

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
ATJAMMU**

**MA No. 236/2017**

**Jamal Din & Ors.** .....Appellant(s)

Through :- Mr. G. S. Thakur, Advocate

v/s

**New India Assurance Co. Ltd. & Ors.** .....Respondent(s)

Through :- Mr. Amrit Sarin, Advocate

**MA No. 315/2017**

**Manzoor Ahmed & Anr.** .....Appellant(s)

Through:- Mr. G.S. Thakur, Advocate

Vs

**New India Assurance Co. Ltd. & Ors.** ....Respondent(s)

Through:- Mr. Amrit Sarin, Advocate

**Reserved on: 10.02.2023**  
**Pronounced on:10.03.2023**

**CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**JUDGMENT**

1. Since a common question of law in both the above titled appeals arises from the two awards dated 29.12.2016 passed by a common judgment by Motor Accidents Claims Tribunal, Ramban (for short the Tribunal) in two separate claim petitions filed by the appellants/claimants, the same are proposed to be disposed of by this common judgment.
2. In a vehicular accident involving the offending vehicle bearing registration No. JK19-0772 at Karol Ramban while on its way from Jammu to Gool on 19.10.2011 at 12.30 PM due to alleged rash and

negligent driving of its driver, as a result of which two passengers Zeba Begum and Shahmal Begum got seriously injured and died. The legal heirs of both the deceased filed two separate claim petitions seeking compensation for the death of the deceased in terms of the Motor Vehicle Act.

3. The Tribunal after full dressed trial of both the claim petitions decided both the petitions vide judgment/award dated 29.12.2016 ( hereinafter called ‘the impugned award’) whereby in case titled “Jamal Din & Ors vs New India Assurance Company Limited & Ors.”, an amount of Rs.1,85,000/- was granted as per following details:

1.	No fault liability	Rs.50,000/-
2.	Loss of love & affection	Rs.50,000/-
3.	Loss of future estate	Rs.75,000/-
4.	Funeral expenses	Rs.10,000/-
<b>Total</b>		<b>Rs.1,85,000/-</b>

whereas in case of Manzoor Ahmed & Anr. Vs New India Assurance Co. Ltd. & Ors., an amount of Rs. 3,10,000/- was granted as per following details:

1.	No fault liability	Rs.50,000/-
2.	Loss of love & affection	Rs.50,000/-
3.	Loss of future estate	Rs.2,00,000/-
4.	Funeral expenses	Rs.10,000/-
<b>Total</b>		<b>Rs.3,10,000/-</b>

under conventional heads only. The Tribunal in its judgment/award to the effect of entitlement under the head of loss of dependency in para 25 has observed as under:

*“25. While going through the evidence on record it is sufficiently clear that the claimants in both cases are quite major who are all married and are putting up separately and engaged in different pursuits, thus despite not denied being the legal heirs of deceased are not entitled compensation on the count of dependency, but can be*

*awarded compensation on the other counts, as held by Hon'ble court in above cases.....”*

4. Aggrieved of both the awards, the appellants/claimants preferred these appeals asserting therein that the Tribunal has not decided the case rightly in accordance with law and has granted meager amount of compensation which cannot be said to be just and fair compensation to which the appellants/claimants were entitled to, in terms of Motor Vehicle Act.
5. Learned counsel for the appellants/claimants vehemently argued that meager amount of compensation including an amount of Rs. 50,000/- under 'no fault liability' in both the claim petitions was awarded to the claimants, moreso loss of dependency has been totally refused by the Tribunal in favour of the appellants/claimants holding that they were not dependents on the deceased, being adults and having their own income which is against the law laid down by the Apex Court of the Country. Learned counsel for the appellants/claimants further argued that he restricts his arguments to this aspect of the matter mainly besides one more factor that the income of the deceased was required to be stepped up, having regard to future prospects in view of the law laid down by the Apex Court, to work out the fair compensation.
6. The Apex Court in a case titled "National Insurance Company Limited vs Birender & Ors" reported as (2020) 11 SCC 356 dealing with the subject, as to whether the adult legal representatives having their own income, can be said to the dependents and are entitled to the compensation under the head of loss of dependency. The relevant paras 12 and 15 of the judgment are extracted below for ready reference:

*“12. We have heard Mr. Amit Kumar Singh, learned counsel for the insurance company (appellant) and Ms. Abha R. Sharma, learned counsel for the respondent Nos. 1 and 2.*

*The principal issues which arise for our consideration are as follows:*

*(i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the [Motor Vehicles Act, 1988](#) (for short, 'the Act')?*

*(ii) Whether such legal representatives are entitled only for compensation under the conventional heads?*

