

Jammu & Kashmir High Court

Suresh Kumar And Another vs Brij Mohan And Others on 15 December, 2022

Sr. No. 04

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on: 15.12.2022

MA No. 384/2010

Suresh Kumar and another

.....Appellant(s)/Petitioner(s)

Through: Mr. M. P. Sharma, Advocate

Vs

Brij Mohan and others

..... Respondent(s)

Through: Mr. Amrit Sarin, Advocate

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE
JUDGEMENT

01. The Motor Accident Claims Tribunal, Jammu, awarded Rs.2,31,000/- and interest at the rate of 7.5% per annum in favour of the appellants/petitioners from the date of filing of the petition till the amount is realized. The appellants/petitioners are aggrieved of the amount of compensation that has been awarded by the Tribunal and impugned the same on the ground that the tribunal has not awarded the amount of compensation keeping in view the monthly income which the deceased was to receive at the time of death, that the multiplier has not been rightly applied and that compensation has not been awarded under other heads as required.

02. The victim-Ajay Kumar Sharma, died as a result of accident which took place on 08.09.2000 near Paloura Akhnoor, Jammu and the accident was due to rash and negligent act of the driver of offending vehicle is not in dispute and need not detain the court on this aspect of the matter as no appeal has been preferred by the driver, owner or even the insurance company which has been held liable to pay compensation to the petitioners by the Tribunal.

03. The court is only required to determine the just compensation to which the petitioners are entitled to. The argument raised on behalf of the petitioners/appellants is that the deceased was working as Motor Mechanic near BSF Ploura Bridge, and was receiving Rs.13,000/- per month at the time of his death and the same was also required to be taken into consideration by the Tribunal but failed to do so.

04. The learned counsel appearing for the Insurance Company has argued that the Tribunal has not erred in not granting the amount as sought by the petitioners on the aforesaid ground as there was nothing on record to suggest that the deceased was entitled to Rs.13,000/- per month.

05. The main argument raised by the learned counsel for the appellants is that the appellants in their claim petition had themselves pleaded the income of the deceased as Rs.13,000/- per month yet the Tribunal has assessed Rs.4,000/- the income of the deceased. The learned Tribunal while appreciating the evidence of the petitioners on record has recorded that the oral evidence adduced by the petitioners is not very clear about the actual income of the deceased yet has taken the earning of the deceased at Rs.4,000/- per month. The court finds no reason to differ from the findings of the Tribunal qua monthly income of the deceased.

06. The monthly income of the deceased is assessed at Rs.4,000/- per month. The deceased was not having fixed income and was a motor mechanic worker, therefore, the appellants are entitled to addition of 40% of future loss of earning on the amount assessed as income by the Court, keeping in view the age of the deceased. This is what is held in case 'Pranay Sethi case reported in (2017) 16 SCC 680'. The Tribunal has applied the multiplier of 11 whereas the multiplier of 18 is required to be applied in the case in hand keeping in view the age of the deceased as 20 at the time of accident as per the judgment in Pranay Sethi case (supra).

07. The learned counsel for the appellants has also argued that the parents of the deceased are entitled to compensation on account of the death of deceased by way of filial consortium. The court has no hesitation in awarding compensation to the tune of Rs. 40,000/- each to the parents of the deceased in view of judgment of the Hon'ble Apex Court in 'Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others' reported in 2018 (4) ACC 184.

08. The appellants are also entitled to Rs. 15,000/- under the head loss of the estate. The tribunal has awarded Rs. 15,000/- as funeral expenses which is not required to be interfered by the court.

09. In view of the discussion made above, the petitioners are entitled to the following amounts.

Heads	Compensation Awarded
(i) Income	Rs.4,000/-
(ii) Future prospects	Rs.1600/- (40% of income)
(iii) Deduction towards personal expenditure	Rs.2800/- (50% of 4000+1600=5600/-)
(iv) Total income	Rs.6,04,800/- (2800×12 × 1
(v) Loss of consortium	Rs.80,000/- (40,000/- each to petitioner Nos. 1 &
(vi) Loss of estate	Rs.15,000/-
(vii) Funeral expenses	Rs.15,000/-
(viii) Total compensation awarded	Rs.7,14,800/-

10. The learned counsel for the respondents-company has vehemently argued that as the respondent-company was not served in the appeal for a fairly long time, therefore, the appellants will not be entitled to interest from the date of filing of appeal till the respondent- company was served in the appeal. The court is not in agreement with the submission of learned counsel for the respondents-company. The appellants cannot be deprived of the interest accrued during the pendency of the appeal. Thus, the total amount to which the appellants are held entitled to comes to Rs.7,14,800/- as indicated above. The appellants are also held entitled to 7.5% per annum from the date of filing of the claim petition till realization of the amount to be paid by the respondent No.3-Insurance Company. The amount, if any, received by the petitioners prior to the decision of this Court shall stand adjusted and so will be the interest calculated accordingly.

11. The appeal is allowed on aforesaid terms. Disposed of.

(Puneet Gupta) Judge Jammu 15.12.2022 Shammi Whether the order is speaking: Yes/No Whether the order is reportable: Yes/No