

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

Reserved on 15.02.2022

Pronounced on 25.02.2022

MA No. 213/2012(O&M) c/w

CCROS No. 19/2012

New India Assurance Co. Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Rupinder Singh, Advocate &

vs

Soma Devi and others

..... Respondent(s)

Through: Mr. C. B. Salathia, Advocate, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The appeal MA No. 213/2012 has been filed against the judgment and award dated 22.12.2011 passed by the Motor Accidents Claims Tribunal, Jammu (hereinafter to be referred as the Tribunal) in file No. 442/Claim, titled, 'Soma Devi and others vs The New India Assurance Co. Ltd and others' whereby a compensation of Rs. 12,65,000/- has been awarded to the claimants/respondents Nos. 1 to 5 along with interest @ 6% per annum from the date of filing of the claim petition till its realization. Simultaneously, the claimants/respondent Nos. 1 to 3 have also filed a cross-appeal against the aforesaid award for enhancement of the compensation.
2. The award has been impugned by the appellant-Insurance Company primarily on the ground of quantum as the learned Tribunal has not considered that the deceased was a Government employee and his family members would continue to draw salary of the deceased for a period of

seven years from the date of death of the deceased, meaning thereby that there was no monetary loss to the dependents for a period of seven years.

3. In the appeal filed by the claimants, it has been stated that the learned tribunal has not rightly assessed the compensation.
4. Mr. Rupinder Singh, learned counsel for the appellant-Insurance Company has restricted his arguments only on the issue that the deceased was a Government employee and his dependents were getting the salary for seven years but the learned Tribunal has not considered the said fact. Mr. Rupinder Singh further submitted that interest cannot be paid for the period when the claim petition was not pending before the tribunal as the same was dismissed for lack of evidence on 23.12.2005 and order was recalled on 04.11.2011.
5. *Per contra*, Mr. C. B. Salathia, learned counsel for the claimants/respondent Nos. 1 to 3 has submitted that the compensation is required to be enhanced as the learned Tribunal has not properly assessed the compensation while computing the same and further the compensation is required to be enhanced as per **Sarla Verma and others vs Delhi Transport Corporation and another, (2009) 6 SCC 121**,
6. Heard and perused the record.
7. The claimants/respondent Nos. 1 to 5 filed the claim petition for grant of compensation on account of death of Baldev Singh, age-41 years, in a road accident that took place on 11.04.2002 at Jamorha, near Mansar Road, Tehsil, Samba, who was husband of respondent No. 1, father of respondent Nos. 2 and 3 and son of respondent Nos. 4 and 5. The respondent Nos. 6 and 7 did not contest the claim and they were set *ex*

parte by the learned Tribunal. The appellant filed the response to the claim petition in which it was stated that the driver of the offending vehicle was not holding an effective and valid driving license at the time of accident and the compensation claimed by the respondents is highly exaggerated. It was also pleaded that the claimants were getting full salary of the deceased which he was getting before death and thereafter the claimants will be getting pension. After considering the pleadings of the parties, the learned Tribunal has framed the following issues:

- “1. Whether the accident took place on 11.04.2022 near Mansar, Tehsil Samba due to rash and negligent driving of offending vehicle No. JKS-7762 by its driver in which deceased namely Smt. Tripta Devi, Kaushalaya Devi, Raj Kumar, Rajinder Kumar Gupta, Mangal Singh, Baldev Singh and Rasal Chand had died and petitioners namely Om Parkash, Tara Chand and Ishwar Singh sustained grievous injuries? OPP
 2. If Issue No. 1 is proved in affirmative whether petitioners in case are entitled to the compensation, if so to what amount and from whom? OPP
 3. Whether driver of offending vehicle at the time of accident was not holding a valid and effective driving license? OPR-3
- Relief. O. P. Parties”

8. The learned Tribunal after considering the evidence has passed the order impugned.
9. The contention raised by the appellant is that the respondent No. 1, who is wife of the deceased would get the salary for seven years but the learned Tribunal has not considered the same. The respondents did not lead any evidence with regard to the said fact that the claimants/respondents were getting salary after the demise of the deceased, who was serving in the

Police Department as ASI. PW Mohd Ashraf deposed that after the demise of deceased, his wife is getting pension.

10. In view of this as there is no evidence on record that the claimants/respondents were getting salary after the death of the deceased for seven years, no indulgence is required to be shown, as such, the said contention is rejected.

11. Otherwise also Rule 20 (bbb) of Section B pertaining to Family pension provides as under:

“Notwithstanding anything contained in sub-clause (bb) above, where a Government servant dies while in service after having rendered not less than 7 years continuous service, the rate of family pension admissible to the beneficiary of the deceased shall be equal to the pay last drawn by the deceased officer before his death. Pension at the enhanced rates equal to the last pay shall be payable for a period of 7 years from the date following the date of death of the Government servant or for period up to the date on which the deceased Government servant would have attained the age of superannuation whichever is earlier.”

