HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No. 146/2016
IA No. 01/2017

Pronounced on : 19th May, 2020

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

Through:- Mr. Jugal Kishore Gupta, Advocate

V/s

Vijay Kumar Gupta & ors. …..Respondent(s)

Through:- Mr. A. K. Gandotra, Advocate

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

ORDER

01. This Appeal is against the award dated 09.06.2016 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter to be referred to as 'the Tribunal') in a claim petition No. 154/C titled *Vijay Kumar & ors. Vs. Oriental Insurance Company Limited & ors.,* by virtue of which, the Tribunal has awarded a sum of Rs. 32,43,550/- alongwith 7.5% interest on account of the death of one Vikram Mahajan.

02. Briefly stated the facts, relevant in the appeal are that, one Vikram Mahajan was driving towards his home on Scooty bearing registration No. JK02BA/1768, when he reached Police Post Digiana Morh, Jammu, he was hit from behind by Tipper bearing Registration No. JK02AS/6055 driven by respondent No. 3, coming from Gangyal towards Nanak Nagar, Jammu. As a result of this accident, Vikram Mahajan was severely injured and due to serious external and internal injuries, he succumbed to his injuries on way to Government Medical College Hospital, Jammu, where he was declared 'brought dead'.

03. Claim petition was filed by respondent No.1-Vijay Gupta, Suman Gupta and his minor brother-Abhay Gupta. The deceased was born on 14.10.1988 and thus, was 26 years & 07 months at the time of his death. Claimants submit that they were completely dependent upon the deceased, who would look after the family and due to the sudden death of the sole bread earner, they have lost all the source of income and livelihood. According to the claimants, the deceased was working as Sales Manager at M/s Om Parkash & Company which is the proprietorship concern of Smt. Sunita Gupta having whole sale retail cement store of brand Ambuja at 144-Shastri Nagar, Jammu. He was receiving the salary of Rs.20,350/- per month and he was also earning an average of Rs.5,000/- per month by imparting tuitions to the Primary School Students. Therefore, his income was Rs.26,350/- per month at the time of his death.

04. Appellant/Insurance Company in its reply has denied that the accident occurred due to negligence of respondent No.3/driver of the Tipper, it also denied income of the deceased. However, it admitted that the vehicle No. JK02AS-6055 was insured from 24.05.2014 to 23.05.2015. The owner in his reply also denied the accident, but placed on record the Insurance policy which was valid upto 24.05.2014 to 23.05.2015.

05. From the pleadings of the parties, the Tribunal below framed the following issues for determination of the claim petition :-

(i) Whether an accident took place on 02.05.2015 at Digiana opposite Police Post Digiana involving offending vehicle bearing registration No. JK02AS-6055 as a result of which deceased Vikram Mahajan received fatal injuries? OPP

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

(iii) Whether there was any violation of terms and conditions of insurance policy with respect to the vehicle No. JK02AS-6055 on the date of occurrence, what is its effect? OPR-1.

(iv) Relief...O.P.Parties.

06. The claimants examined Suman Gupta(PW1), Avtar Singh (PW2), employer of deceased, Sunita Gupta(PW3) and Accountant of Firm of the deceased Ravi Kant Bali(PW4) as their witnesses, whereas the respondent/Insurance Company did not lead any evidence in support of its claim.

07. The Tribunal considering the income of the deceased as Rs.20,350/- and applying the multiplier of 17 awarded a sum of Rs.32,43,550/- alongwith 7.5% interest.

08. The appellant/Insurance Company, aggrieved of the award has assailed the same on the following grounds:-

(i) That the impugned award is passed against the provisions of Motor Vehicles Act and terms & conditions of the Policy and, as such, not sustainable in the law;

(ii) That the award passed is highly excessive and inflated and not in terms of the law laid down by the Court.

(iii) That the Tribunal had erred in assessing the monthly income of the deceased as Rs.20,350/- on the basis of false averment.

(iv) The Tribunal has erred in making 50% addition on account of future prospects.

(v) The multiplier has also been wrongly applied as the age of the parents was to be considered while applying multiplier.

09. Heard learned counsel for the parties and perused the record.

10. The Tribunal rightly decided Issue No.(i) in favour of the claimants after accepting the evidence of Avtar Singh and relying on FIR No. 104/2015 filed in Police Station Gandhi Nagar, Jammu, that the accident occurred due to rash and negligent driving of the driver of Tipper No.JK02AS-6055, which resulted into

death of Vikram Mahajan. The Tribunal also decided Issue No.(iii) in favour of the claimants as the Insurance Company, as well as owner had admitted in their objections that the vehicle was insured and accident occurred during the period of policy, that is, w.e.f. 24.05.2014 to 23.05.2015. Copies of the Insurance Policy, Fitness Certificate & RC of the vehicle were also enclosed with the claim petition. Thus, this issue was also decided in favour of the claimants as no evidence was produced to show any violation of the terms and conditions of the Insurance policy.

11. According to the claimants, the deceased was working as Sales Manager in M/s Om Parkash & Company having its whole sale retail cement store of brand Ambuja at 144-Shastri Nagar, Jammu. At the time of the accident, the deceased according to them was earning salary of Rs.20,350/- per month and was also getting allowance comprising conveyance, entertainment and night allowance etc. and he was also earning an average of Rs.5,000/- per month by imparting tuitions to the Primary School students, thereafter, at the time of his death, he was earning Rs.26,350/-.