*(iii) Whether the amount receivable by the legal representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?"*

*"15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meager income between Rs. 1,00,000/- and Rs. 1,50,000/- per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."*

7. In view of the authoritative interpretations by the Apex Court and given to the facts of the case on hand, it is held that it is settled that the legal representatives of deceased have a right to apply for compensation and it must necessarily follow that even major and earning sons of deceased being legal representatives have a right to apply for compensation and it would be bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on deceased or not, to limit the claim towards the conventional head only. In that view of the matter, the finding recorded by the Tribunal holding that the petitioners in both the claim petitions being major and earning sons

were not entitled to compensation on the point of 'loss of dependency' is not a correct view of the matter.

8. During consideration of the whole matter, it is also found that the Tribunal has also granted compensation under 'conventional heads in both the claims petitions, which is not sustainable in view of the law laid down consistently by the Apex Court and the High Courts, and that is also required to be re-visited.
9. The deceased Zeba in claim petition titled Jamal Din & Ors vs New India Assurance Co. Ltd & Ors, stated to be a house wife besides doing some work of embroidery and maintaining the dairy unit, was claimed to be of the age of 55 years and her income was determined by the Tribunal as Rs.3,000/-pm. It appears that the Tribunal has taken her income on guesswork. In the year 2011 when the deceased had died, the minimum wages as notified by the Government of J&K, vide Order No. 117-F of 2011 dated 19.04.2011 was Rs.125/- per day meaning thereby a monthly income of Rs.3300/-pm. The income of the deceased is thus required to be taken and accepted as Rs.3300/-. In view of the law laid down by the Apex Court in a case titled "National Insurance Company versus Pranay Sethi & Ors", reported as **(2017) 16 SCC 680** the income of the deceased for calculation of 'loss of dependency' has to be stepped up @ 10% in the age group of 50 to 60 years in case of self-employed deceased. Therefore, with the increase of 10% in the monthly income of Rs.3300/-, the income has to be taken  $(3300+330)=Rs.3630/-$ . However, in view of the law laid down by the Hon'ble Apex Court in a case titled in "Sarala Verma & Ors vs Delhi Transport Corporation & Anr"., reported as **(2009) 6 SCC 121** having regard to the number of dependents as five, the deduction towards personal

and living expenses of deceased has to be made  $1/4^{\text{th}}$  thereof which comes to Rs.1237/-. Deducting  $1/4^{\text{th}}$  towards the personal and living expenses of the deceased, the compensation under the head of annual loss of dependency comes to  $(3630-1237)=2393 \times 12=28716$  and by applying the multiplier 11, in the age group of 51-55 years, the total compensation under the head of loss of dependency is worked out as  $(28716 \times 11)=\text{Rs.}3,15,876/-$ .

10. The deceased Shahmal Begum in claim petition titled 'Manzoor Ahmed & Anr vs New India Assurance Co. Ltd & Ors', was stated to be of the age of 49 years at the time of her death and had a monthly income of Rs. 14147/- from her salary as Orderly in Sheep Husbandry Department. In view of the law laid down by the Apex Court in case titled "National Insurance Company vs Pranay Sethi & Ors", reported as **(2017) 16 SCC 680** an addition of 15% is to be made in the income in the age group of 46 to 50 years of the person having fixed salary. With addition of 15%, the income to be taken for determining the compensation comes to  $(14147+2122)=\text{Rs.}16,269/-$ . However, on account of personal and living expenses a deduction is to be made, having regard to the number of dependents which is two in the case. As such  $1/3^{\text{rd}}$  deduction has to be made and the income to be taken for computation of the compensation thus comes to  $(16,269-5423)=\text{Rs.}10,846/-$ , the annual income thus becomes  $(10,846 \times 12)=\text{Rs.}1,30,152/-$  and by applying the multiplier of 13, having regard to the age of the deceased as 49 years, the total compensation on account of loss of dependency, comes to  $(1,30,152 \times 13)=\text{Rs.}16,91,976/-$ .
11. Having regard to the aforesaid reasons and the discussions made hereinabove, I am of the considered view that the Tribunal while passing

the award has fallen in error to decide just and fair compensation in both the cases. The Tribunal has wrongly denied compensation to the claimants for the reason that claimants being major and earning are not entitled to compensation under the head of loss of dependency. Moreover, it has also wrongly granted compensation under the head of loss of love and affection, as no such head is recognized for grant of compensation. Loss of estate has also been exorbitantly granted in both the cases, as against Rs.15,000/- as recognized by the Apex Court, as a thumb rule as in funeral expenses.

