IN THE HIGH COURT OF PUNJAB AND HARYANAT AT CHANDIGARH

FAO Nos. 3646 to 3652 of 2003
Date of decision: 5.8.2015

Tanvi Gupta

….. Appellant

Versus

Mohd. Rafiq and Ors.

…. Respondents

Present: Mr. Karan Nehra, Advocate for the appellant.

None for respondent No.1

Mr. S.S. Grewal, Advocate for respondent No.2.

Mr. Paul S. Saini, Advocate for respondent No.3.

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S.S. Saron, J.

This order will dispose of seven appeals i.e. FAO Nos. 3646, 3647, 3650 of 2003 field by Tanvi Gupta daughter of deceased Ashok Kumar claiming more and higher compensation for the death of her two sisters and brother namely Simran, Swarika alias Allu and Satyam respectively; as also FAO Nos.3648 and 3649 of 2003 also filed by Tanvi Gupta claiming enhanced compensation for the death of her parents Ashok Kumar (father) and Rohi Gupta (mother) and also FAO Nos.3651 and 3652 of 2003 filed by Arun Kumar and Monika Bansal, who are brother and sister *inter se*, claiming more compensation for the death of their father i.e. Ram

Sarup Gupta and compensation for the death of their mother Krishna Devi in an accident that occurred on 9.12.2001.

Arun Kumar (appellant in FAO No.3652 of 2003) and his wife Pooja Gupta along with their children were travelling in a 'Gypsy' vehicle with registration No. UP 15 C/ 6000 on 9.12.2001; while his brother Ashok Kumar (deceased) son of Ram Sarup Gupta (deceased), Rohi Gupta (deceased) wife of Ashok Kumar, Ram Sarup Gupta (deceased) and his wife Krishna Devi (deceased), father and mother respectively of the claimants Arun Kumar and Monika Bansal (appellants in FAO Nos.3651 and 3652 of 2003) as also Swarika alias Allu and Simran minor daughters (both deceased) of Ashok Kumar were travelling in a 'Maruti' car No.PB 29/2323 from Ambala after attending the marriage of the sister's husband's sister of Ashok Kumar (deceased) and Arun Kumar (claimant). The 'Maruti' car was being driven by Ashok Kumar (deceased) and it was being followed by the 'Gypsy' being driven by Arun Kumar (claimant). They reached near the Radha Swami Satsang Bhawan in the revenue estate of village Bagarian on the Nabha - Malerkotla road. At that time, the offending truck bearing registration No. HR 37-A/8579 driven by Mohd. Rafiq (respondent No.1) came from the opposite side at a fast speed in a rash, negligent, careless and 'zig zag' manner. By bringing the truck on the wrong side, it rammed against the car. The offending truck did not blow any horn. Due to striking of the truck at a high speed, the car being driven by Ashok Kumar turned in such a way that it hit the front i.e. the bonnet side and turned towards Bagarian i.e. Nabha side.

Arun Kumar (claimant) who was driving the 'Gypsy' immediately stopped his vehicle and he along with his wife Pooja

Gupta reached near the said car to know the condition of its occupants. Unfortunately all the occupants of the car suffered very serious injuries and all of them succumbed to their injuries then and there. The car was also badly damaged. The dead bodies that were in the car were smeared with blood. The driver of the truck got down from the truck and felt sorry for his negligence. He informed his name, parentage and address. Later, he slipped away from the scene by leaving the truck at the spot. Arun Kumar after leaving his wife Pooja Gupta at the spot went to lodge a FIR, which was recorded by ASI Kulwant Singh vide FIR No.87 of 9.12.2001 at the Police Station Amargarh. The accident had been caused by Mohd. Rafiq (respondent No.1) while driving his truck in a rash, negligent, careless and in a 'zig zag' manner and by bringing it on the wrong side. The lives of all those who had died, it is stated, had been cut short by Mohd. Rafiq (respondent No.1) due to his negligence and carelessness while driving the offending truck.

On account of the untimely deaths that had occurred, the claimants were deprived of love, affection, care and management of the family of the deceased for which the respondents were jointly and severely liable to pay the amount of compensation.

