HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

.....

Mac. App. No. 78/2019
c/w Cross Appeal

Reserved on: 30.05.2022

Pronounced on: 17.08.2022

United India Insurance Company Limited

..... Appellant(s)

Through: Mr. Shabir Hussain Kanth, Advocate

Versus

Jawahira Begum and others

..... Respondent(s)

Through: Mr. Tanveer Tahir, Advocate and
Mr Z. A. Wani, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Impugned in this Appeal is Award dated 25th July 2019, passed by Motor Accident Claims Tribunal, Kupwara, (*for short "Tribunal")* on a Claim petition bearing File no.04/2016 titled *Jawahira Begum v. United India Insurance and others*, directing appellant Insurance Company to pay compensation in the amount of Rs. 32,43,212/- along with 7.5% interest per annum from the date of institution of claim till realization, on the grounds made mention of therein.
2. A claim petition, as is discernible from perusal of the file, was filed by respondents 1 to 3 before the Tribunal on 19.05.2016, averring therein that deceased Parvaiz Ahmad Wani aged 32 years, died in an accident,

which took place on 12.02.2016 at Drugmulla, due to rash and negligent driving of driver of offending vehicle, TATA Sumo bearing Registration no. JK05/5713, which was insured with appellant Insurance Company, Claimants / Respondents 1 to 3 sought compensation to the tune of Rs.1,00,000,000/-.

3. Appellant Insurance Company resisted the claim before the Tribunal on the ground that claimants had no cause of action against appellant-Insurance Company because as per police report alleged accident took place due to collusion between the two vehicles, i.e., bearing Registration no.JK09-5769 (Maruti Car) and no.JK05-5713 (Tata Sumo) and that the collusion between two vehicles had taken place due to contributory negligence of both the drivers of aforesaid vehicles.

4. The Tribunal, in view of pleadings of parties, framed following Issues for determination, which are:

> (1) Whether on 12.02.2016 a TATA Sumo bearing registration no.JK05-5713, driven by its driver respondent no.3 rashly and negligently from Kupwara to Drugmulla collided with a Maruti Vehicle 800 bearing Registration no.JK09-5759, as a result of which deceased Parvaiz Ahmad Wani who was driving the said Maruti vehicle from Drugmulla to Kupwara sustained critical injuries and succumbed to the same at SMHS Hospital, Srinagar on 29.02.2016? ...OPP
> (2) Whether the accident was the result of contributory negligence of both the drivers of TATA Sumo bearing registration No. JK05-5713 and Maruti vehicle 800 bearing registration No. JK09-5759, as such the respondent company cannot be exclusively saddled with liability of compensation in favour of the petitioners? ...OPR-1
> (3) Whether respondent/driver of the vehicle TATA Sumo bearing registration No. JK05-5713 was driving the offending vehicle without valid and effective driving license at the time of accident, as such the respondent company cannot be saddled with liability for payment of compensation? ...OPR-1
> (4) In case issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from whom? ...OPP
> (5) Relief? ….O.P. Parties.

5. Claimants, in support of their claim petition, produced and examined three witnesses before the Tribunal besides claimants/respondent no.1. Appellant Insurance Company also produced two witnesses. By impugned Award, the Tribunal found claimants/respondents entitled to receive compensation of Rs.32,43,212/- along with 7.5% interest per annum.

6. I have heard learned counsel for parties at length. I have perused the record and considered the matter.

7. Learned counsel for appellant Insurance Company has stated that the Tribunal erred in passing impugned Award while calculating the income of deceased as Rs.31,93,212/- on account of loss of dependency as monthly income of deceased was taken as Rs.18,608/-. The deceased is said to have been of the age of 32 years at the time of accident, so 30% of the income was added to the income of deceased as future prospects and net salary of deceased taken as Rs.24,191/- per month and yearly income taken as Rs.2,90,292/-.

