Sr. No.1003

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

MA No.239/2014
IA (1/2018)
IA (1/2016)
IA (171/2015)
CM (3465/2020)
in
MA 296/2014

(Through video conferencing)

**Reserved on: 03.12.2020**
**Pronounced on: 16.12.2020**

**MA 239/2014**

The Oriental Insurance Co. Ltd. .....Appellant(s)

Through :- Mr. Baldev Singh, Advocate.

**V/s**

Sunita Gupta and others .....Respondent(s)

Through :- Mr. Raghu Mehta, Adv.

**MA 296/2014**

Sunita Gupta and others .....Appellant(s)

Through :- Mr. Raghu Mehta, Adv.

**V/s**

The Oriental Insurance Co. Ltd. .....Respondent(s)

Through :- Mr. Baldev Singh, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

**1.** The subject matter in both these appeals is award dated 28.02.2014 passed by the Motor Accidents Claims Tribunal, Jammu in File No.453/2012, titled as, Sunita Gupta & another vs Oriental Insurance Company Limited and others, whereby, by an amount Rs.25,08,000/- along with pendentelite and future interest @ 7.5% p.a. in favour of claimants and against the insurance company, appellant herein.

**2.** Since both the appeals have arisen out of common judgment/award with respect to the same accident, deceased is the same person in both the appeals and as common question of facts and law are involved in both the appeals, I deem it proper to deal with both the appeals by this common judgment.

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**3.** Factual matrix of this case, as gathered from the impugned award, is that, on 11.09.2012, deceased Ishan Jandial, son of claimants was going from Jammu towards Samba and when he reached near LIC Office, opposite Bhargava College on National Highway, Samba, he was hit by an offending vehicle which was a Truck bearing No.JK08-7669, as a result of which he died on spot. Claimants-parents of Ishan Jandial, namely, Sunita Gupta and Manohar Lal filed a claim petition before the learned Motor Accident Claims Tribunal, Jammu, for claiming compensation. Oriental Insurance Company Limited contested the claim petition and the following issues came to be framed:

1. Whether an accident took place on 11.09.2012 near LIC Office, Opposite Bhargav College on NHW Samba by rash and negligent driving of offending vehicle bearing registration No.JK08-7669 by its driver respondent no.3, as

a result of which deceased Ishan Jandial received fatal injuries? (OPP)

2. If issue no.1 is proved in affirmative, whether petitioners are entitled to compensation; if so to what amount and from whom? (OPP)

3. Whether the driver of offending vehicle was not holding a valid and effective driving licence at the time of the accident and whether there was violation of terms and conditions of policy of insurance? If so, to what effect? (OPR-1)

4. Relief? (O.P. Parties)

**4.** Claimants were directed to lead evidence. The witnesses examined were PWs Rue Dass and Narinder Verma, besides claimant Harbans Lal also appeared in the witness box, in support of the case. However, Oriental Insurance Company failed to lead any evidence.

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**5.** The Tribunal after examining the entire record and on the basis of evidence led awarded Rs.25,08,000/- along with pendentelite and future interest @ 7.5% p.a. in favour of claimants and against the insurance company. Being not satisfied, the Oriental Insurance Company Limited has filed MA No.239/2014 for setting aside of the award. Whereas, claimants have also filed MA No.296/2014 for enhancement of the award.

**6.** In MA No. 239/2014 the stand of the insurance company is that the salary certificate for the month of August, 2012, amounting to Rs.20073/- issued by PW Narinder Verma in favour of Ishan Jandial, now deceased, cannot be considered to be valid one as Narinder Verma was running the consultancy institute, whereas, as per claimants, the deceased was doing the job with IDEA Company and not with the consultancy institute of Narinder Verma. The further stand of insurance company is that the multiplier applied by the

learned Tribunal was not proper. Mr. Baldev Singh, learned counsel for insurance company, thus argued that the learned Tribunal fell in error while applying higher multiplier. He further argued that the award is required to be reduced by applying low multiplier.

7. Whereas, in the cross appeal, i.e., MA No.296/2014 the stand of claimants is that the findings of the learned Tribunal on issue No.2 with respect to choice of multiplier was legally incorrect, whereas the appropriate and suitable multiplier is 18 as the age of deceased at the time of death was 21 years. Further, compensation on account of loss and love is also required to be enhanced.

**8.** I have heard learned counsel appearing for the parties and also perused the appeal files and the record of the tribunal.

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**9.** The specific stand of insurance company is that PW Narinder Verma was the owner of consultancy institute, i.e., ABN Personnel Net Work, as also stated in the award passed by the learned Tribunal, whereas the deceased was doing the job in another company, i.e., IDEA Company, thus, how PW Narinder Verma could give the salary certificate in favour of deceased for the month of August, 2012. I have perused the claim petition filed by the claimants under Section 166/140 of the Motor Vehicles Act. In paragraphs-4 and 21 of the petition it has specifically been averred that the deceased was working as sales executive-EBU Sales at Jammu in ABN Personnel Network. PW Narinder Verma has also deposed before the learned Tribunal that he was the owner of ABN Personnel Network which looks after the payroll management of the IDEA company. It is evident from the reading of cross examination of

PW Narinder Verma that there is not even a whisper about the rebuttal by the insurance company to this specific contention. Thus, after considering all the evidence, Learned Tribunal rightly accepted the salary certificate of Ishan Jandial, now deceased.

