

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO NO.4252 of 2002

Date of Decision: 25.02.2015

Smt. Kitabo Devi and others

... Appellants

Vs.

Raj Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.

Present: Mr. Jitender K. Sehrawat, Advocate for
Mr. N.S. Shekhawat, Advocate
for the appellants.

Mr. R.C. Gupta, Advocate
for respondent No.3-National Insurance Company Ltd.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

S.S. SARON, J.

This appeal has been filed by the claimants-appellants aggrieved against the inadequate compensation granted by the learned Motor Accident Claims Tribunal, Rewari ('Tribunal' for short) and for claiming more compensation.

Ganpat son of Siri Ram who is the deceased in the case had boarded a Jeep with registration No.HR34/4962 from Village Bawana Gujjar/Gobindpur on 03.07.1999. He was going to Rewari for purchasing goods for his shop that he was running. The Jeep in which Ganpat had

boarded, was being driven by Raj Kumar (respondent No.1). According to the appellants, the Jeep driver (respondent No.1) was driving his Jeep in a rash and negligent manner, besides, at a very high speed. He did not follow any traffic rules. The Jeep reached in the revenue estate of Village Sundroj at about 7.30 a.m. At that time, a tractor came from the opposite side. The driver of the tractor was on his left side of the road and at a normal speed. However, Raj Kumar (respondent No.1) dashed his Jeep in the tractor. As a consequence thereof, Ganpat received multiple serious injuries. He was taken to Civil Hospital, Rewari where he succumbed to his injuries. The appellants filed a claim petition for grant of Rs.5,00,000/- as compensation for the demise of Ganpat along with interest to the extent of 18% per annum from the date of filing the petition till payment.

It is stated that Ganpat was 35 years of age and was earning Rs.4,000/- per month by running a shop in his Village. The appellants were fully dependent on him. The learned Tribunal after considering the evidence and material on record, has taken the monthly income of the deceased to be Rs.2400/- per month. Out of this, it was held that his dependency was to the extent of 1/3rd. Therefore, the monthly income was taken at Rs.1600/- per month i.e. Rs.19,200/- per annum. Considering the age of Ganpat to be 35 years, a multiplier of 17 was applied and a sum of Rs.3,26,400/- was awarded, besides, Smt. Kitabo was also held entitled to Rs.5,000/- towards general damages on account of loss of consortium and another sum of Rs.5,000/- on account of transportation and funeral expenses. Accordingly, a sum of Rs.3,36,400/- was awarded with interest @ 9% per annum from the date of filing the petition till realisation.

After hearing learned counsel for the parties and perusing the record, it may be noticed that the income of the deceased has been taken by the learned Tribunal to be Rs.2400/- per month. His dependency is to be taken as 1/3rd. The appellants who are widow and two minor sons were three in number. In Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 700 it has been held by the Hon'ble Supreme Court that where deceased was married and number of dependent members is one to three, a deduction of 1/3rd should be made. Therefore, the dependency was correctly assessed at Rs.1600/- per month and the annual dependency comes to Rs.19,200/-. The deceased was 35 years of age and therefore, the multiplier applicable is 16 in terms of Sarla Verma's case (supra) which comes to Rs.3,07,200/-. Besides, the appellants are liable to be awarded a sum of Rs.1,00,000/- for loss of consortium as held by the Supreme Court in Rajesh and others Vs. Rajbir Singh and others 2013 (3) RCR (Civil) 170 and further a sum of Rs.25,000/- is to be awarded for loss of care and guidance of two minor children as held in the said judgment of Rajesh and others (supra), besides, Rs.25,000/- towards funeral expenses.

Learned counsel for the respondent No.3 submits that the compensation was awarded in the year 2002 and therefore, the ratio of the judgments of the Supreme Court, which have now been passed cannot be applied. In this regard, it may be noticed that it is well known that the Supreme Court does not legislate and only interprets the law and when a particular provision is interpreted then it declares the law and it is to be taken the law as it always had been. The Supreme Court in the case of Sarwan Kumar and another v. Madan Lal Aggarwal (2003) 4 SCC 147 held that when

the Court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood from the beginning as per its decision. In Dr. Suresh Chandra Verma and other v. The Vice Chancellor, Nagpur University and others (1990) 4 SCC 55, it was held that when the Court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. In Lily Thomas and others v. Union of India 2000(3) RCR (Civil) 252 (S.C.), the Hon'ble Supreme Court rejected the contention that the law declared in Sarla Mudgal (Smt.) President Kalyani and others v. Union of India (1995) 3 SCC 635, in which it was declared the second marriage of a Hindu husband after conversion to Islam without having the first marriage dissolved under the law to be illegal was prospective in operation and could not be applied to persons who had solemnized their marriage in violation of the mandate of law prior to the date of the judgment. The Supreme Court held as follows:-

“We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal case cannot be applied to persons who have solemnized marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the

arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone.”

(Emphasis added)

Therefore, the Supreme Court has only interpreted the law and it does not lay down the law so as to apply prospectively.

Therefore, the appellants are held entitled to Rs.4,57,200/- from which a sum of Rs.3,36,400/- which has already awarded, is liable to be deducted and the appellants are entitled to further a sum of Rs.1,20,800/-. Accordingly, the appeal is disposed of with the order that the appellants shall be entitled to further a sum of Rs.1,20,800/-.

25.02.2015

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**[S.S. SARON]
JUDGE**