

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 289 OF 2000

**SUREKHA KISHOR RANA AND ORS
VERSUS
RAJENDRA LALACHAND KOTHARI AND ORS**

...
Advocate for Appellants : Shri Balaji Shinde
Adv. Mr.V N Upadhye for R.1
Advocate for Respondent : A A Joshi for R.3

....

CORAM : S.V.GANGAPURWALA,J.

DATED : 29TH OCTOBER, 2015

ORDER :-

The application filed by present appellants for compensation on account of death of Kishor is partly allowed. The present appeal is filed for enhancement of compensation.

2] Shri Shinde, learned counsel for the appellants submits that the Court has deducted 1/3rd towards personal expenses. There are 3 dependents. The income of the deceased is considered as Rs.22000/- p.a. When the income is less, 1/3rd deduction is not to be made as a matter of course. The Court ought to have at the most made deduction of 1/10th towards personal expenses. Learned counsel relies on the judgment of the Apex Court in the case of **Santoshdevi V/s National Insurance reported in AIR 2012 SC 2185**. The learned counsel submits that even towards non pecuniary damages paltry sum is awarded.

3] Mr.Joshi, learned counsel for respondent supports judgment

and submits that when there are only 3 claimants 1/3rd deduction towards personal expenses is legal and proper as per the judgment of Apex Court in the case of **Sarla Verma V/s Delhi Transport Corporation reported in AIR 2009 S.C. 3104.**

4] I have considered submissions canvassed by learned counsel for respective parties. There cannot be a straight jacket formula for deducting amounts towards the personal expenses. It would depend upon the facts placed before the Court. In the case of Sarla Verma referred supra, general proposition has been laid down by the Apex Court with regard to the personal deduction. In the present case, after scanning of evidence, it does not transpire that the petitioners have brought on record the special circumstances to consider deduction of lesser amount for personal expenses. Considering the same, the tribunal has properly calculated the amount towards loss of dependency which comes to Rs.2,28,300/-.

5] However, perusing the amounts awarded under the head non pecuniary damages, it is clear that the tribunal has awarded paltry sum. **The Apex Court in the case of Asha Varman V/s Maharaj Singh reported in 2015 AIR SCW 3177** has laid down the principle regarding amounts being awarded under the non pecuniary damages, however, considering the fact that the accident is of the year 1990, I am not inclined to award the same amount as awarded by Apex Court in the said judgment. I would award amount of Rs.50,000/- to the claimant no.1 for loss of consortium and amount of Rs.50,000/- each to claimant nos.2 and 3 on account of loss of love and affection. For funeral expenses, I would award Rs.15000/-, for loss of estate, the tribunal awarded Rs.2500/-, I would award Rs.25,000/-. Total compensation comes to Rs.4,18,300/-.

6] In the result, I pass following order :

The original opponent nos.1 to 3 are jointly and severally liable to pay Rs.4,18,300/- to the claimants (inclusive of the amount under the no fault liability) alongwith interest at the rate of 12% p.a. from the date of application till realisation of the entire amount. The amount already paid shall be adjusted as on the date the said payment is made. Appeal is disposed of. No order as to costs.

[S.V.GANGAPURWALA,J.]

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