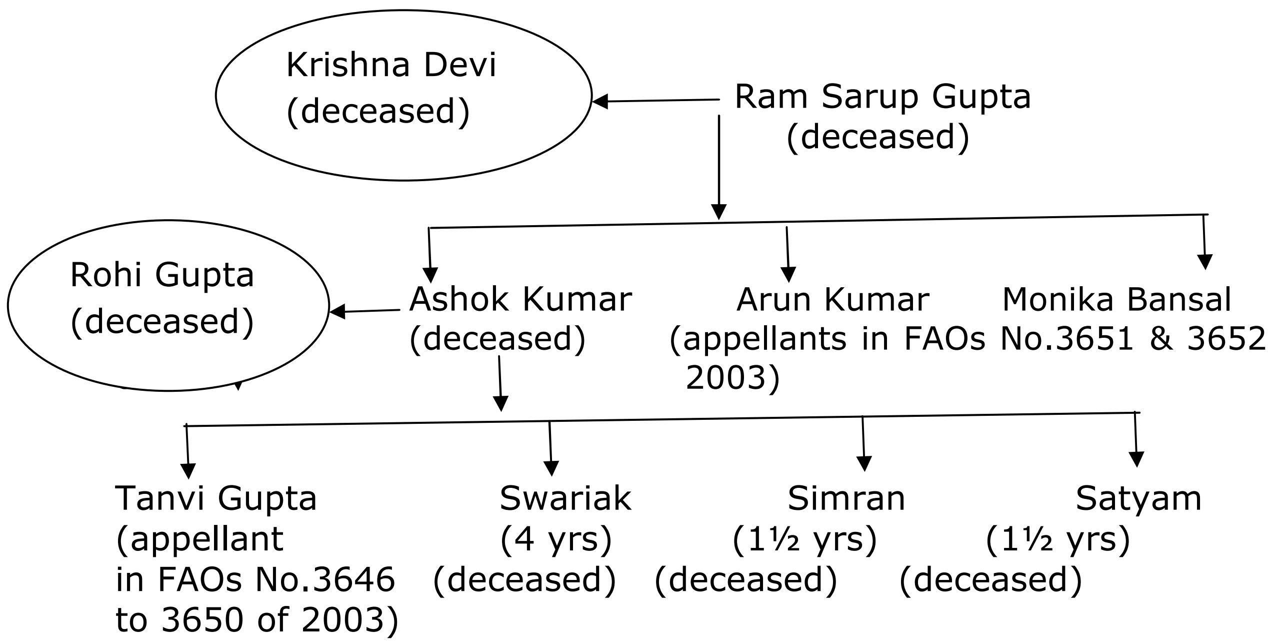
The petitions filed by the claimants were contested by Mohd. Rafiq (respondent No.1) and Mohinder Singh (respondent No.2) the driver and owner respectively of the offending truck. They denied that any such accident had ever taken place with their truck. It was averred that the claimants had got registered a false case against them to get compensation. It was, however, submitted that the offending truck was insured with the New India

Assurance Company Limited, Branch Malerkotla (respondent No.3).

The New India Assurance Company (respondent No.3) in its written statement denied and controverted the averments as made in the claim petition. It was, however, admitted that Mohinder Singh (respondent No.2) was the owner of the offending truck which was insured with it. It was also pleaded that the liability of the Insurance Company (respondent No.3) would arise only if it was proved that the driver Mohd. Rafiq (respondent No.1) of the offending truck was holding a valid driving license at the time of accident. Further, it was alleged that it was liable to be shown as to whether the vehicle was fit to be brought on road and that it had a valid registration certificate and an insurance policy. It was also pleaded that if the learned Motor Accident Claims Tribunal ('Tribunal' - for short) came to the conclusion that the accident had occurred due to contributory/composite negligence of both the drivers of the vehicles, in that eventuality the liability of the company (respondent No.3) shall be to the extent of its negligence.

From the pleadings of the parties, the learned Tribunal framed the issues. However, the only issues that now survive in these appeals is whether the claimants/appellants are entitled to more and higher compensation for the deaths other than that of Krishna Devi that had occurred and that whether Arun Kumar and Monika Bansal are entitled for compensation for the death of their mother Krishna Devi.

In order to appreciate the facts of the case, the following pedigree table of the claimants/appellants may be noticed:-



<u>FAO Nos. 3646, 3647, 3650 of 2003</u>.

As already noticed Tanvi Gupta has filed the above FAOs claiming more compensation for the death of her two minor sisters namely Simran and Swarika alias Allu, besides, her minor brother namely Satyam. Simran the minor sister of Tanvi Gupta was one and a half years old, Swarika alias Allu was four years old while Satyam was one and a half years old at the time of accident that had occurred on 9.12.2001. Tanvi Gupta (appellant) herself was eleven and a half years old at the time of accident.

Insofar as the minors are concerned, admittedly there is no fixed formula for determining the liability of the minors. In <u>Smt. Nikki and others v. State of Haryana & Ors.,</u> 2014 (2) RCR (Civil) 454 (P&H) the deceased was one and a half years of age, the Tribunal had awarded Rs.1.00 lac lump sum amount as compensation. This Court held the same to be inadequate and it awarded another sum of Rs.2,50,000/-.

