

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

MA No 431/2012
c/w
MA No. 422/2012

***Reserved on:- 17.09.2025.
Pronounced on:- 25.09.2025***

National Insurance Co. Ltd.

.....Appellants

Through: Mr. C.S Gupta, Advocate

Vs

Pooja Devi and ors.

..... Respondents

Through: Mr. S. A Hussain, Advocate

CORAM: HON'BLE MR.JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. By this common judgment, two appeals, one filed by the insurer for setting aside award dated 29.05.2012 passed by Motor Accident Claims Tribunal, Reasi (hereinafter referred to as "the Tribunal") and other, filed by the claimants seeking enhancement of compensation awarded in their favour in terms of the aforesaid award, are proposed to be disposed of.

2. It appears that a claim petition was filed by respondent Nos. 1 to 3 (in MA No. 431/2012) and appellants (in MA No. 422/2012) [hereinafter referred to as "**claimants**"] before the Tribunal pleading that on 24.06.2009, while, Smt. Satya Devi, mother of the claimants was travelling in a bus bearing Registration No. JK02E-7525 from Katra to Udhampur for attending her duties, the said bus suffered an accident on

reaching near Check Post Panthal. It was further pleaded that the accident was caused due to rashness and negligence of driver of the aforesaid bus and it resulted in death of several passengers including death of deceased Satya Devi as well as injuries to some other passengers. It was also pleaded that deceased Satya Devi was an employee of Field Ammunition Depot, Army Headquarter, Garhi, Udhampur and she was drawing gross monthly salary of Rs. 11,341/-. It was averred that the offending vehicle was being driven by respondent Kartar Singh and it was owned by the respondent-Ram Singh. It was further submitted that the offending bus was insured with National Insurance Company Limited at the time of the accident. The claimants sought compensation in the amount of Rs. 41 lacs from the respondents to the claim petition.

3. The claim petition was contested by the Insurer by filing its reply thereto before the Tribunal. In its reply, it was pleaded that the vehicle in question was overloaded at the time of the accident. It was submitted that seating capacity of the offending vehicle was only 42 passengers, whereas, it was overloaded beyond its capacity at the relevant time. The insurer admitted the currency of the policy of insurance of the vehicle with it at the relevant time but claimed that driver of the offending vehicle was not holding a valid and effective driving license. It was also contended that the vehicle in question was overloaded and as

such, there was breach of policy conditions, hence, the insurer was not liable to indemnify the insured in the present case

4. The learned Tribunal on the basis of the pleadings of the parties, framed the following issues:-

“1. Whether the deceased died in Road Traffic Accident caused on account of rash and negligent driving of vehicle bearing registration No. JK02E7525, by respondent No. 3? (OPP)

2. Whether the vehicle was being driven by respondent No. 3 without a valid driving licence and against the terms of insurance policy as well as conditions of the route permit? (OPR-1)

3. If issue No. 1 is proved in affirmative, to what amount of compensation the claimants are entitled to, and from whom? (OPP)”

5. After framing of issues, the parties were directed to lead evidence. The claimants, in order to prove their case, examined claimant Pooja Devi and PWs Mohd. Sadiq, Bansilal and Captain Anita as witnesses in support of their case. No witness was produced by the respondent-insurer before the Tribunal.

6. The learned Tribunal, on the basis of evidence on record, came to the conclusion that deceased-Satya Devi had died as a result of the road traffic accident which was caused due to rash and negligent driving of the offending vehicle by the offending driver. The defence of the insurer that the vehicle in question was being driven against terms and conditions of policies of insurance inasmuch as, the driver of the offending vehicle was not holding

valid driving license at the relevant time was not established before the Tribunal. Regarding overloading of the vehicle, the learned Tribunal held that the same does not absolve the insurer of its liability to pay compensation to the claimants.

7. So far as assessment of compensation is concerned, the learned Tribunal, while calculating the loss of dependency to the claimants deducted the allowances from the gross salary of the deceased and calculated the monthly income of the deceased on the basis of her basic salary. After deducting 1/3rd towards the personal and living expenses and giving an increase of 50 % towards the future prospects, the learned Tribunal assessed the loss of dependency to the claimants at Rs. 14, 77, 800/-. After addition of Rs. 10,000/- under the head of loss of estate, Rs. 50,000/- under the head of loss of love and affection and Rs. 10,000/- under the head of Funeral expenses, total compensation of Rs. 15,47,800/- was awarded in favour of the claimants. The said amount carried interest @ 7.5 % per annum.