8. It is also contended by learned counsel for appellant Insurance Company that deceased is having three dependents and the Tribunal deducted 1/3rd of income towards deceased personal and living expenses and Rs.1,86,400/- was taken as annual loss of income of dependency. The Tribunal while calculating further had wrongly taken Rs.2,90,292/- as annual loss of income of dependency instead of Rs.1,86,400/- and multiplier 11 was applied and compensation under Head of Loss of Income was wrongly calculated as Rs.31,93,212/- instead of Rs.20,50,400/-. According to learned counsel, compensation granted by the Tribunal is highly exorbitant.

9. When above submissions of learned counsel for appellant-Insurance Company is tested on the touchstone of law laid down by the Supreme Court in *Sarla Verma v. Delhi Transport Corporation, 2009 AIR (SC) 3104* and *National Insurance Company v. Pranay Sethi AIR 2017 SC 5157*, the same seem to be misconceived.

10. The Tribunal has in detail discussed all the aspects of the matter concerning calculation of compensation to be granted in favour of claimants. As can been seen from perusal of impugned Award, the Tribunal, while deciding Issue no.4, has in detail discussed the law laid down by the Supreme Court in *Santosh Devi v. National Insurance Co. Ltd, AIR 2012 SC 2185* and *Sarla Verma* (supra) and thereafter computed the compensation to be paid to claimants/respondents.

In the above milieu, it is germane to add that there cannot be actual compensation for anguish of heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance. [Vide: *K. Suresh v. New India Assurance Co. Ltd. (2012) 12 SCC 274*].

11. It is next averred that Tribunal has failed to consider that deceased being government employee, working in Forest Department as Junior Assistant and posted in Forest Division, Kupwara, his legal heirs would be entitled to full salary for a period of seven years and, therefore, it was incumbent upon the Tribunal to take into consideration the said fact

while assessing the payment of compensation, but this aspect was ignored by the Tribunal while passing impugned Award.

12. The above submission of learned counsel for appellant Insurance Company qua salary/pensionary benefits is misconceived. Whether pensionary benefits can be deducted by calculating loss of income, is no longer *res integra*. Family pension received by family of deceased cannot be deducted while calculating the loss of income.

13. Law is now settled. The Supreme Court in ***Reliance General Insurance Company v. Shashi Sharma (2016) 9 SCC 627, Sebastiani Lakra v. National Insurance Company Limited, AIR 2018 SC 2079***; and ***National Insurance Company Ltd v. Mannat Johal (2019) 15 SCC 260***, has held that family pension received by family of deceased employee cannot be deducted from calculating the loss of income and similarly other benefits, extended to dependents of deceased employee, viz. family pension, life insurance, provident fund etc., must remain unaffected and cannot be allowed to be deducted.

14. The 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 kin of deceased. The main reason is that all these amounts are earned by deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts have accrued to dependents or legal heirs of deceased on account of his death in a motor vehicle accident. The claimants/ dependents are entitled to just compensation under the Motor Vehicles Act as a result of death of deceased in a motor vehicle accident. Thus, the natural corollary is that the advantage that accrues to the estate of

deceased or to his dependents as a result of some contract or act which deceased performed in his life time cannot be said to be the outcome or result of death of deceased even though these amounts may go into the hands of dependents only after his death.

15. Insofar as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by deceased to his employer. It is now an established principle of Service Jurisprudence that pension and gratuity are the property of deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

16. The Supreme Court in ***Helen C. Rebello (Mrs) and others v. Maharashtra State Transport Corporation and another, (1999) 1 SCC 90***, has held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etcetera, are all pecuniary advantages receivable by heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act, to be termed as pecuniary advantage liable for deduction and that family pension is also earned by an employee for benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by heirs after his death and heirs receive family pension even otherwise than accidental death. The Supreme Court also said that compassionate

appointment in the case of death of an employee in harness, could not be stated to be an advantage receivable by heirs on account of one's death and had no correlation with amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with death of an employee while in service but it is not necessary that it should have a correlation with accidental death.