In <u>Santosh Rani v. Ranjit Singh & Others</u>, 2008 ACJ 1405, the Supreme Court considered the case of a deceased boy aged 13 years stated to be earning Rs.50/- or Rs.60/- per day. The Tribunal in the said case held that no source of income of the deceased was proved. However, it awarded Rs.50,000/- on account of no fault liability. Being aggrieved, the claimant in the said case preferred an unsuccessful appeal before the High Court. The Supreme Court held that the Tribunal and the High Court completely ignored the factum of loss of life at a tender age, the future prospects of a young man and mental agony suffered by the claimant. It was held that an award of Rs.50,000/- for no fault liability in case of death of a person was too meager and it awarded a lump sum compensation of Rs.2,50,000/- to the claimant along with the interest awarded by the Tribunal.

The Supreme Court in R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 considered the case of school children. It was held that it cannot be said that in case of death of school children, the parents do not suffer pecuniary loss. The Second Schedule of the Motor Vehicles Act, 1988 ('Act' - for short) introduced on 14.11.1994 was noticed. In the said case, the accident had occurred on 18.11.1997. It was observed that proximity between date of death and introduction of Schedule II did not necessitate deviation from the structural formula. Besides, notional income by implication takes into account future prospects, inflation and price rise. Since the deceased was a child, notional income of Rs.15,000/- per annum as applicable to a non-working person was determined to be applicable.

In National Insurance Company Limited v. Farzana and others, 2009 ACJ 2763 (Delhi), the grant of compensation to the parents of a deceased minor studying in a school was dealt with at considerable length and a compensation of Rs.3,75,000/- was awarded.

The Supreme Court in Manju Devi and another v. Musafir Paswan and another, 2005 ACJ 99, considered the case of a thirteen years old boy who died in an accident, which occurred on 2.7.1998. The Tribunal awarded a fixed sum of Rs.90,000/- which amount was considered to be proper and reasonable by it. The High Court dismissed the appeal *in limine*. The Supreme Court referred to its earlier judgment in UP State Road Transport Corporation v. Trilok Chandra, (1996) 4 SCC 362 wherein it was held that there should be no departure from the multiplier method on the ground that the payment being made was just compensation and that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the said method which brings uniformity and certainty to awards made all over the country. In view of the said judgment, it would have to be held that the award of compensation had to be made by the multiplier method. In the Second Schedule to the Act for a boy of 13 years of age a multiplier of 15, it was held, would have to be applied. As per Second Schedule, he being a non-earning person, a sum of Rs.15,000/- was taken as income and the compensation was worked out to Rs.2,25,000/-.

In Shyam Narayan v. Kitty Tours Travels and ors. 2006 (1) RCR (Civil) 555, the Delhi High Court considered the case of a child aged 5 years who died in a motor accident. It was held that the income of a child was incapable of assessment or estimation. However, recognizing that every parent had a reasonable expectation of financial and moral support of his child, in the absence of evidence, the learned Tribunal awarded compensation of Rs.1.00 lac. It was held that had the Tribunal peeped into the Second Schedule as per Section 163-A of the Act, it would have dawned that at serial No.6, notional income for compensation in case of fatal accidents was stipulated at Rs.15,000/- per annum. A multiplier of 15 was applied which is applicable where age of a victim is upto 15 years, as set out in the Second Schedule. The compensation payable was determined as Rs.15,000/- x 15 i.e. Rs.2,25,000/-. Besides, an amount of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death was awarded.

This Court in Gurmeet Kaur v. Punjab Roadways, (2006 - 3) PLR 858 considered the case of a deceased who died in a motor vehicle accident and was aged 15 years. Reliance was placed on the Supreme Court judgment in Manju Devi v. Musafir Paswan (supra) wherein it was held that notional income as stipulated in the Second Schedule was to be taken into consideration and, therefore, an amount of Rs.15,000/- per annum was to be considered as income of the deceased. The notional income as stipulated in the Second Schedule of the Act was taken into consideration and an amount of Rs.15,000/- per annum was considered as income of the deceased.

