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IN THE HIGH COURT OF DELHI AT NEW DELHI

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MAC.APP. 801/2013

RAJENDER SAH & ORS

..... Appellants

Through: Mr. Peeush Sharma, Advocate.

versus

SANTOSH KUMAR & ORS

..... Respondents

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

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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09.05.2014

1. The present appeal has been filed by the LR's of the deceased Bharat Kumar for enhancement of the compensation amount of Rs. 4,70,170/- granted vide award dated 3rd May, 2013.
2. The deceased namely Bharat Kumar was unmarried at the time of his death and is survived by his parents, brothers and sisters. On 18th November, 2005 at about 10.05 am, deceased Bharat Kumar was going to the construction site at Rama Vihar on his motor vehicle bearing No. DL 4S AU 7471 along with his friend Mr. Ajay kumar, the pillion rider. When he reached at Jain Nagar, one truck bearing No. HR 10 0582 came from the wrong side and hit his motor cycle. As a result of the injuries received by him in this accident, he died on the spot. The Id. Tribunal reached to the conclusion that the accident had taken place due to the rash and negligent driving of truck bearing No. HR 10 0582 by its driver. The Id. Tribunal has

also assessed the age of the deceased as 23 years on the basis of secondary school certificate Ex. PW ½. He had rejected the claim that the deceased was working as Contractor and was earning Rs. 30,000/- per month. The Id. Tribunal had concluded that the deceased was a matriculate and assessed the loss of dependency on the basis of minimum wages of a matriculate labour. He took the multiplier as per the age of the mother of the deceased and since he found that only his parents were dependent upon the deceased, did the deduction of ½ from his salary towards personal expenses and assessed the loss of dependency.

3. The contention of the appellant is that the Id. Tribunal has wrongly taken into consideration the minimum wages. The Id. Tribunal ought to have taken the income of the deceased as Rs. 30,000/- per month. It is further argued that he was a marble contractor and about 30 labourers were working under him and that the document PW 2/R1 which is the attendance register maintained by the deceased in due course and also the oral evidence of PW 2 which has remained unrebutted, duly prove this fact. It is also argued that at the time of the accident, he was carrying Rs. 10,000/- in his pocket to make the payment to his labour. It is further argued that minor siblings were also dependent on the salary of the deceased and thus, the total number of dependents were seven and the Id. Tribunal ought to have deducted 2/3 of the monthly income towards personal expenses. It is also contented that Rs. 5 lacs ought to have been given towards loss of love and affection and the compensation of Rs. 10,000/- towards loss of Estate is also meagre and has claimed Rs. 2 lacs towards loss of Estate. It is also prayed that the compensation of Rs. 10,000/- towards funeral expenses is also too less and Rs. 2 lacs should have been awarded.

4. The appeal is contested only by the Insurance Company. It is argued that Id. Tribunal has correctly assessed the compensation and there exist no ground to disturb the said finding.
5. I have heard the parties and have perused the record and have given thoughtful consideration to the rival contentions.
6. There is no challenge to the factum of accident and that the accident has taken place due to rash and negligent driving of the offending vehicle of which Respondent.No.3/Insurance Company is the insurer. The insurance company has also not disputed its liability to pay the maintenance. These findings of Id. Tribunal has thus attained finality.
7. In this case, the deduction towards personal expenses of deceased was done by using the formula of $\frac{1}{2}$ of his salary. There is no evidence on record to show that the siblings i.e. the brothers and sisters of the deceased were financially dependent on him. He thus is survived by his parents as he was also unmarried at the time of his death. The Id. Tribunal has thus rightly deducted $\frac{1}{2}$ of the income of the deceased towards his personal expenses.
8. The Id. Tribunal has also rightly granted a sum of Rs. 10,000/- towards loss of Estate. In the case Rajesh & Ors. vs. Rajbir Singh & Ors., 2013 (6) Scale 563, the Apex court has clearly held that Rs. 1 lac under the head of 'Loss of love and affection' is a just compensation and has also held that atleast a sum of Rs. 25,000/- should be awarded towards funeral expenses.
9. The hon'ble Apex Court in the case Rajesh & Ors. vs. Rajbir Singh & Ors., 2013 (6) Scale 563 dealt with the grant of compensation towards loss of consortium, love and affection and funeral charges and has observed as

under:-

“20. 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 one lakh for loss of consortium.

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses to award at least amount of Rs. 25,000/-."

No ground has been made out for the claim of Rs. 5 lacs towards loss of Estate and the Id. Tribunal has rightly awarded a sum of Rs. 10,000/- towards loss of Estate.

10. It is argued that the assessment of the monthly income of the deceased has not been done properly. He was working as a contractor and the witnesses have proved on record the attendance register maintained by the deceased in due course as Ex. PW 2/R1. It is further argued that 30 labourers were working under him. He was a marble contractor. Oral testimony of PW 2 proves that the deceased was a marble contractor and that his income ought to have been assessed as Rs. 30,000/- to Rs. 40,000/- per month and that the denial of future prospect despite the fact that he was a young boy of 23 years, is against the principle laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. DTC 2009 ACJ 129 A and Rajesh & Ors. vs. Rajbir Singh & Ors, 2013 (6) Scale 563. An addition of 50% towards future prospects ought to have been made.

