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

Judgment reserved on : 31.07.2014

Judgment pronounced on: 29.09.2014

+ **MAC.APP. 699/2013**

SUNITA & ORS.

..... Appellants

Through Mr.S.N.Parashar, Advocate.

versus

MAHESH & ORS

..... Respondents

Through Mr.Pankaj Seth, Advocate for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. The present appeal is filed by the appellants/claimants under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation as awarded in the impugned Award dated 30.04.2013 passed by the Tribunal. The claimants are the dependants of late Sh.Jagmohan Gupta, the deceased and had filed the petition under Sections 166 and 140 of the MV Act.

2. On 03.07.2010 Sh. Jagmohan Gupta along with other persons was crossing the road at Palwal Camp, Haryana. There was said to be a great rush on the road due to procession of Barat approaching a Banquet Hall. An LPG Tanker said to be driven by its driver respondent No.1 in a rash and negligent manner despite a stop signal rammed over some people resulting in death of two persons including Shri Jagmohan Gupta.

3. On the pleadings of the parties the following issues were framed:-

“1. Whether deceased suffered fatal injuries in an accident which took place on 03.07.2010 at about 11.00-11.30 p.m. due to rash and negligent driving of vehicle bearing no. HR-66-0242 being driven by respondent no.1, owned by respondent

No.2 and insured with Reliance General Insurance Company Ltd./respondent No.3? OPP

2. Whether petitioners are entitled to compensation? If so, to what amount and against which of the respondents?

3. Relief.”

4. On issue No.1, the Tribunal recorded that the accident occurred due to rash and negligent driving of the LPG Tanker by its driver respondent No.1.

5. On issue No.2, the Tribunal awarded the following compensation.

|                                  |                     |
|----------------------------------|---------------------|
| Loss of dependency               | ₹5,23,250.00        |
| On account of Love and Affection | ₹25,000.00          |
| Loss of consortium               | ₹10,000.00          |
| Loss of estate                   | ₹10,000.00          |
| Funeral expenses                 | ₹10,000.00          |
| Total                            | <u>₹5,78,250.00</u> |

6. Learned counsel appearing for the appellant submits that the said compensation amount is liable to be enhanced on three different counts. He firstly submits that there is a clear calculation mistake in the calculation of the Tribunal. The Tribunal had fixed the income of the deceased at ₹1,40,000/- per annum, it had awarded 15% increase and had also adopted a multiplier of 13, keeping in view that the age of the deceased was 46 years old. 1/4<sup>th</sup> was directed to be deducted towards personal expenses. Hence, it is submitted that [(₹1,61,000 - 25%) x 13] totals ₹15,69,750/- and not ₹5,23,250/- as awarded by the Tribunal. It is secondly submitted that the deceased was earning handsomely. He relies on evidence of PW-1 where she has not been cross-examined to state that the deceased had a bright future prospects. He also relies upon the judgment of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54* to contend that instead of 15% the increase in future prospects should have

been 30%.

7. Lastly, relying on the same judgment of the Supreme Court, he submits that the compensation awarded for love and affection, loss of consortium and funeral expenses are on the lower side.

8. As far as the first contention of the learned counsel for the appellant is concerned, on the face of it there is a calculation mistake. Hence, loss of dependency as per the calculation in Award ought to have been ₹15,69,750/- and not ₹5,23,250/-. The said correction is accordingly made.

9. As far as increase in future prospects is concerned, learned counsel for the respondent has strenuously urged that the judgment of the Supreme Court in the case of *Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)* is per incuriam and contrary to the judgments of the Supreme Court in the case of *Sarla Verma vs. DTC, AIR 2009 SC 3104* and *Reshma Kumari & Ors. vs. Madan Mohan & Anr., (2009) 13 SCC 422*. He submits that the judgment of *Reshma Kumari & Ors. vs. Madan Mohan & Anr. (supra)* is prior in time and is also a three judge Bench judgment. He also submits that there is no evidence on record to demonstrate that the deceased was likely to have an increase in his income over time or that inflation would be a factor which can entitle the appellants to enhancement of 30% as claimed. He submits that even otherwise the appellant ought to have examined some property broker to show future prospects or likely increase in the income on account of inflation. He further submits that as per the ITR record of the deceased his income had actually fallen over the time.

