

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

MA No. 221/2018
IA No. 1/2018
Caveat No. 4026/2018

Pronounced on:- 05.06.2020

Bharti Axa General Ins. Co. Ltd.Appellant(s)

Through: Mr. R. S Durswal, Advocate

vs.

Vicki Devi and others ...Respondent(s)

Through: Mr. Sheikh Altaf Hussain,
Advocate for R-1 to 5

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. This appeal is against the award dated 30.07.2018 passed by the Motor Accident Claims Tribunal, Rajouri in case titled, '*Veeki Devi and others v/s Mangat Ram and another*' in which an amount of Rs. 81,28,960/- was awarded alongwith interest @ 7.5% per annum from the date of institution of the claim petition till its realization.

02. Briefly stated material facts which arise for consideration in the appeal are that the deceased Deputy Lal R/o Village Breri, Tehsil Nowshera, District Rajouri died as a result of injuries sustained by him in an accident on 18.09.2015 at Muradpur, Rajouri due to rash and negligent driving of the offending vehicle (Car i10) bearing registration No. JK11A-2419 by the respondent No. 1.

03. The deceased was serving in the Education Department as Physical Education Teacher. Respondent No. 1 is his wife and respondent Nos. 2 to 5 are his daughters (hereinafter they are referred to as claimants). They filed a claim petition before the Motor Accident Claims Tribunal, Rajouri (hereinafter referred to as Tribunal) for grant of compensation. Upon notice

to the parties, respondent No. 6-Driver, who was also the owner, appeared and thereafter absented himself from the proceeding, and was, thus, set ex-parte. Appellant-Insurance Company filed its objections contested the claim petition.

04. On the pleading of the parties following issues were framed:-

- (i) Whether on 18.09.20015 the respondent NO. 1 while driving vehicle I10 Car No. JK11A/2419 in a rash and negligent manner caused an accident at Muradpur within the jurisdiction of P/S Rajouri and hit the deceased Deputy Lal who succumbed to the injuries on spot? OPP
- (ii) In case issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? OPP
- (iii) Whether the offending vehicle was being driven in violation of insurance policy? OPR
- (iv) Whether the offending vehicle was having no valid documents at the time of accident? OPR-2
- (v) Relief. O.P Parties

05. The claimant No. 1, besides her own evidence also produced Naveen Kumar and Mohd. Bashir in support of her claim. Appellant-Insurer did not produce any evidence. The Tribunal awarded a sum of Rs. 81,28,960/- alongwith interest @ 7.5 per annum. The appellant-Insurance Company is against the quantum of award and is challenging the same on the following grounds

- “(i) Whether the income tax was liable to be deducted by the Tribunal while determining compensation under the Motor Vehicles Act;
- (ii) That the Tribunal has not adopted an appropriate multiplier and has wrongly deducted 1/5th as personal and living expenses of the deceased;
- (iii) That the multiplier as adopted by the tribunal is on much higher side;

(iv) That the Tribunal has not considered the compensatory relief received.”

06. The appellant is aggrieved of the award of the Tribunal on the ground that while considering the income of the deceased, the Tribunal as not assessed the same according to the actual salary drawn by him. The deceased was a Teacher in Education Department and was receiving salary of Rs. 46,125/- per month, thus, the annual income of the deceased was Rs. 5,53,500/- which was taxable, thus, his income was to be assessed after deduction of income tax. There is merit in the submissions made by the appellant as where the salary of the deceased was taxable then actual salary would be taken into consideration only after deducting the tax payable on the same.