Another question that is required to be considered is that whether Tanvi Gupta (appellant) who was not dependent on the deceased would be entitled to file claim for compensation. This issue in fact is not *res integra* as the Supreme Court in Manjuri Bera v. Oriental Insurance Co. Ltd. and another, (2007) 10 SCC 643 considered the case of a married daughter being entitled to file a claim for compensation for the death of her father. It was held that the liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement and while assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, the multiplier was a measure. It was held that there were three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next, is the quantification and Section 166 of the Act is primarily in the nature of recovery proceedings. A reference was made to Section 165 of the Act which also threw some light on the controversy and that the explanation includes the liability under Sections 140 and 163-A of the Act. It was held that where a legal representative who is not dependent files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there was no loss of dependency, the claimant if he or she is a legal representative would be entitled to compensation, the quantum of which is not to be less than the liability flowing from Section 140 of the Act. A further reasoning was given to the effect that 'no fault liability', envisaged in Section 140 of the Act was distinguishable from the rule of 'strict liability'. In the former, the compensation amount was fixed at Rs.50,000/- in cases of death in terms of Section 140 (2) of the Act. It was a statutory liability. It was an amount which could be deducted from the final amount awarded by a Claims Tribunal. Since, the amount was a fixed amount/ crystallized amount, the same was to be considered as part of the estate of the deceased. Therefore, his legal representative namely his daughter who had inherited his estate was held entitled to receive compensation under 'no fault liability'.

From the above case law, in the case of Manju Devi and another v. Musafir Paswan and another, (supra) and UP State Road Transport Corporation v. Trilok Chandra, (supra) it is to be noticed that there is to be no departure from the multiplier method on the ground that the payment being made was just compensation and that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is a method which brings uniformity and certainty to awards made all over the country.

The multiplier which is to be applied for payment of compensation to a claimant for the demise of a victim as a result of a motor vehicle accident is based on the judgment of the Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another, (2009-3) PLR 22 (SC) wherein the steps have been provided for the purpose of determining the compensation payable in cases of death which inter alia provide for determining the multiplier to be chosen from the table with reference to the age of the deceased. Apart from the calculations to be carried out for determining the loss of dependency and the amount payable, certain lump sum payments have been provided for, which may be awarded under the heads of (i) loss of estate, (ii) loss of consortium and (iii) funeral expenses, cost of transportation of the body (if incurred) and under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

Therefore, in respect of three minor children namely Simran, Swarika alias Allu and Satyam who died in the motor accident, their income though incapable of determination is to be taken as Rs.15,000/- per annum and to this a multiplier of 15 is to be applied according to the Second Schedule of the Act. Therefore, the compensation in respect of the three deceased in the case i.e. Simran aged 1½ years, Swariak alias Allu aged 4 years and Satyam aged 1½ years works out to Rs.2,25,000/- each. From this the amount already awarded by the learned Tribunal i.e. Rs.50,000/- in respect of each of the said deceased is to be deducted and on the balance amount payable interest to the extent of 7.5% is to be awarded from the date of filing the petition till payment. Besides, conventional lump sums amounts are liable to be awarded. The appellant Tanvi Gupta would not be entitled for loss of consortium for the death of her brother and sisters as consortium is a right of the spouse to the company care, comfort, companionship; besides, love and care to which the spouse is to be compensated. However, for loss of estate, a sum of Rs.25,000/-, besides, for funeral expenses, a sum of Rs.25,000/- for each of the deceased is to be awarded. A sum of Rs.25,000/- as cost of litigation as held in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765 (SC) is also awarded.

FAO Nos.3648 and 3649 of 2003.

The above FAOs have also been filed by Tanvi Gupta claiming enhanced compensation for the death of her parents i.e. father Ashok Kumar and mother Rohi Gupta. Ashok Kumar (deceased) was 35 years of age at the time of his demise. He was a businessman during his life time. His annual HUF income on record has been proved to be Rs.53,000/- by Satbir Kumar CW-4 Clerk from the office of Income Tax, Malerkotla as per the income tax return (Ex.A-15) filed on 21.03.2001 for the financial year 1999-2000. It was further deposed by Satbir Kumar CW-4 that Ashok Kumar (deceased) also filed income tax return (Ex.A-16) for the financial year 1999-2000 in his individual capacity showing his annual income as Rs.53,770/- The said income of Ashok Kumar (deceased), the father of Tanvi Gupta (appellant), was not disputed by the respondents. The mother of Tanvi Gupta (appellant) namely Rohi Gupta (deceased) was also an earning hand and an income tax payee.

