

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No. 537/2014

IA No. 806/2014

Date of order: 30.04.2019

Oriental Ins. Com. Ltd.	vs.	Shunki Lal & ors.
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Coram:

Hon'ble Mr Justice Sanjeev Kumar, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. Baldev Singh, Advocate.

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

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

01. This appeal is filed by Oriental Insurance Company against the award dated 23.06.2014 passed by Motor Accident Claims Tribunal Kishtwar (for brevity 'the Tribunal') in File No. 119/Claim titled Shunki Lal and another vs. Oriental Insurance Company Limited and anr. whereby respondents 1 and 2 have been held entitled to a compensation of ₹ 7,75,000 along with interest at the rate of 4% per annum from the date of filing of the petition till the realization of the award amount.

02. The impugned award has been assailed by the appellant-Insurance Company primarily on two grounds:

i) that the Tribunal committed an error of law by adding 50% of established income of the deceased towards the loss of future prospectus whereas in view of the law settled in *Sarla Verma's case* and affirmed in case of *Pranay Sethi's* case there should have been an increase of 40% of the established income. This is so, for the deceased at the time of accident was 27 years old and was in private employment. Award has also been challenged on the ground that the offending vehicle was being driven by the driver who was possessing license to drive Light Motor Vehicle but without an endorsement authorizing him to drive the Public Service Vehicle.

03. Having heard learned counsel for the parties and perused the record I am of the view that first ground of challenge taken in this appeal must succeed. It is now clear from the guidelines laid down in case of *Sarla Verma and ors.* which has been affirmed by the constitution Bench of the Supreme Court in subsequent case of *Pranay Sethi*, that in case the deceased is a self employed person and below the age of 40 years there should be increase of 40% in established income. The Tribunal has erroneously added the income by 50% towards loss of future prospectus. To this extent, the award needs to be modified. So far as other contentions of the learned counsel for the appellant is concerned, the issue is no longer *res-integra* and the same has been settled by the Supreme Court in case titled *Mukand Dewangan vs. OIC*, reported in 2017 ACJ 2011 (SC). The Company cannot be absolved of its liability to satisfy the award on the ground that the driver of the offending vehicle was, though possessed of a license authorizing him to drive Light Motor Vehicle, but the same did not carry the PSV endorsement authorizing him to drive the Public

Service Vehicle. In that view of the matter, the aforesaid ground of challenge is not tenable.

04. Accordingly, this appeal is partly allowed and the award is modified to the following extent:

Monthly income of the deceased = ₹ 5000

Add 40% of established income towards loss of future, i.e., ₹ 2000

Total monthly income = ₹ 7000

Less by 50% on account of personal

Living expenses = ₹ 3500

Annual loss of dependency = 3500x12x 17

= ₹ 7, 40,000

(Rupees Seven Lakhs Forty Thousand only)

05. With the aforesaid modification, the appeal is disposed of. The other amounts shall remain unchanged. The excess amount, if any, deposited to the Registry of this Court by the appellant-Insurance Company, shall be disbursed to the appellant-Insurance Company after satisfying the award.

(Sanjeev Kumar)
Judge

Jammu
30.04.2019
Sunita