IN THE HIGH COURT OF BOMBAY AT GOA.

Civil Review Application No.2 OF 2016 In First Appeal No.80/2013

Kritik Kishore Naik and another Applicants

Versus

Buddesa Bandagisa Mulla and others Respondents.

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Shri E. Afonso, Advocate for the applicants.
Shri U. R. Timble, Advocate for the respondents.

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CORAM : NUTAN D.SARDESSAI, J.
RESERVED ON :07/04/2016.
PRONOUNCED ON :28/04/2016

ORDER :

1] The applicants, who are the original appellants before this Court seek for the review of the judgment and order dated 08/10/2015 on the premise that this Court had not considered the notional income of the deceased at ₹6000/- and 50% increase towards the future prospects, had not considered the award of the additional compensation of ₹1,00,000/- for the loss of life of the deceased and an equal amount towards the loss of estate apart from ₹25,000/- towards the funeral expenses as laid down by the Hon'ble Apex Court and which had escaped its attention on account of the passage of 48 days between reserving the judgment on 21.08.2015 and its pronouncement on 08.10.2015.

2] Shri E. Afonso, learned Advocate on behalf of the applicants submitted that the judgment passed by this Court necessitated a review since the learned Judge had failed to consider the law laid down by the Apex Court in the matter of the grant of compensation under the distinct heads. Both the applicants had lost their parents at the young age of 07 years and 12 years and, therefore, they were entitled to the compensation as prayed for. He relied in **Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation** [(2015)2 SCC 764], **Rajesh and others Vs. Rajbir Singh and others** [(2013) 9 SCC 54], **Savita Vs. Bindar Singh and others** [(2014)4 SCC 505] and **Arun Kumar Agrawal and another Vs. National Insurance Company Limited and others** [(2010)9 SCC 218] while pressing for the grant of the review.

3] Learned Advocate Shri U.R. Timble on behalf of the respondents no.3 invited attention to the order under review and relying in **Kamesh Verma Vs. Mayawati & Ors.** [Review Petition (CRL)No.453/2012 in Writ Petition (CRL) No.135/2008] submitted that a review was not possible of the judgment under challenge and that the remedy lay by way of an appeal. Learned Advocate Shri E. Afonso in reply submitted that the proceedings were under a beneficial piece of legislation i.e. the Motor Vehicles Act, where a duty was cast upon the Tribunal to grant just compensation and that such a plea was not available to the respondents. i would consider their submissions in the light of the material on record apart from the judgments relied upon (supra) and decide the application appropriately.

4] **Kalpanaraj and others** (supra) was an appeal by the appellants questioning the correctness of the judgment and final order dated 30.01.2002 passed by the High Court of Judicature of Madras. In the brief facts, the deceased, while going on his motorcycle had collided with the bus of the respondent Corporation due to which he had sustained fatal injuries and died on the spot. His legal representatives viz. the widow and the two minor children had filed the petition contending that the accident had occurred solely on account of the rash and negligent driving of the bus of the respondent Corporation and claimed the compensation of ₹20,00,000/-. The Tribunal, on a consideration of the material on record, holding the monthly income of the deceased at ₹15,000/- and adopting the multiplier of 18 determined the compensation of ₹32,40,000/- but restricted it to ₹20,90,000/- as claimed by the claimants apart from interest.

5] In **Kalpanaraj** (supra), this award was challenged by the respondent Corporation where the High Court restricted itself to ascertain whether the compensation awarded by the Tribunal was excessive and to what amounts were the claimants entitled to. The High Court opined that the Tribunal had erred in relying on the statement of the widow of the deceased to determine his monthly income at ₹15,000/- instead of relying upon the income shown in the income tax returns and moreover, the Tribunal had not deducted 1/3rd towards the personal expense of the deceased and in the circumstances, awarded the total compensation of ₹5,76,000/- by reducing the interest to 9% per annum giving rise to the appeal before the Apex Court.

6] In **Kalpanaraj** (supra), the Hon'ble Apex Court considered the principles laid down by it in **Sarla Verma Vs. D.T.C.** [(2009) 6 SCC 121] which was referred to in **Santosh Devi Vs. National Insurance Co. Ltd.** [(2012)6 SCC 421] as also in the light of the principles laid down in Rajesh (supra), and awarded ₹1,00,000/- towards the loss of consortium and ₹1,00,000/- towards the loss of care and guidance to the minor children. Besides an amount of ₹1,00,000/- was awarded towards the loss of estate and ₹1,00,000/- towards the loss of expectation of life and ₹50,000/- towards the funeral expenses, taking the total compensation to ₹14,51,000/-.

