

\$~12

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

% *Judgment delivered on: 10th February, 2014*

+ MAC.APP. 70/2012

SMT SUNITA KUMARI & ANR.

..... Appellants

Represented by: Mr. P.D. Gupta, Ms. Kusum
Dhalla and Mr. Atul Gupta, Advs.

versus

SARDAR DALBIR SINGH & ORS

..... Respondents

Represented by: Mr. Ravi Shankar Garg, Adv. for
R2 and R4.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Present appeal is directed against the impugned award dated 20.07.2011, whereby Ld. Tribunal has awarded compensation for a sum of Rs.12,17,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

2. Vide the present appeal, appellants are seeking enhancement of the compensation amount as noted above.

3. Ld. Counsel appearing on behalf of the appellants has argued the instant appeal on the ground that deceased died at the age of 30½ years. He left behind his young widow wife, a minor child and a widow mother.

4. Ld. Counsel submitted that on non-pecuniary damages, Ld. Tribunal granted Rs.10,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. However, considering the age of deceased and the number of dependents, Ld. Tribunal ought to have granted Rs.1,00,000/- each towards loss of consortium and loss of love affection and Rs.25,000/- towards funeral expenses.

5. To strengthen his arguments, ld. Counsel appearing on behalf of the appellant has relied upon a case of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563.***

6. Ld. Counsel for the appellants further argued that the date of birth of the deceased was 23.12.1975 and he met with an accident on 30.05.2006. Therefore on the date of accident, he was 30 years, 5 months and 8 days and keeping in view the law laid down in the case of ***Sarla Verma Vs. DTC and Ors. 2009 (6) SCC 121***, Ld. Tribunal ought to have applied multiplier of 17. However, Ld. Tribunal had erred in applying multiplier of 16.

7. Ld. Counsel for the appellant further argued that age of the deceased was less than 31 years on the date of accident and was working as a Project Manager with M/s. Channel Technology at NOIDA. He was earning Rs.9,000/- as salary from the said Establishment. Therefore, keeping the age of the deceased, Ld. Tribunal ought to have added 50% towards future prospects while awarding the compensation, however failed to do so.

8. To strengthen his arguments, Ld. Counsel for the appellants relied upon a case of ***Rajesh & Ors. (Supra)*** wherein it is held 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.”*

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.*

9. On the other hand, Ld. Counsel appearing on behalf of the respondent nos. 2 & 4 submits that keeping the age of the deceased and number of dependents into view, Ld. Tribunal has granted just compensation towards non-pecuniary damages.

10. Ld. Counsel further submitted that the appellants failed to examine any witness or to produce any material on record which proves that deceased was on the permanent employment, therefore, Ld. Tribunal has not added any amount towards future prospects while calculating the compensation in view of the dictum of the Apex Court in the case of **Sarla Verma (Supra)**.

11. I heard Ld. Counsels for the parties.

12. As the issue of multiplier is concerned, Ld. Counsel for the respondent nos. 2 & 4 does not dispute the proposition advanced by the Ld. Counsel for the appellants and submits that keeping in view the age of the deceased, Ld. Tribunal ought to have applied multiplier of 17 instead of 16 while calculating the compensation.

13. As far as the issue of compensation towards non-pecuniary damages is concerned, the Tribunal and the Court has to see the facts and circumstances of each case. Undisputedly, in the present case, deceased died at the young age of 30-31 years. He left behind a young widow, a minor child and widow mother. In such a situation, the widow lost the enjoyment of life and association of her husband and the minor child lost the care and guidance of his father, which requires for his betterment.

14. The Full Bench of the Apex Court has decided the issue of non-pecuniary damages in the case of ***Rajesh & Ors. (Supra)*** and awarded Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards funeral expenses and this court has been consistently relying upon the dictum of ***Rajesh & Ors. (Supra)***. Therefore, keeping in view the facts and circumstances of the present case, I grant Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards funeral expenses.

15. As far as the issue of future prospects is concerned, this issue has been considered by this court in the case bearing MACA No.846/2011 titled as '***ICICI Lombard Channel Insurance Co. Ltd. Vs. Angrej Singh & Ors.,***'

decided on 30.09.2013 while relying upon the dictum of *Rajesh & Ors. (Supra)*. In the present case, the age of the deceased was less than 31 years of age and the appellants have proved the employment of the deceased with Channel Technology at NOIDA which has been testified by the Director of the said Company, who specifically deposed that the deceased was working with them. Therefore, keeping the age of deceased on the date of accident, I add 50% in his income towards future prospects on the income of the deceased.

16. Consequently, the compensation amount comes as under:-

Sl. No.	Heads of compensation	Compensation granted by the Ld. Tribunal.	Compensation granted by this court.
1.	For Loss of dependency	Rs.11,52,000/-	Rs.18,36,000/- (After adding 50% future prospects and 17 multiplier)
2.	For Loss of consortium	Rs.10,000/-	Rs.1,00,000/-
3.	For Loss of Estate	Rs.10,000/-	Rs.10,000/-
4.	For Loss of love and affection	Rs.40,000/-	Rs.1,00,000/-
5.	For funeral expenses	Rs.5,000/-	Rs.25,000/-
	Total	Rs.12,17,000/-	Rs.20,71,000/-

Resultantly, the enhanced compensation comes to Rs.8,54,000/- (Rs.20,71,000 – Rs.12,17,000).

17. The enhanced compensation amount shall carry interest @ 7.5% *per annum* from the date of filing of the claim petition till realization of the amount.

18. Accordingly, the respondent No.2 & 4 is directed to deposit the enhanced compensation amount with the Registrar Channel of this Court within a period of five weeks from today, failing which, appellants / claimants shall be entitled for penal interest @ 12% *per annum* on account of delayed payment.

19. On deposit, the Registrar General is directed to release the amount proportionately in favour of the appellants / claimants in terms of the award dated 20.07.2011 on taking necessary steps by them.

20. The appeal is allowed accordingly.

SURESH KAIT, J

FEBRUARY 10, 2014

Jg