

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

CIMA No. 270/2006

Date of decision: 17.08.2016

Union of India and ors. vs. Pushap Raj Sharma and ors.

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For the appellant/petitioner(s) : Mr. N. A. Choudhary, CGSC.
For the respondent(s): Mr. K. K. Abrol, Advocate

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes

1. This is appeal against the judgment and award dated 17.02.2006 rendered by the Motor Accidents Claims Tribunal, Jammu (for short the Tribunal) in claim No. 387/2002, whereby compensation of Rs. 4,23,120/ has been awarded in favour of the respondents 1 & 2 (claimants) on account of the death of their 18 years old son due to a road traffic accident caused by Army Vehicle No.97-D-106037-H (for short the offending vehicle) on 20.04.2002.
2. Heard learned counsel for the parties and perused the record.
3. On 20.04.2002 deceased, Rakesh Kumar Sharma, was riding his Motorcycle. He was knocked down by the offending vehicle, which was coming from opposite

direction, at a place called Kahpota. He died due to this accident. His legal representatives filed a claim under Sections 166 of the Motor Vehicles Act, 1988 (for short, the Act) in the Tribunal. Learned Tribunal on inquiry found that the accident had occurred due to negligence of the driver of the offending vehicle-appellant No. 3 and awarded compensation to the claimants. Compensation to two other claimants, who are siblings of the deceased, however, was refused.

4. In assessing the compensation, learned Tribunal took Rs. 3,500/ as monthly income of the deceased from the business of readymade garments and plastic items, which he was said to be running at Jandarah. Learned Tribunal deducted one-third of the income (Rs. 1166) towards the personal and living expenses of the deceased and treated the remaining two-third (Rs. 2334) as the contribution towards the parents, that is, monthly loss of dependency suffered by them. The annual loss of dependency, that is, the multiplicand, therefore, came out as Rs. 28,008/. Learned Tribunal applied multiplier of 15, having regard to the age of the mother of the deceased as 43 years and awarded compensation of Rs. 4,20,120/ under the head 'loss of dependency'.
5. The appellants have assailed the judgment and award on the ground that learned Tribunal has erred in taking two-third of the income of the deceased as his contribution

towards the claimants. It is contended that the contribution towards the parents should have been taken one-third only as in the course of time, the deceased, who was an unmarried person, would have got married and had to have his own family. The other ground of assail is that the multiplier of 15 should have been scaled down. Appellants have also assailed the award of Rs. 3,000/ towards funeral expenses and the contention is that under the second schedule of the Act, it should have been Rs. 2000/.

6. There is no denial of the facts that the deceased was aged 18 and was unmarried as also to the finding in regard to his income as arrived at by the learned Tribunal. There is no assail by the claimants to the manner in which the calculation of compensation has been made by the learned Tribunal nor to the quantum of compensation awarded.
7. Submissions made at bar by learned CGSC, Mr. N. A. Choudhary, were in tune with the aforementioned grounds of assail to the impugned judgment and award. Mr. Choudhary submitted that the deceased being an unmarried person, all time contribution towards the parents should have been taken not more than one-third of his income and the multiplier should have been scaled down.
8. Per contra, Mr. K. K. Abrol, learned counsel for the respondents supported the judgment and award and urged

that there is no sufficient ground for showing any indulgence by this Court.

9. Law in regard to deduction towards personal and living expenses of an unmarried son and contribution towards the parents and also in regard to selection of multiplier for assessment of compensation now is well settled. In the cases involving death of an unmarried son 50 per cent of the income of the deceased is deducted towards his personal and living expenses and 50 per cent is taken as contribution towards the parents. In *Sarla Verma v Delhi Transport Corporation*, 2009 ACJ 1298, Supreme Court considered earlier land mark judgment in *Susamma Thomas*, 1994 ACJ 1 and *Trilok Chandra* (1996) 4 SCC 362 and has held as under:

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50%

as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

(also ref. Shakti Devi. New India Insurance Co. Ltd. (2010) SCC 575.

10. In regard to the selection of multiplier, recently a learned three- Judge Bench of the Supreme Court in Munna Lal Jain and ors. v. Vipin Kumar Sharma and Ors. 2015 ACJ 1985 has approved the view that the age of deceased will govern the selection of the multiplier. I may reproduce para 12 of the reporting:

"12. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari 2013 ACJ 125 (SC). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of

dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.”

11. Supreme Court in *Sarla Verma*’s case (*supra*) has held that in the claims falling under section 166 of the Act, multiplier mentioned in column (4) of the table drawn in the judgment shall be applied. The column (4) of the table has been prepared after comparative analysis of the law in regard to selection of multiplier discussed and laid down in landmark judgments in *Susamma Thomas* and *Trilok Chandra* (*supra*) and the table prescribed in the Second Schedule in the Act.
12. The deceased in this case was 18 and unmarried. His monthly income has been taken as Rs. 3,500/ and two-third thereof (Rs. 2,334) as contribution towards the parents. Contribution, however, should have been taken as 50 percent of the total income, that is, Rs. 1750/ only. Learned Tribunal therefore, committed error in determining loss of dependency suffered by the parents, that is, the multiplicand. Multiplicand in this case has to be Rs. 21,000 (1750 x 12) and not Rs. 28,008/ as taken by the Tribunal.
13. Even the application of the multiplier by the Tribunal calls for a correction for the reason that the multiplier is to be applied on the basis of the age of the deceased and not that of the claimant(s). The deceased was 18. The multiplier

prescribed for the age group of 15 to 20 in column (4) of the table provided in Sarla Verma is 18. The judgment and award rendered by the learned Tribunal, therefore, calls for indulgence of this court to the extent of determination of the multiplicand and application of the multiplier. The compensation payable under the head 'loss of dependency' would be Rs. 3,78,000/ (21,000 x 18) instead of Rs. 4,20,120/ as awarded by the Tribunal.

15. Viewed thus, this appeal is allowed. Compensation awarded by the learned Tribunal under the head 'loss of dependency' is reduced from Rs. 4,20,120 to Rs. 3,78,000/. Rest of the conditions including rate of interest as awarded by the learned Tribunal shall be the same.
16. Registry shall disburse the compensation amount, if deposited in this Court, to the claimants subject to aforementioned modification. Excess amount, if any, shall be remitted back to the appellant. In case award amount has not been deposited in this Court, the appellant shall satisfy the award, subject to aforementioned modification, by depositing the entire amount in the Tribunal within four weeks hereafter.
17. Record of the Tribunal be remitted back along with a copy of this order.

(Janak Raj Kotwal)
Judge

Jammu:
17.08.2016
Karam Chand