17. Learned counsel for appellant-Insurance Company has also urged that the Tribunal has erred in laying down that appellant Insurance Company shall deposit award amount within two months along with interest @ 7.5.% per annum from the date of filing of petition till final liquidation, failing which appellant Insurance Company had to pay at enhanced rate of interest @ 9% per annum from the date of filing of petition till realization of award amount. While saying this, he also avers that even granting of 7.5% interest is not in accordance with law in the face of delay committed by respondents in prosecuting the matter with expedition.

18. Insofar as above submission of learned counsel for appellant as regards interest part is concerned, there is sum and substance in submission of learned counsel for appellant. The Tribunal has wrongly applied 9% interest. There shall be interest of 6% per annum from the date of institution of the claim till final realisation. To that extent impugned Award is also set-aside and modified.

19. For the foregoing reasons, the Appeal is **dismissed**. Nevertheless, impugned Award dated 25th July 2019, passed by Motor Accident Claims Tribunal, Kupwara, as regards payment of interest @ 9%, is set-aside and the Award is modified to the extent that interest @ 6% per

annum shall be paid by appellant Insurance Company from the date of institution of the claim till final realisation.

Cross Objections/Appeal

20. Respondents/Claimants 1 to 3 have filed Cross objections/Appeal as they also feel aggrieved of the Award dated 25th July 2019 passed by Motor Accident Claims Tribunal, Kupwara, in claim petition No. 04/2016, titled *Jawahira Begum and others v. United India Insurance Company Limited and others*, and seek setting-aside thereof by increasing the quantum of compensation.

21. Learned counsel for respondent has stated that respondents/claimants filed a claim petition titled *Jawahira Begum & Ors V/s United India Insurance Co. Ltd. and* others, before the Motor Accident Claims Tribunal, Kupwara, on 19.05.2016 and upon full-dress trial, the Tribunal passed the award for an amount of Rs.32,43,212/- in favour of claimants against the Insurance Company. He contends that the view taken and conclusion drawn by the Tribunal in impugned Award, regard being had to the pleadings of the appellants, is not at all admitted by the attendant facts and circumstances of the case, rendering in sequel thereto, the impugned award bad and unsustainable in law and accordingly liable to be corrected to the tune of applying multiplier 16 instead of 11 while passing the final award, the same can be corrected.

22. Learned counsel for respondents/claimants has also averred that deceased was working in Forest Department as Junior Assistant and the net salary as per Last pay certificate was Rs. 18,608/- per month, the deceased was 32 years of age at the time of accident, so the Tribunal was supposed to enhance the future income of deceased 50% instead of

30% as future income under law, as such the net salary of the deceased becomes Rs. 27912/- per month and yearly income of the deceased becomes Rs, 3,34,944/- instead of 2,90,292/- the deceased is having three dependents (claimants 1 to 3) as such the Tribunal has deducted 1/3rd of the income towards deceased personal and living expenses as such the yearly income of the deceased would have been Rs. 2,23,296/- instead of Rs.2,90,292/- as annual loss of dependency and the Tribunal was supposed to apply multiplier of 16 instead of 11 in terms of the law laid down by the Supreme Court in ***Pranay Sethi*** and ***Sarla Verma*** (supra) and the compensation under the head of loss of income has been wrongly calculated as Rs.31,93,212/- instead of Rs.35,72,736/-. While concluding the submissions, learned counsel for respondents/ claimants prays for enhancement of compensation awarded by the Tribunal.

23. I have given my thoughtful consideration to the submissions made by learned counsel for respondents/claimants. I do not find any merit in the Cross Objections/Appeal as the Tribunal has given just compensation in favour of claimants and the same does not warrant any interference, more particularly in view of the findings given by me herein above while dismissing, the appeal, bearing Mac App no.78/2019.

24. In view of above the Cross Objections/Appeal is also **dismissed**.

25. Copy be sent down along with the record.

(Vinod Chatterji Koul)
Judge

Srinagar
17.08.2022
Ajaz Ahmad, PS

Whether approved for reporting? Yes