

REKHA Appellant
Through : Mr. D.D. Singla, Adv.

versus

GANGA RAM NATH & ORS. Respondents
Through : Mr. Amit Kumar Pandey, Adv.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.13,34,000/- has been awarded to the appellant. The appellant seeks the enhancement of the award amount.

2. The accident dated 22nd February, 2006 resulted in the death of Anil Chauhan. The deceased was survived by his widow, parents, two unmarried sisters and a brother who filed the claim petition before the learned Tribunal.

3. The deceased was working as Executive with HBL Global Pvt. Ltd. at the time of the accident.

4. The appellant appeared in the witness box as PW-1 and

deposed that the deceased was earning Rs.20,000/- per month. PW-1 proved the salary slips – Ex.PW1/7 to Ex.PW1/21. PW-1 further deposed that the deceased was Income Tax payee and TDS was deducted from his salary by the employer. The Form 16A was exhibited as Ex.PW1/22. The statement of salary account of the deceased with HDFC Bank was exhibited as Ex.PW1/23A.

5. The father of the deceased appeared as PW-2 and deposed that the deceased was earning Rs.17,000/- per month at the time of his accident.

6. The Area Sales Manager of the employer of the deceased appeared as PW-3 and proved the letter – Ex.PW3/A. PW-3 proved the salary slips – Ex.PW3/C1 to Ex.PW3/C14, joining application – Ex.PW3/D, joining form – Ex.PW3/E, biodata – Ex.PW3/F, the academic qualification of the deceased – Ex.PW3/G. PW-3 further deposed that the deceased would have got one grade promotion every year and would have reached the position of Manager at the retirement age of 58 years if he had not died in the accident in question. PW-3 further deposed that the present salary of the Manager was about Rs.3,00,000/- excluding incentives.

7. The eye-witness of the accident appeared as PW-4 and proved that the accident in question occurred due to the rash and negligent driving of the offending vehicle.

8. The learned Tribunal has taken the income of the deceased to be Rs.9,000/- per month. The learned Tribunal

has not taken the future prospects into consideration. $\frac{1}{3}^{\text{rd}}$ has been deducted towards the personal expenses of the deceased and the multiplier of 17 has been applied to compute the loss of dependency at Rs.12,24,000/-. Rs.50,000/- has been awarded towards loss of consortium to the appellant and Rs.10,000/- has been awarded towards funeral expenses and Rs.50,000/- towards loss of love and affection. The total compensation awarded is Rs.13,34,000/- along with interest @9% per annum.

9. The appellant has urged the following grounds at the hearing of this appeal:-

- (i) The income of the deceased be taken at Rs.12,000/- instead of Rs.9,000/- per month.
- (ii) The future prospects be taken into consideration.
- (iii) The personal expenses of the deceased be taken to be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$.

10. The learned Tribunal has taken the income of the deceased to be Rs.9,000/- per month from the salary slips – Ex.PW1/7 to Ex.PW1/21 and Ex.PW3/C1 to Ex.PW3/C14. According to the last salary slip for the month of January, 2006, the deceased got the salary of Rs.17,710/- which included arrear of the incentives to the tune of Rs.6,050/- and conveyance allowance of Rs.1,500/-. The learned Tribunal deducted the allowances from the salary of the deceased and took the income of the deceased to be Rs.9,000/- per month. The learned counsel for the appellant

has placed reliance on the certificate under Section 203 of the Income Tax Act, 1961 – Ex.PW1/22 filed by the employer in respect of the Income Tax Deducted at source. As per the certificate, the gross salary paid to the deceased for the period April, 2005 to March, 2006 is Rs.1,40,937/- and Rs.3,082/- has been deducted as TDS by the employer and deposited with the Income Tax Authorities. The learned counsel for the appellant submits that the income of Rs.1,40,937/- shown in Ex.PW1/22 is for a period of 11 months since the deceased expired on 22nd February, 2006 and the average income for the 12 months would be to the tune of Rs.1,50,000/- and the average monthly income of the deceased according to Ex.PW1/22 would be to the tune of Rs.12,500/- per month. The Income Tax paid by the deceased, the transportation allowances of Rs.8,800/- and conveyance charges of Rs.1,500/- per month have to be deducted from the said salary of the deceased for computation of compensation. After deducting the Income Tax paid by the deceased and the transportation/conveyance allowances from the gross salary of Rs.12,500/-, the income of the deceased for computation of compensation is taken to be Rs.10,500/- per month. PW-3 has proved the future prospects and according to the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**