The learned Tribunal held that Ashok Kumar (deceased) must be spending 1/6th of his income on himself and to the extent of 5/6 of his income on his four children and wife. It is to be noticed that in the case of <u>Sarla Verma and others v. Delhi Transport Corporation and another</u> (supra), the operative multiplier of 16 is to be applied for those in the age group of 31 to 35 years. Besides, it was also held that in case the deceased was married deductions towards personal and living expenses of the deceased should be 1/4th where the number of dependent family members is 4 to 6, which would be the applicable deductions to be made in the present case as the number of dependents would be between 4 to 6 at the time of demise of Ashok Kumar. It was further held that 50% of the salary income is to be enhanced taking into account the future prospects of the deceased. However, in this regard there has been a conflict in the cases between <u>Rajesh v. Rajbir Singh</u>, 2013 (3) Recent Apex Judgments 659 (SC) and <u>Reshma Kumari and others v. Madan Mohan and others</u> 2013 (2) Recent Apex

Judgments 664 (SC). In Rajesh v. Rajbir Singh (supra) it was held that in case of self employed persons or person with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation of compensation: (i) by 50% where his age was below 40 years, (ii) by 30% where he belong to the age group of 40 to 50 years and (iii) by 15 % where he was between age group of 50 to 60 years. However, no such addition/enhancement would be permissible where the deceased exceeded the age of 60 years. Therefore, in the case of self employed person or persons with fixed wages where the deceased victim was below 40 years there is to be an addition of 50% to the actual income of deceased while computing future prospect. In Reshma Kumari's case (supra), it was, however, held that the standardization of addition to income of the deceased towards his future prospect shall help in achieving certainty in arriving at appropriate compensation. It was further held that while making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma's case (supra). Thus, an addition of 50% of actual salary is to be made to the actual salary income of the deceased towards future prospect where the deceased had a permanent job and was below 40 years of age and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased was more than 50 years. In cases where the deceased was self employed or was not on a fixed salary without provisions for annual increments, the actual income at the time of death without any addition to income for future prospect, it was held, would be appropriate. A departure from the above principle could only be justified in extra ordinary circumstances and very exceptional cases.

Therefore, the Supreme Court in Rajesh v. Rajbir Singh (supra) held that in cases where the deceased was a self employed person or was engaged on fixed wages, an addition of 50% of his income was to be made to his actual income towards his future prospects if his age was below 40 years. While in Reshma Kumari's case (supra), the Supreme Court held that an addition of 50% of actual salary is to be made to the actual salary income of the deceased towards future prospect where the deceased had a permanent job and was below 40 years. The Supreme Court in view of the divergent opinions reflected in the two cases, in the case of National Insurance Company v. Pushpa, in SLP (c) No.___ (CC No.8058 of 2014) on 02.07.2014 has referred the matter to a larger Bench.

A three Judges Bench of the Supreme Court thereafter in Munna Lal Jain and another v. Vipin Kumar Sharma and others, 2015 (3) Recent Apex Judgments 459, however, relied on Rajesh v. Rajbir Singh (supra) and held that insofar as future prospects were concerned in case of self-employed persons also, if the deceased victim was below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. The following was quoted from Rajesh v. Rajbir Singh's case (supra):-

> "Since, the Court in Santosh Devi case [2012 (2) RCR (Civil) 882 (SC)] actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case 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."

Therefore, the Supreme Court added income of 50% towards future prospects of a self employed deceased victim in the age group of upto 40 years.

In <u>Sanjay Verma v. Haryana Roadway,</u> (2014-2) PLR 641 (SC), the Supreme Court in a case where the victim had suffered multiple injuries including a fracture of the spinal cord resulting in paralysis of his body and was self employed; considered the question whether for determination of the multiplicand, the Act provides for any criterion particularly as regards determination of future prospects. It was held that taking into account the age of the claimant in the said case i.e 25 years and the fact that he had a steady income as evidenced by his income tax returns, an addition of 50% to the income that the claimant was earning at the time of the accident to be justified.

In <u>Rekha Jain v. National Insurance Company Ltd.</u> (2013-4) PLR 420 (SC), the Supreme Court observed that for determining the annual income of the deceased in the said case, who was 51 years of age, the principles laid down in Sarla Verma's case (supra) should have been applied to the case of the appellants and by taking into consideration the monthly salary of the deceased at Rs.12000/- a further amount of 30% should have been added as future prospect of income.

In Minu Rout v. Satya Pradyumna Mohapatra, 2013 (6) Recent Apex Judgments 75 (SC), there was a head on collusion between a car, of the deceased and a truck. The deceased in the case was a driver, which was taken as a skilled job and the amount of income which was determined at Rs.6000/- was enhanced by 30% towards future prospects by applying the law laid down by the Supreme Court in Santosh Devi v. National Insurance Company Ltd. (2012) 6 SCC 421: (2012-3) PLR 22 (SC).

Therefore, it is to be noticed that for future prospects of a skilled driver, the monthly income of the deceased was enhanced towards future prospects.