12. Thereafter, vide SRO 94 dated 15.04.2009 following was provided by virtue of clause 8.

“Provided that in respect of a Government servant who may die while in service on or after 1.7.2009 after having rendered not less than seven years continuous service, the family pension on enhanced rates equal to 50 % of the last pay drawn shall be payable to the family of the Government servant from the date of death of the Government servant for a period of ten years without any upper age limit. Thereafter, the family pension shall be payable at the ordinary rates.”

13. Thus, a bare perusal of above mentioned rules reveal that the rule providing for the grant of family pension equivalent to the last pay drawn by the deceased employee for a period of 7 years has been replaced by SRO 94, that provides that Government servant who may die while in service on or after 01.07.2009 after having rendered not less than seven years continuous service, the family pension on enhanced rates equal to 50% of the last pay drawn shall be payable to the family of the

Government servant from the date of death of the Government servant for a period of ten years without any upper age limit. Thus, both the rules provide for the payment of family pension in the event of death of deceased employee and this is not contingent upon the death of the employee in motor accident alone but on other causes/reasons as well.

14. The Hon'ble Apex Court in *Sebastiani Lakra v. National Insurance Co. Ltd.*, reported in (2019) 17 SCC 465 has held as under:

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to “just compensation” under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.”

15. Similar view has been taken by the Co-ordinate Bench of this Court in *“National Insurance Co versus Purna devi & Ors” reported in 2020(4)JKJ(HC) 188*, in which it has been held as under:

“21. The legal position as enunciated in the aforesaid Judgment, to put it precisely, is that the pecuniary advantage, to be deducted from the loss of income while assessing the compensation claimed under the Motor Vehicles Act must be from a source which correlates to the injury or death arising out of a motor vehicle accident. **The pecuniary advantage which is payable or derivable on account of death of an employee in harness whether or not such death is result of motor vehicle accident is not to be deducted from the loss of income.** This principle has been followed by the Hon'ble Supreme Court in its later judgments and also by this Court consistently.”

16. Also, there is no force in the contention of the appellant-insurance company that interest should not have been paid for the period when the

claim petition was not pending for a particular period, as in the award itself it has been observed by the tribunal that the claim petition was dismissed for want of evidence even though the claimants had led evidence and that evidence formed part of the connected claim petition titled “Jagdish Chander & Ors. Vs New india Assurance Company Ltd. This prompted the tribunal to review the order of dismissal vide order dated 04.11.2011. Needless to say that the act of the court should prejudice none.

17. Now, the contention of the respondents, who are appellants in this cross appeal, is that the compensation has not been rightly assessed by the learned Tribunal. The learned Tribunal has considered the salary of the deceased as Rs. 8,831/- and he was 41 years of age at the time of his death. The learned Tribunal has applied the multiplier of 12, whereas applicable multiplier as per judgment of the Apex Court in **Sarla Verma and others vs Delhi Transport Corporation and another, (2009) 6 SCC 121** is 14.
18. The learned Tribunal has made an addition of 30% of the actual salary to the actual income of the deceased and that is in accordance with judgment of the Apex Court in **National Insurance Company versus Pranay Sethi & Ors reported in (2017)16SCC 680**. The learned Tribunal while computing the compensation, the learned Tribunal has erred so far as the multiplier is concerned. As per **Sarla Verma’s case (supra)** , 14 was required to be applied whereas the learned Tribunal has applied multiplier of 12. As the deceased was having wife, two children and mother as dependants at the time of death, so 1/4th is required to be deducted from

his income as personal expenses. Further Rs. 5000/- and 10,000/- awarded on account of funeral expenses and loss of estate, are also on lesser side and they were required to be paid as Rs. 15,000/- each and more so the consortium of Rs. 10,000/- paid to respondent No. 1 is also not in accordance with the judgment of **Pranay Sethi (supra)** and taking into consideration the judgment in **Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130**, respondent Nos. 2 and 3 are also required to be compensated on account of loss of consortium. Thus the compensation payable to the respondents/claimants is as under:

Loss of dependency:	₹14,46,520/-
Consortium:	₹ 1,20,000/-
Funeral expenses:	₹ 15,000/-
Loss of estate	₹ 15,000/-
Total	₹15,96,520/-

19. For the foregoing reasons, MA No. 213/2012(O&M) is dismissed and the CCROS No. 19/2012 is allowed. The award of the Tribunal is modified as above. The amount, if deposited, shall be released in favour of the claimants/appellants in terms of the award of the Tribunal after proper identification and verification. Excess amount, if any, shall be deposited by the appellant-Insurance Company in the Registry within thirty days from the date of this order along with interest @ 6% from the date of filing of petition.

20. Record of the Tribunal be sent back.

(Rajnish Oswal)
Judge

JAMMU
25.02.2022
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No