decided on 15th April, 2009, 50% of the income of the

deceased has to be added towards the future prospects. 50% of the income of the deceased towards the future prospects comes to Rs.5,250/- and adding the same to the income of the deceased, the total comes to Rs.15,750/- per month. The deceased has left behind three legal representatives, namely, widow and parents. The two sisters and a brother also joined in the claim petition but the learned Tribunal has not taken them to be the dependents of the deceased. Considering that the deceased left behind his widow and two parents, $\frac{1}{3}^{\text{rd}}$ is deducted towards the personal expenses of the deceased which comes to Rs.5,250/-. The dependency of the claimants is taken to be Rs.10,500/-. The learned Tribunal has applied the multiplier of 17. However, the appropriate multiplier considering the age of the deceased to be 21 years according to the judgment of **Sarla Verma** (supra) is 18 and the loss of dependency is computed to be Rs.22,68,000/- (Rs.10,500 x 12 x 18). The learned Tribunal has awarded Rs.50,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection and adding the said amount, the total comes to Rs.23,16,000/-.

11. The appeal is allowed and the award amount is enhanced from Rs.13,34,000/- to Rs.23,16,000/- along with interest @9% per annum from the date of filing of the petition till realization. The shares of the appellant and other

claimants in the award amount shall be in the same proportion as in the award of the learned Tribunal. The shares of the claimants in the enhanced award amount along with interest shall be as under: -

Appellant (Rekha)	-	50%
Respondent No.4 (Jagan Nath)	-	20%
Respondent No.5 (Sheela)	-	30%

12. The enhanced amount be paid by respondent No.3 by means of a account payee cheque drawn by respondent No.3 in the name of UCO Bank A/c Rekha, Delhi High Court Branch, New Delhi and be handed over to Mr. M.M. Tandon, Member Retail-Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

13. Upon the aforesaid amount being deposited, the UCO Bank is directed to transfer a sum of Rs.1,00,000/- in the savings bank account of the appellant and a sum of Rs.50,000/- each in the savings bank accounts of the parents. The remaining share of the appellant and the parents be kept in the fixed deposit for the periods mentioned below:-

Appellant (Rekha)	-	50% of the enhanced award amount minus Rs.1,00,000/- for a period of 5 years.
Respondent No.4 (Jagan Nath)	-	20% of the enhanced award amount minus Rs.50,000/-

or a period of 5 years.

Respondent No.5 (Sheela)	-	30% of the enhanced award amount minus Rs.50,000/- for a period of 5 years.
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14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of appellants.

15. Withdrawal from the aforesaid account shall be permitted to the appellant and respondents No.4 and 5 after due verification and the Bank shall issue photo Identity Card to the appellants to facilitate identity.

16. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Books shall be given to the appellant and respondents No.4 and 5 along with the photocopy of the FDRs.

17. The original Fixed Deposit Receipts shall be handed over to the appellants at the end of the fixed deposit period.

18. No loan, advance or withdrawal shall be allowed on the said Fixed Deposit Receipts without the permission of this Court.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of the appellant and respondents No.4 and 5, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the claimants.

21. The appellant and respondents No.4 and 5 shall furnish all the relevant documents for opening of the Saving Bank Accounts and Fixed Deposit Accounts to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.
22. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.
23. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi through the UCO Bank, High Court Branch under the signature of Court Master.
24. The appeal stands disposed of.
25. The LCR be returned back through a special messenger.

J.R. MIDHA, J

JULY 07, 2009

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