**10.** The another legal issue canvassed by the company before this court is regarding the properity of the multiplier. Also, in cross appeal by the claimants, validity of multiplier applied by the learned tribunal is challenged on the ground that it is the age of the deceased which is to be taken into account while applying multiplier and not the age of dependants. This issue is already settled and no more *res integra* as it is held by the Constitution Bench in **National insurance company Limited Vs. Pranay Sethi and Ors. (2017) 16 SCC 680** and reiterated in **Royal Sundaram Alliance Insurance Company Ltd. Vs Mandala Yadagiri Goud and Ors., AIR 2019 SC 1825,** relevant paragraph-13 whereof is reproduced hereunder:

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> "13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

**11.** Thus, it is clear that the Learned Tribunal fell in error while calculating the multiplier while taking the age of mother/dependant into account instead of the deceased.

**12.** According to the award the income of the deceased is accepted as Rs 20,073 P.M. and rounded off to Rs. 20,000 P.M. The annual income of the deceased comes to Rs. 2,40,000 and after deducting the income tax, the net income comes to Rs.2,36,000. In **Pranay Sethi (supra)**, the Apex Court held

that while determining the income of the deceased, 40% of the actual salary of the deceased is taken towards future prospects where the deceased was on a fixed salary or self employed and was below the age of 40 years. Since the deceased was of 21 years of age and having a contractual job on fixed salary, therefore, 40% of his salary is to be added to future prospects. i.e. Rs.236000 + Rs.94,400 = Rs.3,30,400 /- would be the income of the deceased.

**13.** The deceased was survived by his parents i.e. mother and father, thus, keeping in view the judgment of the Apex Court in "***Sarla Verma & ors. vs. Delhi Transport Corporation & anr. AIR 2009 SC 3104,*** wherein it has been held in para 15 as under:

> "15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

**14.** Since the deceased was a bachelor of 21 years of age and claimants are parents of the deceased, 50% of the income of the deceased is to be deducted as

his personal and living expenses. After deducting 50% of the income towards personal and living expenses of the deceased, the net income would be (50% of Rs. 3,30,400 ) = Rs.1,65,200 /-.

**15.** The age of the deceased at the time of death as 21 years, therefore, in terms of **Sarla Verma case (supra),** the appropriate multiplier in this case would be 18, thus the loss of dependency of the claimants would be Rs.1,65,200 x 18 = Rs.29,73,600/-.

**16.** In view of the judgment of the **Pranay Sethi (supra)**, the claimants are also entitled to Rs.15,000/- as Funeral Expenses, Rs.15,000/- as Loss of Estate. Further, the Apex Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram and others in Civil Appeal No. 9581 of 2018** has held that the loss of consortium includes filial consortium, that is the right of the parents to be compensated in case of the death of the child. The amount awarded to the parents is compensation for loss of love, affection, care and companionship of the deceased child. Thus both the parents are entitled to Rs. 40,000/- each on loss of love and affection. Thus, the claimants are entitled to the total compensation as follows:-

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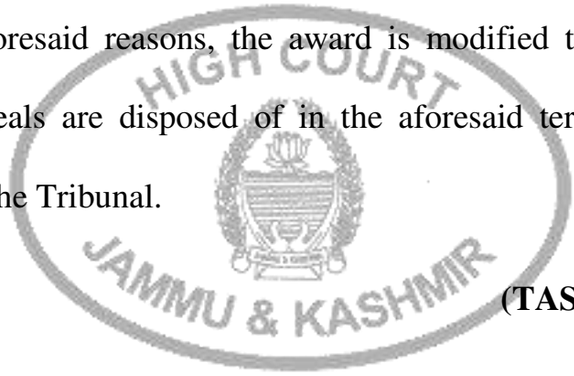
i. Loss of Dependency Rs.29,73,600/-
ii. Loss of Consortium Rs. 80000/- (4000 each)
iii. Funeral Expenses Rs. 15,000/-
iv. Loss of Estate Rs. 15,000/-

**Total Rs.30,83,600/-**

**17.** This amount is held to be just compensation to the claimants and out of this awarded amount, a sum of Rs.40,000/- only shall be paid to the father of the deceased as in view of the Sarla Verma's case (supra) wherein it is held that subject to the evidence to the contrary the father is likely to have his own

income and will not be considered as a dependant and the mother alone will be considered as dependent. Therefore, rest of the amount by deducting an amount of Rs.5.00 lacs which has already been released in favour of claimants vide order dated 28.10.2016 of this Court, that is an amount of Rs.25,43,600/- (Twenty Five Lacs Forty Three Thousands and Six Hundred only) shall be paid to the mother of the deceased. The insurance company shall pay the compensation directed above together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. The whole of the amount awarded shall be released only after proper verification and identification.

**18.** For the aforesaid reasons, the award is modified to the extent stated above. Both appeals are disposed of in the aforesaid terms. The record be remitted back to the Tribunal.




**(TASHI RABSTAN)**
**JUDGE**

JAMMU
16.12.2020
(Anil Sanhotra)

**Whether the order is speaking ? Yes/No**
**Whether the order is reportable ? Yes/No**

ANIL SANHOTRA
2020.12.17 14:24
I attest to the accuracy and
integrity of this document