10. I can take judicial note of the fact that minimum wages for a skilled worker in 2002 were Rs. 3103.7/- P.M. and in 2012 were Rs.8528/- P.M. It is obvious that the prescribed minimum wages have more than doubled in

ten years.

11. In case of ***Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)***, the Supreme Court held that in the case of self employed or those on fixed wages, the assessed income should be increased by 30% for those between the age bracket of 40-50 for the purpose of computing loss of future earnings.

12. In the case of ***Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC 505***, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the Supreme Court in the case of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

13. Reference may also be had to the judgment of this High Court in the case of MAC.APP.No.846/2011 ***ICICI Lombard General Insurance Company Ltd. vs. Angrej Singh*** decided on 30.9.2013 which held that there should be enhancement on account of future prospects as it cannot be lost sight of that over time the rates of minimum wages itself are revised upwards. The court in this case enhanced the wages by 50% for future prospects as the age of the deceased was less than 40 years.

14. In the said case of ***ICICI Lombard General Insurance Company Ltd. vs. Angrej Singh (supra)***, this Court after discussing the judgments of ***Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)*** and ***Reshma Kumari & Ors. vs. Madan Mohan & Anr. 2013 ACJ 1253***, held as follows:

26. In view of above, this court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex

Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon'ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self-employment/fixed wages this court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh.”

15. Reference may be had to the judgment of *Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)*. The Supreme Court relying upon its earlier judgment in the case of *Santosh Devi v. National Insurance Co. Limited and Ors. (2012) 6 SCC 421* quoted the following relevant portion of the later judgment:-

“11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socioeconomic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast-changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.

....

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total

emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet

the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.”

16. The Supreme Court in *Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)* further held:

“17. 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.”

16. The Supreme Court in the said case concluded as follows:

“8. 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.”

17. Accordingly, keeping into account the judgment of the Supreme Court in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.**(supra) and keeping into account the age of the deceased on the date of the accident i.e. 46 years, the income is liable to be increased by 30% on account of future prospects.

18. On the issue of loss of consortium the Supreme Court in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors.** (supra) noted as follows:-

“20. .... 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.”

19. Hence, the Supreme Court awarded ₹1,00,000/- for loss of consortium.
20. On the head of funeral expenses, the Supreme Court noted that the funeral expenses did not mean only the fee paid for the use of space in the cemetery. There are various expenses involved including several religious practices, conventions, etc. All those are quite expensive.
21. Hence, the Court was of the view that in the absence of any evidence to the contrary for higher expenses, funeral expenses of at least ₹25,000/- should be awarded.
22. The Supreme Court had also awarded for loss of care and guidance of minor children a sum of ₹1,00,000/-.
23. Keeping in view the observation of the Supreme Court, I increase the

Award for funeral expenses from ₹10,000/- to ₹25,000/-. I also increase loss of consortium from ₹10,000/- to ₹1,00,000/-.

24. As per the claim petition, appellants No. 2 and 3 are shown to be minor children of late Sh.Jagmohan Gupta and appellant No.1.

25. At this stage learned counsel for the respondent has submitted that pursuant to an investigation carried out, he has the photocopy of the passports of the minor and on the date of the accident the daughter Shinu Gupta was 15 years old and the son Piyush Gupta was 14 years old.

26. In view of the above, I do not feel it necessary to change the award amount of ₹ 25,000/- on account of love and affections.

27. Hence the total compensation as awarded is as follows:

|                                  |                     |
|----------------------------------|---------------------|
| Loss of dependency               | ₹20,40,625/-        |
| On account of Love and Affection | ₹25,000/-           |
| Loss of consortium               | ₹1,00,000/-         |
| Loss of estate                   | ₹10,000/-           |
| Funeral expenses                 | ₹25,000/-           |
| Total                            | <u>₹22,00,625/-</u> |

28. The enhanced amount as per the order today shall be deposited by the Insurance Company within four weeks from today alongwith interest @ 9% per annum from the date of filing of the claim petition till deposit in Court. On receipt of the amount, the same shall be released in favour of the claimants proportionately as per the directions in the Award.

29. The appeal stands disposed of.

**JAYANT NATH, J**

**SEPTEMBER 29, 2014/rb**