

HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

CIMA No. 5/2017

Date of Order: 29.03.2017

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National Ins. Co. Ltd.

vs.

Payal Tondon & ors.

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**Coram:**

*Hon'ble Mr. Justice Ramalingam Sudhakar, Chief Justice(A)*

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**Appearing Counsel:**

For the Appellant(s): Mr. Rajesh Kumar, Advocate.

For the Respondent(s): Mr. Sachin Gupta, Advocate.

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i/	Whether to be reported in Press/Media	:	Yes/No
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ii/	Whether to be reported in Digest/Journal-Net	:	Yes/No
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1. It is an appeal by the appellant-Insurance Company primarily challenging the quantum of award passed by the MACT Jammu. The finding of negligence and liability of Insurance Company to compensate the claimants is not in dispute.

2. It is a case of fatal accident. Accident in this case happened on 04.05.2013 at 11.23 pm when the offending vehicle No. JK02BB-5799 being driven in a rash and negligent manner by its driver, resulting in grievous injuries to one Karan who was on the motorcycle. As a result of this accident, the injured succumbed to the injuries. On his death, widow 32 years and two minor sons are the claimants.

3. In the claim petition the claimants claim that the income of the deceased was Rs.15,000/- per month being an employee of Punjab Kesri News. The Tribunal, however, fixed the income at Rs. 6000/- in absence of any documentary evidence or witness. It added 30% increase on account of future prospectus and determined

the income at Rs. 7800/- per month. After deducting  $1/3^{\text{rd}}$  towards the personal expenses of the deceased, loss of benefits to the deceased was taken as Rs. 5200/- per month. Multiplier of 15 was adopted and following compensation was granted:

S.No.	Heads	Award of tribunal
01.	For loss of dependency	Rs. 9, 36,000/-
02.	Funeral expenses	Rs. 25,000/-
03.	For loss of consortium	Rs. 1.00,000/-
04.	For love & affection to two minor children	Rs. 2,00,000/-
04.	For loss of estate	Rs. 5,000/-
Total		Rs. 12,66,000/-
With interest @ 7.5 % per annum		

4. In appeal, it is pleaded that income of the deceased fixed at Rs. 6000/- per month is on higher side as well as no proof of actual earning has been brought on record. Besides it, 30% increase would be contrary to paragraph No. 24 of the case titled **Sarla Verma & ors vs. Delhi Transport Corporation & anr. reported in 2009(3) Supreme 487** because the deceased in this case was not in regular employment and no proof of employment is submitted.

5. Taking note of the above, income of deceased is fixed at 4000/- per month and after adopting 15 as multiplier the loss of dependency is fixed at Rs. 7,20,000/- . However, the award granted by the Tribunal under other heads is confirmed along with the interest. The award granted by the Tribunal is modified as under:

S.No.	Heads	Award of tribunal	Award of tribunal
01.	For loss of dependency	Rs. 9, 36,000/-	Rs. 7,20,000/-
02.	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
03.	For loss of consortium	Rs. 1.00,000/-	Rs. 1.00,000/-
04.	For love & affection to two minor children	Rs. 2,00,000/-	Rs. 2,00,000/-
04.	For loss of estate	Rs. 5,000/-	Rs. 5,000/-
Total		Rs. 12,66,000/-	Rs. 10, 50,000/-
With interest @ 7.5 % per annum			

6. To that extent, the appeal is allowed. The award passed by the Tribunal is modified as above. The appellant is entitled to seek refund of the excess after settling the claimants. Claimants are entitled to withdraw the award modified as above.

**(Ramalingam Sudhakar)**  
**Chief Justice (A)**

Jammu:

*Sunita.*

20.03.2017

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