In Sanobanu Nazirbhai Mirza v. Ahmedabad Municipal Transport Service, (2013) 16 SCC 719, 50% of income was added to future prospect in the case of the deceased, who was performing the job of a polisher, which was a skilled job.

In G.Dhanasekar v. M.D. Metropolitan Transport Corporation Limited, (2014-2) PLR 233 (SC), an amount of 30% increase in future income was awarded in the case of a driver aged 46 years, who had suffered physical disability to the extent of 35%.

In Smt. Savita v. Binder Singh (2014-2) PLR 724 (SC), the Supreme Court awarded for future prospect at the rate of 30% of the salary of Rs.3000/-. The following observations of the decision in Santosh Devi v. National Insurance Company Ltd. (supra) were referred to:-

> "14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case (supra) 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 naive 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.

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> 18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma 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% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

Therefore, it is to be noticed that the predominant view of the Supreme Court has been that for future prospects, the income of the deceased is to be enhanced. Besides, in Reshma Kumari's case (supra) also it is to be noticed that though it was held that an addition of 50% of actual salary is to be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and that in cases where the deceased was self-employed or was on a fixed salary without provisions for annual increment, the actual income at the time of death without any addition to income for future prospects would be appropriated; however, a departure from the above principle, it was held, can only be justified in extraordinary circumstances and very exceptional cases.

The present is a case which is covered by the exception in view of the extraordinary circumstances inasmuch as the appellant Tanvi Gupta was aged 11½ years at the time of the accident in which she lost her parents, her sisters, brother and grandmother. She has been deprived of the parental care, grandmother's affection and playfulness of her sisters and brother. The father of the appellant namely Ashok Gupta was self-employed and an income tax assessee. His income is discernible and definite, besides, he was 35 years of age at the time of his demise. With the passage of time, he would have increased his income. In Rajesh v. Rajbir Singh (supra) it was clarified that the increase in the case of those group i.e. persons who were self employed and engaged on fixed wages is not 30% always; it will also have a reference to the age. In other words, in the case of self employed person or person with fixed wages where 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. It was added that the actual income should be income after paying the tax if any.

The annual HUF income of which the deceased Ashok Kumar, father of appellant Tanvi Gupta, was the 'Karta,' as already noticed, was Rs.53,000/- and his individual annual income was Rs.53,770/-. In this manner, his total annual income was Rs.1,06,770/-. The learned Tribunal held that Ashok Kumar (deceased) must be spending 1/6th of his income on himself and 5/6th on his four children and wife. However, according to Salra Verma's case (supra) it has been held that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of the dependent family members is two to three, one-fourth ($1/4^{th}$) where the number dependent family members is four to six and one-fifth ($1/5^{th}$) where the number of dependent family members exceed six. In the present case, the dependent family members were four to six; therefore, a deduction of one-fourth ($1/4^{th}$) of the annual income of the deceased Ashok Kumar is to be deducted for his personal expenses. In this manner, the annual income of the deceased works out to Rs.1,06,770/- and to this 50% is to be added towards future prospects i.e. Rs.53,385/- which works out to Rs.1,60,155/-. From this one-fourth ($1/4^{th}$) is to be deducted towards his personal expenses i.e. Rs.40,038.75/- which works to Rs.1,20,116.25/-. To this a multiplier of 16 is to be applied, which works out to Rs.19,21,860/-. From the said amounts as calculated, the amount already awarded by the learned Tribunal i.e. Rs.2,18,490/- is to be deducted and on the balance amount payable interest to the extent of 7.5% is to be awarded from the date of filing the petition till payment. The appellant Tanvi Gupta would also be entitled to Rs.25,000/- towards funeral expenses for the demise of her father Ashok Kumar plus Rs.25,000/- as cost of litigation as held in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, (supra).

As regards the compensation payable for the demise of Rohi Gupta, mother of appellant Tanvi Gupta, the learned Tribunal held that she was an income tax assessee. She was proprietor of Royal Marketing Company and had a permanent account number with the Income Tax Department. In her income tax return for the financial year 2000-2001 (Ex.A-14) filed on 24.7.2001, her annual income was mentioned as Rs.81,560/-. As in the case of Ashok

Kumar, one-fourth (1/4th) of her income is to be deducted for her personal expenses as the number of dependents were between 4 to 6. Besides, to this 50% is to be added towards future prospects i.e. Rs.40,780/- which works out to Rs.1,22,340/-. From this one-fourth (1/4th) is to be deducted towards her personal expenses i.e. Rs.30,585/- which works to Rs.91,755/-. Rohi Gupta (deceased) was 35 years of age. Therefore, to the said amount of Rs.91,755/- a multiplier of 16 is to be applied, which works out to Rs.14,68,080/-. From the said amount as calculated, the amount already awarded by the learned Tribunal i.e. Rs.1,68,116/- is to be deducted and on the balance amount payable interest to the extent of 7.5% is to be awarded from the date of filing the petition till payment. The appellant Tanvi Gupta would also be entitled to Rs.25,000/- towards funeral expenses for the demise of her mother Rohi Gupta plus Rs.25,000/- as cost of litigation as held in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, (supra).