7] In **Savita** (supra), the Hon'ble Apex Court while dealing with an appeal directed against the order passed by the High Court of Uttarakhand affirming that passed by the MACT Haridwar and considering the judgment in **Santosh Devi** and **Rajesh**(supra), held that it was the duty of the Court to fix just compensation and that while fixing the compensation, the Court should not succumb to niceties or technicalities to grant just compensation in favour of the claimants. In the case at large, the Apex Court observed that the Tribunal and the High Court had failed to consider the fact situation of the case, without taking any pragmatic view and further without considering the price index prevailing at the moment, assessed the compensation ignoring the principles laid down by this Court in **Rajesh** and **Santosh Devi** (supra), and awarded the compensation of ₹4,28,000/-.

Their Lordships of the Apex Court opined that such an award suffered from a proper assessment of the compensation awarded by the Tribunal and the High Court on the conventional heads i.e. “loss of consortium” to the spouse, “future prospects of the deceased” and further the sum awarded under the head “funeral expenses” could not be said to be a just compensation and there ought to have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor and should have considered the amounts fixed by the Court several decades ago on such heads.

8] In **Rajesh** (supra), the petitioners were the widow and the three minor children of late Bijender Singh who was around 33 years old at the time of the fatal accident and working as a clerk in a school under the Education Department in the State of Haryana drawing a salary of ₹6926 per month. The Tribunal had deducted 1/3rd towards his personal expense, applied the multiplier of 16, further awarded an amount of ₹10,000/- towards all the other conventional heads and then rounded off the compensation to ₹8,96,500/- with interest @ 7.5% per annum from the date of the filing of the petition and apportioning 60% in favour of the widow and 40 % to the share equally between the minor children and the mother.

9] In **Rajesh** (supra), dissatisfied, the petitioners had approached the High Court of Punjab and Haryana which followed **Sarla Verma** (supra), modifying the award holding that only 1/4th should have been deducted from the income. An amount of ₹10,000/- was awarded towards the loss of consortium in addition to ₹10,000/- already granted by the Tribunal and held them entitled to the compensation of ₹10,17,000/- with interest giving rise to a further appeal by leave to the Supreme Court. Their Lordships considered **Santosh Devi** and **Sarla Verma** (supra), and also the increase in the wages where the deceased victim was in a particular age group for computing future prospects and took judicial notice of the fact that the Tribunals had been quite frugal with regard to the award of compensation under the head of "funeral expenses" and awarded ₹25,000/- on that count.

10] In **Rajesh** (supra), the 3-Judge Bench of the Apex Court considered the salary certificate of the deceased which showed a revision of the salary by the Sixth Pay Commission and applying the principles laid down in Sarla Verma as explained in **Santosh Devi** (supra), computed his future prospects by adding 50% to his salary, deducted 1/4th towards his personal expense and computed the dependency at ₹20,56,320/-. Besides, an amount of ₹1,00,000/- was awarded towards the loss of consortium and an additional ₹1,00,000/- towards the loss of love, care and guidance for the minor children and awarded the total compensation of ₹22,81,320/- inclusive of the funeral expenses of ₹25,000/-.

11] In **Arun Kumar Agrawal** (supra), the point which was at large before the Hon'ble Apex Court was what should be the criteria for the determination of the compensation payable to the dependents of a woman who dies in road accident and who does not have regular source of income. In the brief facts, Renu, wife of Arun Kumar Agrawal and the mother of the appellant no.2 died in a road accident when the car driven by him was hit by a truck giving rise to a petition under Section 166 of the Motor Vehicles Act before the Tribunal. An amount of ₹19,20,000/- was claimed asserting that the accident was caused due to the rash and negligent driving of the truck owned by the respondent no.2 and insured with the respondents no.1.

12] In **Arun Kumar Agrawal** (supra), the claim was contested and after considering the pleadings and the evidence, the Tribunal concluded that the accident was caused due to the rash and negligent driving of the truck by the respondent no.4 and held them entitled to the compensation. However, while considering the income of the deceased, the Tribunal held that it could be assessed at ₹5000/- per month in view of Clause 6 of the Second Schedule to the Act and after making a deduction of $1/3^{rd}$ towards the personal expense and applying the multiplier of 15, computed the loss of dependency at ₹6,00,000/-. This amount was reduced by observing that she was actually not an earning member and it was based only on notional income.