8. The appellant-insurer has challenged the impugned award primarily on the ground that there has been breach of policy conditions in the present case because the offending vehicle was carrying passengers beyond its permissible capacity at the time of the accident. It has been submitted that in the accident, which is subject matter of the present case, as many as 26 persons lost their lives and 55 persons received injuries,

whereas, seating capacity of the vehicle in question was only 42. On this ground, it has been contended that the insurer is not liable to be indemnify the insured in the facts and circumstances of the case.

9. The claimants are concerned, have sought enhancement of the compensation on the ground that the learned Tribunal has erred in calculating the loss of dependency of claimant on the basis of salary drawn by the deceased after deducting the allowances. It has been contended that the actual salary, would include not only the basic salary but even the allowances and perks that are drawn by a victim of a motor vehicular accident, thus, according to the claimants, the monthly income of the deceased was required to be taken as Rs. 11,341/- and not Rs. 6,410/- as has been done by the Tribunal.

10. I have heard learned counsel for the parties and I have considered the grounds of challenge, the impugned award and record of the Tribunal.

11. In the first instance, we shall deal with the ground of challenge put forth by the insurer for assailing the impugned award. As has been already stated, the only ground put forth by the insurer for challenging the impugned award is that the offending vehicle was overloaded at the relevant time and as such, there is breach of policy conditions and consequently, the

insurer is eligible to be exonerated from its liability to indemnify the insured in the present case.

12. The legal position with regard to liability of insurer to satisfy award in a case where the insured vehicle was carrying passengers beyond its permissible capacity has been settled by the Supreme Court in the case of **United India Insurance Co. Ltd. Vs. K.M Poonam & ors; (2015) 15 SCC 297**. In the said case, the Supreme Court, while dealing with the question regarding the liability of insurance company to pay compensation to the victims of a motor vehicular accident travelling in the insured vehicle which is found to be carrying passengers beyond its permissible capacity has held that the insurer has to first deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees whereafter, the insurer shall be entitled to recover the amount from the owner of the vehicle in respect of the awards which are beyond the permissible capacity of the insured vehicle. The relevant observations of the Supreme Court in the said case are reproduced as under:-

“24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but

since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of [Section 149](#) of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle.

25. As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.

26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in [Anjana Shyam's](#) case (supra). The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in [Baljit Kaur's](#) case (supra) and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so

deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the Insurance Policy from the owner of the vehicle, as was directed in [Baljit Kaur](#)'s case.

27. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle."

13. From the afore-quoted position of law, it is clear that in the first instance, the insurer has to deposit total amount of all the awards, whereafter, total amount of number of awards which are highest amongst the awards passed are to be taken as liability of the insurance company. After deducting the said amount from the total amount of all the awards deposited, the insurer would be entitled to recover the balance amount from the owner of the vehicle.

14. The aforesaid principle has to be applied in the present case also. Therefore, the insurer in this case is obliged to satisfy the award in the first instance and thereafter, if it is called upon to satisfy awards more in number than the seating capacity of the insured vehicle, the insurer shall be entitled to recover the amount in respect of the awards beyond the seating capacity from the insured/owner of the offending vehicle. Thus, the insurer cannot escape its liability to satisfy the award in the instant case. The contention of the appellant/insurer is, therefore, without any substance.

15. That takes us to the ground urged by the claimants for seeking enhancement of the compensation. If we have a look at the impugned award dated 29.05.2012, the Tribunal has, after holding that the gross monthly income of the deceased was Rs. 11,341/- deducted the amount on account of DA, Transport Allowance, Washing Allowance and HRA and thereafter, observed that actual salary is always the basic pay and the grade pay only, which, in the instant case, was assessed by the Tribunal as Rs. 6,410/- after deduction of allowances.

16. In the above context, it is to be noted that as per the ratio laid down by the Supreme Court in **Smt. Sarla Verma and ors. Vs. Delhi Transport Corporation & anr; (2009) 6 SCC 121** the actual income of the deceased less income tax should be the starting point of calculating the compensation. The question that

is required to be determined is as to what is meant by “actual income”. According to the learned Tribunal, the income means the gross salary less by allowances drawn by an employee.

17. I am afraid, the interpretation given by the learned Tribunal to the expression “actual income” is erroneous. There cannot be any deductions from the gross salary of a deceased person while determining the monthly income while computing the loss of dependency to the claimants. Only statutory deductions such as personal and living expenses of the deceased are permissible to be made. Any contribution made by an employee during his lifetime form part of his salary and the same has to be included in the monthly income while computing the dependency compensation.