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12. They have also placed on record salary certificate dated 10.04.2015 of the deceased Vikram Mahajan under the seal of Om Parkash & Company which reads as under :-

To WHOM IT MAY CONCERN

It is to certify that Vikram Mahajan S/o Sh. Vijay Kumar Gupta R/o H. No. 710 Nanak Nagar Jammu having expired on 2nd May 2015 was working in my firm for the last three years as Sales Manager. He was drawing Rs.20,350/- as monthly salary with effect from 10th April 2015.

In addition to the above salary, he was also getting Conveyance and Night allowance and actual reimbursement of Telephone Bill/s. His work and conduct was quite satisfactory.

Date 10.04.2015

13. Claimants have produced account ledger of Om Parkash & Company in which the salary of the deceased from 2014 onwards has been paid at Rs.18,500/- till 10.03.2015. However, as per entry made on 10.04.2015, salary has been reflected as Rs.20,350/-. Sunita Gupta, the proprietor, in her evidence has stated that w.e.f. 10.04.2015, his salary was increased from Rs.18,500/- to Rs.20,350/- in addition to other allowances. So far as the evidence of Ravi Kant Bali, Accountant with the Firm and who prepared the salary details of the deceased Vikram Mahajan as per the record. The salary of the deceased was Rs.20,350/- as per his salary certificate from 10.04.2015 as his salary has been increased. PW-Sunita Gupta-proprietor and Ravi Kant Bali-Accountant, both have in their evidence stated that the deceased contributed to their business would have been entitled to enhancement of salary had he not died. The salary, therefore, actually received by the deceased was Rs.18,500/- and salary certificate, thus, cannot be relied upon. No evidence had been led of any other source of income of the deceased. Thus, the income of the deceased is to be calculated on the actual salary/income of the deceased. Since the actual income received by the deceased was Rs.18,500/-, therefore, the monthly income of the deceased is Rs. 18,500/-.

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14. The age of the deceased as per the certificate attached with the claim petition i.e., the date of birth of the deceased is 14.10.1988, therefore, his age at the time of the accident would be 26 years & 07 months. The Tribunal, thus, rightly adopted the multiplier of 17 in view of the law laid down in **(2009) 6 SCC 121, Sarla Verma & ors. Vs. Delhi Transport Corporation & anr.**

15. The contention of the appellant that the multiplier should have been adopted by taking into consideration the age of the parents of the deceased can also not be accepted in view of the law laid down by the Supreme Court in **M/s**

Royal Sundaram Alliance Vs. Mandala Yadagari Goud decided on 09.04.2019 in which the Hon'ble Apex Court, while considering the issue whether the multiplier has to be adopted keeping in view the age of the deceased or the age of his parents has held that this question has no more *res integra* that it is only the age of the deceased which is to be considered while adopting the multiplier for granting compensation. Thus, the multiplier of 17 has rightly been adopted and needs no interference.

16. The appellant is also aggrieved of addition of 50% towards future prospects by the Tribunal. In **National Insurance Company Vs. Pranay Sethi, 2017 (16) SCC 680,** it has been held that in case a person is on fixed salary or below 40 years of age, addition of 40% of established income should be granted towards future prospects. Thus, future prospects awarded to the deceased would be 40% of the actual income of the deceased. The claimants are also entitled to Rs.15,000/- as funeral expenses and Rs.15,000/- as loss of estates.

17. This apart, the Apex Court in **Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram & ors. 2018 (18) SCC 130** while considering the judgment of the Apex Court had also granted filial consortium which includes loss of love, affection, care and companionship of the deceased child.

18. Thus, Hon'ble apex court in aforesaid case has also held right to parental consortium as well as filial consortium i.e., the right of the parents to compensation in case of accidental death of the child to the parents. Thus, considering the present case, the parents of the deceased are entitled to Rs.40,000/- each (Total Rs.80,000/-) for loss of filial consortium. Monthly income as Rs.18,500/- and 40% add for future prospects = 18,500 + 7,400 = Rs. 25,900/- and 50% of 25,900/- is deducted towards personal and living expenses

of the deceased, therefore, the monthly income of the deceased would be Rs.12,950/-. Annual dependency by applying multiplier of 17 could be 12950 x 12 x 17 i.e., 12950 x 12 x 17 = Rs. 26,41,800/-.

19. The claimants are thus entitled to the following compensation :-

Monthly income	:	Rs.18,500/-
40% for future prospectus	:	Rs.25,900/-
Less 50% for personal expenses	:	Rs.12,950/-
Monthly dependency	:	Rs.12,950/-
Annual dependency	:	Rs.1,55,400/-
Multiplier	:	17
Loss of dependency	:	Rs.26,41,800/-
Funeral Expenses	:	Rs.15,000/-
Loss of estate	:	Rs.15,000/-
Loss of future income	:	Rs.26,41,800/-
Loss of filial consortium to the parents(Rs. 40,000 each):		Rs. 80,000/-
Total	**:**	**Rs.28,51,800/-**

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20. The claimants are, thus, entitled to the compensation which shall be apportioned in terms of the Award. The interest awarded is justified and needs not interference.

21. Award is, accordingly, modified and the appeal is allowed on aforementioned terms. Connected IA(s), if any, also stands disposed of.

(Sindhu Sharma)
Judge

JAMMU
19th.05.2020
Ram Murti

Whether the order is speaking : Yes/No.
Whether the order is reportable : Yes/No.

RAM MURTI
2020.07.02 16:25
I attest to the accuracy and
integrity of this document