13] In **Arun Kumar Agrawal** (supra), the High Court dismissed the appeal preferred by the appellants on the premise that neither of the claimants were dependent on her and the services rendered by her as housewife may be estimated at ₹1250/- per month and thus the annual contribution by rendering services come to ₹15,000/- and applying the multiplier 15 calculated the dependency of ₹2,25,000/-. Their Lordships considered the 2-Judge Bench judgment in **Sarla Verma** (supra) and in their view observed that it was highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data could be possibly be produced for estimating the value of such services.

14] In **Arun Kumar Agrawal** (supra), Their Lordships found that the appellant no.1 had categorically stated that she was earning ₹50,000/- per annum by paintings and handicrafts, and there was no evidence in rebuttal to controvert the same and yet the Tribunal and the High Court had altogether ignored the income of the deceased. Although the Tribunal did advert to the Second Schedule of the Act and observed that the income of the deceased could be assessed at ₹5000/- per month and then held the total loss of dependency at ₹6,00,000/- after making deduction, however, without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually a non-earning member and the amount of compensation would be too much.

15] In **Kamlesh Verma** (supra), the Hon'ble Apex Court laid down the grounds when a review would be maintainable namely:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him.

(ii) Mistake or error apparent on the face of record or

(iii) Any other sufficient reason apart from supporting circumstances in which review will have to be maintainable.

16] The short point which is falling for consideration in the review application is whether the judgment and the order passed by this Court reflects a mistake or error apparent on the face of the record as to justify interference by way of review. There can be no dispute with the proposition culled out by the Hon'ble Apex Court in **Kamlesh Verma** (supra), but the question is whether the judgment and order passed by this Court is amenable to review or otherwise.

17] The applicants at the cost of repetition had assailed the award passed by the learned MACT Panaji in the First Appeal before this Court claiming the enhanced compensation from that awarded by the learned MACT, Panaji. This Court by the judgment and order under review at paragraph 7 apparently referred to the judgment in **Sarla Verma** and **Rajesh** (supra), and still considered the earnings of the deceased at ₹1800/- per month and, by adopting the multiplier of 15 computed the dependency at ₹2,16,000/-. Although both the parents of the applicants had expired, this Court had awarded ₹1,00,000/- each to the applicants towards the loss of consortium and loss of care and guidance but had restricted the compensation to ₹5000/- towards the funeral expense and an equal amount towards the loss of estate despite having purportedly considered the judgment in **Sarla Verma** and **Rajes**h (supra).

18] These judgments in **Sarla Verma** and **Rajesh** (supra), with respect had clearly held the entitlement of the party to an amount of ₹1,00,000/- towards the loss of estate and an equal amount towards the loss of expectation of life apart from awarding ₹25,000/- towards the funeral expense considering the price index and the deteriorating value of money. There appears much force in the contention of Learned Advocate E. Afonso that with the passage of time between the date of hearing the matter and its final disposal, the passage of 48 days turned to be a casualty for the applicants who were not awarded the compensation appropriately under the heads of loss of estate and loss of love, care and affection on the demise of their parent i.e. the mother.

19] Moreover, this Court had awarded an amount of ₹5000/- towards the funeral expenses when it has been well settled that an amount of ₹25,000/- would be appropriate in the circumstances since it covers not only the actual rituals but all other attending circumstances relating to the funeral i am however, unable to concur with the contention of Learned Advocate E. Afonso that the applicants are entitled to an amount of ₹2,00,000/- each towards the loss of estate and loss of love and expectation even considering the fact that both the applicants had lost both their parents at a tender age in the vehicular accident, simultaneously.

20] Besides, it is settled law that the income of house wife is to be considered at the least at ₹3000/- per month if not more. Even otherwise, considering the Second Schedule to the Motor Vehicles Act, 1988 and if the earnings of the deceased spouse are taken into account, 1/3rd thereof in terms of Rule 6 of the Schedule would justify the income of the deceased at ₹5000/- per month. All these aspects of the case were not considered by this Court while passing the judgment under review. This constitutes an error apparent on the face of the record and unlike the contention of Learned Advocate U.R. Timble appearing for the respondents no.3, that the remedy to the aggrieved applicants is purely by way of appeal and not by way of a review.

21] Hence, taking the income of the deceased at ₹5000/- per month, deducting 1/3rd towards her personal expenditure and applying the multiplier of 15, the dependency would work out to ₹6,00,000/-. The applicants are held entitled to an amount of ₹1,00,000/- each towards the loss of love, care and guidance and ₹1,00,000/- each towards the loss of estate apart from ₹25,000/- towards the funeral expenses thereby taking the total compensation to ₹10,25,000/- to which they are held entitled with interest @9% per annum from the date of the petition till realisation.

22] In the result, the application for review is allowed in the above terms.

NUTAN D. SARDESSAI, J.

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