18. The Supreme Court in the case of **National Insurance Company Ltd. Vs. Indira Srivastava and ors; (2008) 2 SCC 763** while interpreting the term “income” has made the following observations:-

“9.. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00

CONVEYANCE ALLOWANCE : 12,000.00

RENT CO LEASE : 49,200.00

BONUS (35% OF BASIC) : 21,840.00

TOTAL : 1,45,440.00 In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.)

LTA reimbursement Rs. 7,000/- (p.a.)

Medical reimbursement Rs. 6,000/- (p.a.)

Superannuation 15% of Basic Rs. 9,360/- (p.a.)

Gratuity Cont. 5.34% of Basic Rs. 3,332/- (p.a.)

Medical Policy-self & Family @ Rs.55,000/- (p.a.)

Education Scholarship @ Rs.500 Rs.12,000/- (p.a.)

Payable to his two children Directly”

.....

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. Re Huggins, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ

337."

21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, **it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.**

22. In [N. Sivammal & Ors. v. Managing Director, Pandian Roadways Corporation & Ors.](#) [(1985) 1 SCC 18], this Court took into consideration the pay packet of the deceased.

23. We may notice that in [T.N. State Transport Corporation Ltd. v. S. Rajapriya & Ors.](#) [(2005) 6 SCC 236], this Court held :

"8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by

multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

24. Yet again in [New India Assurance Co. Ltd. v. Charlie & Anr](#) [(2005) 10 SCC 720], the same view was reiterated. However, therein although the words 'net income' has been used but the same itself would ordinarily mean gross income minus the statutory deductions. We must also notice that [the said decision](#) has been followed in [New India Assurance Co. Ltd. v. Kalpana \(Smt.\) & Ors.](#) [(2007) 3 SCC 538]."

19. From the aforesaid analysis of legal position on the subject, there is no manner of doubt in holding that the amounts received by the deceased employee towards interim relief, special pay, dearness allowance, house rent allowance, etc. need not to be deducted from the gross salary of the deceased for ascertaining his income because such allowances and benefits would be beneficial to the family of the deceased employee and it would form a part of the estate of the deceased. Therefore, the Tribunal has gone wrong in deducting the allowances while computing the monthly income of the deceased.

20. It has been established that the deceased was getting gross monthly salary of Rs. 11,341/- at the time of her death. She

was aged less than 40 years at the time of her death. Therefore, an addition of 50 % of her gross salary towards future prospects has to be made. Accordingly, the monthly gross salary of the deceased would come to Rs. 17,012/- approximately. It is pertinent to mention here that income of the deceased in the present case does not fall within the taxable range. After deducting 1/3rd towards the personal and living expenses of the deceased, annual loss of dependency to the claimants would come to Rs. 11,341/- $\times$ 12= Rs. 1,36,092/-. The multiplier applicable to the present case, keeping in view age of the deceased is 15. After applying the multiplier of 15, loss of dependency to the claimants would come to Rs. 20,41,380/-. Besides the aforesaid amount, the claimants, in the light of ratio laid down in **National Insurance Company Ltd Vs. Pranay Sethi; (2017) 16 SCC 680**, are also entitled to Rs. 15,000/- on account of funeral expenses, Rs. 15,000/- on account of loss of estate and Rs. 40,000/- per claimant on account of loss of parental consortium.

21. Thus, the compensation to which claimants would be entitled to is as under:-

“Loss of dependency:-	Rs. 20,41, 380/-
Funeral Expenses:	Rs. 15,000/-
Loss of estate:-	Rs. 15,000/-

Loss of parental consortium:- Rs. 1,20,000/-

Total:-

Rs. 21,91,380/-”

22. In view of the above, while dismissing the appeal of the insurer, the award passed by the learned Tribunal stands modified to the aforesaid extent. There shall, however, be no change with respect to interest awarded by the learned Tribunal. The insurer shall deposit the balance amount in the Registry of this Court and the amount on its deposition, shall be released in favour of the claimants. The other terms and conditions made in the award shall remain unaltered.

23. Disposed of.

JAMMU
25.09.2025
Tarun/PS



(SANJAY DHAR)
JUDGE

सत्यमेव जयते

Whether the judgment is speaking?

Yes

Whether the judgment is reportable?

Yes