

\$~16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 9th July, 2013

+

MAC.APP. 619/2011

SUMAN BALA & ORS

..... Appellants

Through: Mr.O.P. Mannie, Advocate.

Versus

VIRENDER & ORS.

..... Respondents

Through: Mr. A.K. Soni, Advocate for
Respondent No.3/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 16.03.2011 passed by the learned Tribunal and seeking enhancement of the compensation amount.
2. Appeared none on behalf of respondent nos. 1 and 2, i.e., the driver and owner of the offending vehicle despite service upon them. However, this Court has decided to dispose of the present appeal in their absence.
3. Learned counsel appearing on behalf of the appellants has argued that in view of the dictum of the Supreme Court in the case of ***Rajesh & Ors. Vs. Rajbir Singh & Ors. 2013 (6) SCALE 563***, keeping in view the age of the deceased, i.e., 28 years, 50% of the future prospects may be granted by this

Court, whereas, the learned Tribunal has not granted any compensation on account of future prospects.

4. To support his submission, learned counsel has relied upon para 11 and 20 of the said judgment, which are reproduced as under:-

“11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

xxxx

xxxx

xxxx

20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2,500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs. 5,000/- to Rs. 10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care,

help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

5. Learned counsel further submitted that the learned Tribunal has granted a lesser amount towards non-pecuniary claims such as loss of love and affection Rs.10,000/-, loss of consortium Rs.10,000/-, funeral expenses Rs.5,000/- and loss to estate Rs.10,000/-. He submits that in view of the judgment cited above, the claimants/appellants are entitled for loss of love and affection Rs.1,00,000/-, for loss of consortium Rs.1,00,000/- and for funeral expenses Rs.25,000/-. Thus, seeking enhancement of the compensation accordingly.

6. Admittedly, learned Tribunal has not granted compensation on account of future prospects. In view of the dictum in **Rajesh & Ors.** (*supra*), I grant 50% future prospects on the income of the deceased.

Resultantly, the annual income of the deceased comes to Rs.1,64,115/- (Rs.1,09,410/- + 50% of Rs.1,09,410/-).

7. Mr. A.K. Soni, learned counsel for the respondent Company has raised the issue that the learned Tribunal has wrongly deducted 1/4th towards personal expenses. He submitted, keeping in view the dependants of the deceased, i.e., widow, a son and mother, the learned Tribunal should have deducted 1/3rd instead of 1/4th towards personal expenses. He further submitted that father cannot be considered as a dependant in view of the dictum of *Sarla Varma & Ors. Vs. Delhi Transport Corporation & Anr., 2009) 6 SCC 121*.

8. Learned counsel for the appellants is not disputing if the personal expenses be deducted as 1/3rd instead of 1/4th.

9. I ordered accordingly.

10. Thus, compensation on account of loss of financial dependency would be Rs.18,59,970/- (Rs.1,64,115/- x 17 x 2/3).

11. In view of the submissions made by the learned counsel for the appellants and the legal position, I grant a compensation of Rs. 1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/-for funeral expenses.

12. Therefore, the total compensation amount comes to Rs.21,44,770/-. The enhanced compensation amount is Rs.6,64,992/-. The enhanced amount will carry interest @ 7.5% as awarded by the learned Tribunal from the date of the filing of the petition till realization.

13. Consequently, the respondent No.3/Insurance Company is directed to deposit the aforementioned enhanced amount of compensation within four weeks from today before the Registrar General of this Court.

14. On deposit, the Registrar General is directed to keep the enhanced amount in the form of FDR in favour of the appellants for a period of two years as per the ratio of the award.

15. Needless to state that as regards the enhanced amount of compensation is concerned, the respondent No.3/Insurance Company shall have the recovery rights against the respondent Nos. 1 and 2, driver and owner of the offending vehicle, who were served but preferred not to appear before this Court.

16. The instant appeal is allowed on the above terms.

17. There is no order as to costs.

SURESH KAIT, J.

JULY 09, 2013

Sb/jg