FAO Nos.3651 and 3652 of 2003

The said FAOs have been filed by Arun Kumar and Monika Bansal who are brother and sister claiming compensation for the demise of their mother namely Smt. Krishna Devi and higher compensation for the death of their father namely Ram Sarup Gupta. They filed MACT No.28 and 29 of 2002. In claim petition No.28 of 2002 an amount of Rs.4.00 lacs was claimed for the demise of their mother Krishna Devi and in claim petition No.29 of 2002 an amount of Rs.10.00 lacs was claimed for the death of their father Ram Sarup Gupta. The learned Tribunal held that there was no evidence on record to establish that Arun Kumar or Monika

Bansal appellants were in any manner dependent upon Krishna Devi. It was held that both the claimants were married and were looking after their families in their own way. Krishna Devi had died along with her husband Ram Sarup Gupta who was a retired employee. Therefore, it was held that a safe inference could be drawn that these old persons were leading a retired life and rather they should be considered to be dependent upon the claimants and their deceased son Ashok Kumar and his family.

Ram Sarup Gupta (deceased) according to Arun Kumar claimant CW-3 was 60 years of age and was earning Rs.5053/- per month as pension, besides, Rs.3000/- per month by way of practice. As such his total income was Rs.8000/- per month. The fact of Sh. Ram Sarup Gupta being a pensioner and earning Rs.5053/- per month was proved by Sh.Bachittar Singh, Sr. Asst. Treasury Officer, Malerkotla who appeared as CW-2. It was observed by the learned Tribunal that there was no evidence to prove that Ram Sarup Gupta was earning an amount of Rs.3000/- by way of practice. Besides, the claimants, it was observed, had failed to show as to what type of practice he was doing before his death. Accordingly, the income of Sh. Ram Sarup Gupta was taken as Rs.5053/- per month. He had his wife Smt. Krishna Devi were leading their life and sustaining themselves with this amount.

Arun Kumar CW-3 (appellant) stated that his father used to give his entire income to him for household expenses. This was, however, held to be not believable, although it could be assumed that Ram Sarup Gupta (deceased) might be giving some portion from his pension to the children of both his sons i.e. Arun Kumar (appellant) (CW-3) as also deceased Ashok Kumar. After taking the entire circumstances of the case, it was held that the annual income of Ram Sarup Gupta was Rs.5053/- x 12 that works out to Rs.60,636/-. Besides, it was taken that he was spending four-fifth ($4/5^{th}$) of his pension on himself and on his wife which worked out to Rs.48,509/-. It was considered by the learned Tribunal that Ram Sarup Gupta must be spending 1/5th of the amount on the children of his two sons which amount came to Rs.12,127/-. It was observed that Tanvi Gupta had not filed any claim petition claiming compensation for the death of Ram Sarup Gupta. His age at the time of death was 60 years. Therefore, a multiplier of 4 was applied after taking into account the age of the deceased and the nature of the dependency. Half of Rs.12,127/- was worked to Rs.6063/- which was considered by the learned Tribunal that Ram Sarup Gupta must be spending on the children of Arun Gupta. So, the amount of compensation to the claimants was worked out Rs.6063/- x 4 i.e. Rs.24,252/- which amount was ordered to be shared equally by both the claimants namely Arun Kumar and Monika Bansal (appellants).

It is to be noticed that Ram Sarup Gupta had his wife who it can be said was dependent on him. The Supreme Court in Sarla Verma's case (supra) held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is two to three. Therefore, from the annual income of Rs.60,636/- of deceased Ram Sarup Gupta, one-third ($1/3^{rd}$) is to be deducted, which works out to Rs.20,212/-. In this manner, his income works out to Rs.40,424/-. The age of Ram Sarup Gupta has been held to be 60 years. According to Sarla Verma's case (supra) for the age group from 56 to 60 a multiplier of 9 is to be applied. The amount works out to Rs.3,63,816/-, which is the amount payable to the claimants Arun Gupta and Monika Bansal. From this an amount of Rs.24252/- that has been awarded is liable to be deducted and on the balance amount payable interest at the rate of 7.5% per annum is awarded. Besides, conventional amount of Rs.25000/- towards funeral expenses and Rs.25000/- as litigation expenses are to be paid.