07. In **National Insurance Company Ltd. V. Pranay Sethi and others, (2017) 16 SCC 680**, it has been held that:

“59.2-Actual salary should be read as actual salary less tax to assess the income of the deceased”

Therefore, it is to be determined that what was the tax payable on the salary of the deceased for the year 2015-16. The Income Tax Slab for the Financial year 2015-16 was as under:

Income Tax Slab Rates for individuals Below 60 years of Age:

Income Tax Slab	Income Tax Rate
Income up to Rs. 2,50,000	Nil
Income above Rs. 2,50,000 but up to Rs. 5,00,000	10 %
Income above Rs. 5,00,000 but up to Rs. 10,00,000	20%
Income above Rs. 10,00,000	30%

In addition to this, 3% tax was also levied on account of Education Cess and Secondary and Higher Education Cess

08. The annual income of the deceased who was drawing salary of Rs.46,125/- per month would amount to Rs. 5,53,500/- annually. Applying the above Income Tax Rates, the tax calculation on the income of the deceased for the year 2015-16 would be as under:

				(In Rs.)
Calculation of Income Tax for Financial Year 2015-16				
Total Income per month				46,125
Annual Income	(46125X12)			5,53,500
Income Tax Calculation				
Income Tax Slabs	Amount	Rate of Tax		
On First Rs. 2,50,000/-	2,50,000/-	Nil		Nil
Above 2,50,000/- to Rs. 5,00,000	2,50,000/-	10%		25,000
Above 5,00,000/- to Rs. 10,00,000/-	53,500	20%		10,700
Total	5,53,500			35,700
Add. Education Cess & Secondary and Higher Education Cess		3%		1,071
Total Income Tax Liability				36,771

Therefore, while assessing the income of the deceased, the actual salary of the deceased after deducting the tax payable would be Rs. 5,53,500-36,771=Rs. 5,16,729/-.

09. The deceased at the time of the accident was 45 years old and, therefore, in view of the law laid down in **Sarla Verma and others. V. Delhi Transport Corporation and another'**, (2009) 6 SCC 121, multiplier of 14 was rightly adopted by the Tribunal.

10. The deceased was a permanent employee of the Education Department working as Physical Education Teacher, therefore, while determining his income, an addition of 30% towards his future prospects is to be added in view of the law laid down by the Apex Court in **National Insurance Company Ltd. V. Pranay Sethi and others**, (2017) 16 SCC

680. Para 61 of which reads as under:

“61. (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”

11. Appellant has also questioned the deduction of 1/5th towards personal and living expenses of the deceased. According to the appellant, deceased was survived by his widow and four daughters and considering the number of his dependents, which was five, deduction of 1/4th should have been made towards personal and living expenses of the deceased. In **Sarla Verma and others. V. Delhi Transport Corporation and another**’, (2009) 6 SCC 121. While considering the deductions on account of personal and living expenses in para 30, it was held as under:

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.”

12. In view of the settled position of law, since the dependent family

members of the deceased were five, therefore, 1/4th deduction is to be made towards personal and living expenses of the deceased.

13. It is also submitted that the claimants have received the compensatory relief in terms of SRO-194 of the J&K Service Act, which has not been taken into consideration while calculating the loss of income. The award under the Motor Vehicles Act is in addition to any compensation received by the claimants, as the Motor Vehicles Act is a beneficial legislation intended to place the claimants in the same position as he was before the accident to compensate for loss.

14. In view of the aforesaid discussion, the claimants are held entitled to the following compensation :-

Annual income after Deduction of Tax	Rs.5,16,729/-
Add 30% for future prospectus :	Rs.1,55,019/-
	Rs. 6,71,748/-
Less 1/4th for personal expenses :	Rs.1,67,937/-
	Rs.5,03,811/-
Multiplier : 14 (Rs. 5,03,811 X 14)	
Loss of Dependency :	Rs.70,53,354/-
Loss of Estate :	Rs.15,000/-
Funeral Expenses :	Rs.15,000/-
Loss of Consortium:	Rs. 40,000/-
Total :	Rs.71,23,354/-

15. The claimants are held entitled to the compensation as given above, and the same shall be apportioned in terms of the Award. The interest awarded is justified and needs not interference. Appeal is partially allowed and the award is modified in aforementioned terms. Pending applications, if any, also stands disposed of.

(Sindhu Sharma)
Judge

JAMMU
05.06.2020
SUNIL-II

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