12. In so far as the compensation on account of 'love and affection' granted by the Tribunal is concerned, no such head is recognized, however, this aspect can be included under the head of 'loss of consortium'. The Apex Court in a case titled 'Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram', reported as **2018 ACJ 2782** extended the scope of term 'consortium' and held that the term encompasses, 'spousal consortium', 'parental consortium' and 'filial consortium'. The consortium, it was held would include the company, care, help comfort, guidance, solace and affection of the deceased which is loss to a family. With the aforesaid judgment rendered by the Hon'ble Supreme Court, perhaps for the first time, two other kinds of consortium i.e., parental and filial besides spousal came to be recognized as legitimate conventional heads for assessment of compensation under the Motor Vehicles Act. This position of law has been reiterated by the Hon'ble Apex Court in a case titled 'United India Insurance Co. Ltd. vs Satinder Kour & Ors' (**Civil Appeal No. 2705/2020**) decided on 30.06.2020. The parental consortium is awarded to the children who lose the care and protection of their parents. The amount to be awarded for 'loss of consortium' will be as per the amount fixed in Pranay

Sethi's case by the Constitutional Bench of the Supreme Court, so as to provide uniformity with respect to grant of consortium and loss of 'love and affection'. Loss of 'love and affection' is comprehended in 'loss of consortium'. Learned counsel for the respondent-insurer has argued that in both the cases before this Court, the claimants who have filed cases for compensation for the death of their aged mothers in vehicular accident, are major and cannot be granted compensation under the head 'parental consortium'. This plea raised by learned counsel for the respondent is not tenable in view of the fact that if the earning major sons and daughters are entitled to 'loss of dependency' on account of the income of the deceased why they cannot be granted 'parental consortium' for the death of their parents. In the considered opinion of this court no distinction, with regard to the age of the claimants can be made basis, to either grant or deny the compensation under the head of 'loss of parental consortium' to the sons or daughters of a deceased. The appellants are thus held to be entitled to receive a compensation @ Rs.40,000/- each of the claimants in both the cases, under the head of 'loss of parental consortium'.

13. Having regard to the afore-stated reasons, it is held that claimants, even being major and earning, at the time of death of their deceased mothers are entitled to the 'loss of dependency', besides other heads under the conventional heads of 'loss of estate', 'funeral expenses' and loss of 'parental consortium'. In this backdrop, quantum of compensation is required to be modified.
14. The Tribunal has thus misdirected itself while calculating and granting of compensation in both the cases. The impugned awards are thus not



sustainable, not granting just compensation. The appeals are allowed. The awards are thus modified in both the cases as follows:

MA No. 236/2017,

Jamal Din & Ors v. New India Assurance Co. Ltd. & Ors:

S.No.	Headings	Modified Award
1.	Loss of dependency	Rs. 3,15,876/-
2.	Funeral expenses	Rs.15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of parental consortium @ Rs.40,000/- per dependent	Rs. 2,00,000/-
<b>Total</b>		<b>Rs. 5,45,876/-</b>

(rounded off to Rs. 5,46,000/-)

MA No. 315/2017

Manzoor Ahmed & Anr v. New India Assurance Co. Ltd. & Ors:

S.No.	Headings	Modified Award
1.	Loss of dependency	Rs.16,91,976/-
2.	Funeral expenses	Rs.15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of parental consortium @ Rs.40,000/- per dependent	Rs.80,000/-
<b>Total</b>		<b>Rs. 18,01,976/-</b>

(rounded off to Rs.18,02,000/-)

15. For the foregoing reasons and the observations made hereinabove, the appeals are thus allowed and the impugned awards are modified accordingly. The respondent/insurer is directed to pay the claimants in appeal bearing MA No.236/2017 titled “Jamal Din & Ors vs New India Assurance Co. Ltd & Ors”, as total compensation in the amount of **Rs.5,46,000/-** and in appeal bearing MA No. 315/2017 “Manzoor Ahmed & Anr. Vs New India Assurance Co. Ltd & Ors”, as total compensation in the amount of **Rs.18,02,000/-** to the claimants, along with interest @ 7.5%

from the date of filing of the claim petitions till realization. The amounts, if paid, in terms of the impugned awards of the Tribunal or as 'no fault liability' shall be adjustable. The awarded amounts shall be shared equally by the claimants, in each of the cases. No order as to costs.

16. Copies of this judgment shall be placed across the files of both the appeals and shall also be sent down to the Tribunal for information.

17. The appeals are, accordingly, disposed of.

**(M A Chowdhary)**  
**Judge**

JAMMU  
10.03.2023  
Vijay

Whether the order is speaking: Yes  
Whether the order is reportable: Yes

