15000/-
Total	Rs.19,36,124/-

9. In view of the above, the appeal filed by the Insurance Company stands **dismissed**. Accordingly, CIMA No.126/2010 filed by the claimants is **allowed**.

(Ramalingam Sudhakar)
Judge

Jammu,
11.08.2016
Varun