11. It is argued on behalf of the contesting respondents that the Id.

Tribunal has rightly assessed the income of the deceased on the basis of minimum wages as there was no concrete evidence showing the income of the deceased.

12. I have given thoughtful consideration to the rival contentions and have also gone through the record. There is no doubt that the appellant have produced on record the documents PW 2/R1 which includes attendance card allegedly issued by the deceased wherein he is shown as the marble contractor and has also produced certain attendant sheets but these sheets are loose sheets and do not seem to be part of any attendance register. These documents do not reflect the income of the deceased. If the testimony of the witnesses in this case are believed that the deceased was earning Rs. 30,000 to Rs. 40,000/- per month in the year 2005, then he was earning approximately Rs. 4 lacs in a year and under the Income Tax Act, he was liable to file Income Tax Returns. No copy of the Income Tax Return of any year has been placed on record by the appellants. In their statement, PW 1 i.e. the appellant no. 1, Rajender Saha, has deposed that deceased was sending Rs. 25,000/- to Rs. 30,000/- per month to him in village, however, no documentary evidence, in the form of money order or transfer of the money through bank, has been placed on record. In these circumstance, the ld. Tribunal has correctly resorted to assess the annual income of the deceased on the basis of minimum wages of a matriculate. It is not disputed that the deceased was a matriculate.

13. The appellant has also claimed the future prospect in view of the findings in *Sarla Verma Case (supra)*. The court has concluded that the appellant has failed to prove that the deceased was the marble contractor. His income has been assessed on the basis of minimum wages. He thus is

taken as a salaried person instead of a self employed person.

14. The apex court in *Sarla Verma (supra)* has clearly laid down the proposition for grant of the future prospects. It has categorised the categories of persons entitled for the future prospects. The relevant paragraphs are reproduced as under:-

“10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In *Susamma Thomas*, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs.2000/- as gross income before deducting the personal living expenses. The decision in *Susamma Thomas* was followed in *Sarla Dixit v. Balwant Yadav* [1996 (3) SCC 179], where the deceased was getting a gross salary of Rs.1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs.3000/-. This court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs.2200/- per

month. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India* [2003 (3) SCC 148], as against the actual salary income of Rs.42,000/- per annum, (Rs.3500/- per month) at the time of accident, this court assumed the income as Rs.45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. Re : Question (ii) - deduction for personal and living expenses

15. From the directions in *Sarla Verma Case (supra)* , it is apparent that only two categories of persons are not entitled to future prospects, one,

where the deceased was self-employed and secondly, where the deceased was working on a fixed salary (without prospect of annual increment etc).

16. The Apex court has made a reference of *Sushma Thomas Case* wherein the future prospects were given to a deceased who had a 'stable job'. In other referred cases also, the deceased were salaried persons. The careful reading of the findings of the Apex court clearly shows that it had intended to exclude only two categories i.e. where the deceased was self-employed or where he was working on a fixed salary with no provision of annual increment etc. By necessary implication, it can be concluded that the Hon'ble Apex court has not intended to exclude the salaried persons who are not employed on a fixed salary. Thus, the Apex court had meant to include all those persons which are in employment but not on a fixed salary.

17. In the present case, the claimants have failed to prove that the deceased was a self employed person working as a contractor. The court rather has treated him as a matriculate and working as a daily wager. The government revises the minimum wages twice annually i.e on 1st of Feb and 1st of August. The deceased thus does not fall in the exempted category in *Sarla Verma Case (Supra)*. As per *Sarla Verma Case (supra)*, since the age of the deceased was below 40 years, he was entitled for addition of 50% of his salary towards future prospect.

18. There is no dispute to the multiplier used. Multiplier used is 15.

Income of the deceased= Rs. 3613 per month (minimum wages)

Future prospect= Rs. 3613 + 3613 X 50% = Rs.5419.5/-

Deductions towards personal expenses= 5419.5-5419x1/2 = Rs. 2710/-

Loss of dependency= 2710 x 12 x 15 = Rs. 4,87,800/- .

19. The compensation thus awarded is:-

1.	Loss of dependency	Rs. 4,87,800/-
2.	Funeral charges	Rs. 25,000/-
3.	Loss of Estate	Rs. 10,000/-
4.	Loss of love, company And affection	Rs. 1,00,000/-
5.	Loss of gratuitous services	Rs. 25,000/-
	Total	Rs. 6,47,800/-

20. I award Rs. 6,47,800/- alongwith interest at the rate of 9% per annum from the date of filing of the petition. The amount shall be paid within eight weeks, in default of which, the appellants are liable to pay interest at the rate of Rs. 12% per annum from the date of default till its realisation. An amount be distributed among the parents of the deceased as per the directions of the order of the Id. tribunal dated 3rd May, 2013.

21. The appeal stands disposed of in the above terms.

MAY 09, 2014
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DEEPA SHARMA, J