Insofar as the claim for compensation for the death of Krishna Devi is concerned, the learned Tribunal held that there was no evidence on record to establish that the appellants Arun Kumar or Monika Bansal were dependent on her. It was observed that both the claimants were married and looking after their families in their own way. Krishna Devi died along with her husband Ram Sarup Gupta. Shri Arun Kumar in his deposition as CW-3 stated that Krishna Devi was getting Rs.4000/- per month from tuition work but according to the learned Tribunal there was not even an iota of evidence on record to establish that Krishna Devi was an educated lady, who had been running an institution for tuition work from which she may be earning Rs.4000/- per month. In view of the fact that both the claimants namely Arun Kumar and Monika Bansal were married, it was held that they were not entitled to compensation on account of the death of their mother Krishna Devi. The appellants Arun Kumar and Monika Bansal had claimed compensation of Rs.4,00,000/- for the death of their mother Krishna Devi.

A Division Bench of this Court in Paramjit Singh and another v. Dilbagh Singh alias Bagga and others, FAO No.3310 of

2012 decided on 16.05.2013 considered the case of son and a daughter, who claimed compensation for the death of their mother at the age of 45 in a motor vehicle accident, which was caused by a driver of an offending bus. The Tribunal assessed her income at Rs.3000/- per month but applied a cut of Rs.1000/- towards personal expenses and by applying a multiplier of 14, awarded a sum of Rs.3,36,000/- on account of loss of dependency.

The case was referred to the Lok Adalat for settlement, however, the Lok Adalat referred the case back for adjudication as to, 'whether in case of assessment of notional income of a housewife, one-third ($1/3^{rd}$) is to be deducted to arrive at the figure of dependency'. The matter was referred to Division Bench. This Court referred to a judgment of a two Judges Bench of the Supreme Court in Arun Kumar Aggarwal and another v. National Insurance Company and others 2010 (3) RCR (Civil) 827 wherein it was held that in case of death of a housewife in a motor vehicle accident, the assessment of compensation is virtually impossible to measure in terms of money. A housewife, it was observed, takes care of all the requirements of her husband and children including cooking of food, washing of clothes etc. she teach small children and provides invaluable guidance to them for their future life. All these chores could be performed by a maid servant but she can never be a substitute for a wife/mother who renders selfless service to her husband and children. Therefore, the dependents, it was held were entitled to adequate compensation in view of the loss of gratuitous service rendered by a housewife. It was held to be reasonable to rely upon the criteria specified in Clause (6) of the Second Schedule and then apply an appropriate multiplier. A further reference was made to a judgment of three Judges Bench of Supreme Court in Lata Wadhwa and others v. State of Bihar, (2001) 8 SCC 197. The following paragraph was reproduced:-

> "So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs 12,000 per annum in cases of some and Rs 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs 3000 per month and Rs 36,000 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services

> rendered per annum to be Rs 36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs 50,000 instead of Rs 25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs 10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs 10,000 per annum, cannot be held to be just and, we, therefore, enhance the same to Rs 20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs 20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs 50,000 towards the conventional figure."

As regards the question whether one-third cut is to be applied out of the sum that is determined, a reference was made to the divergent judgments of this Court. It was observed that in cases in which one-third cut had been applied no reasoning was given by the learned Single Judge. However, cases in which one-third cut had not been applied, the learned Single Judges had observed that Rs.3000/- per month was assessed as monthly value for the services rendered by a housewives and not her monthly income and, therefore, the concept of deduction could not be applied. Therefore, it was held by the Division Bench that while calculating the notional income of the housewives, the entire income should be taken as dependency of the legal heirs without applying any cut much less one-third (1/3rd) as had been done in certain cases.

In Lata Wahdwa's case (supra) in the case of elderly ladies, the value of services rendered has been taken as Rs.20,000/- per annum. The age of the deceased Krishna Devi is mentioned as about 60 years, therefore, according to Sarla Verma's case (supra) for the age group of 60, a multiplier of 9 is to be applied. This works out to Rs.20,000/- x 9 i.e. Rs.1,80,000/-. Besides, in Lata Wadhwa's case (supra) a sum of Rs.50,000/- has been added towards the conventional figure. This works out to Rs.2,30,000/- which is payable to the appellants Arun Kumar and Monika Bansal.

Accordingly, the appeals are disposed of by enhancing the amount of compensation as has been determined and awarding compensation for the death of Krishna Devi. There shall be no order as to costs.

(S. S. Saron)
Judge

05.08.2015
A.Kaundal

Note : Whether to be referred to reporter: Yes