

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 5837 of 2011 (O&M)
Date of Decision : 11.01.2016**

Shashi and anotherAppellants

Versus

Jai Krishan Gupta and othersRespondents

2. FAO No. 5838 of 2011 (O&M)

Shashi and anotherAppellants

Versus

Jai Krishan Gupta and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Dhawan, Advocate
for the appellants.

Mr. V.K. Garg, Advocate
for respondent no. 4-Insurance Company.

Surinder Gupta, J.

This judgment will dispose of above captioned two appeals filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Jalandhar (later referred to as 'the Tribunal') for the death of their sons, namely; Anuj aged 23 years and Saurav aged 25 years in a motor accident with truck bearing registration No. JK-02-E-7441 (later referred to as 'the offending vehicle').

2. Case of claimants, in brief, is that on 08.07.2007, at about 07.30 p.m., Anuj alongwith Saurav (brother), Vishal, Mayank and Jatin were returning from Vaishno Mata to Jalandhar in Indica Car bearing registration no. PB-08-AZ-1054.

Anuj was driving the car very carefully at normal speed. When

they reached near village Dadua, *Tehsil* and District Reasi, Jammu and Kashmir, the offending vehicle came in a rash and negligent manner and hit the car of Anuj resulting in death of Anuj at the spot. Saurav received serious injuries and was brought to Dayanand Medical College, Ludhiana where he remained admitted from 10.07.2007 to 14.07.2007 and ultimately succumbed to his injuries. Vishal also received serious injuries. The accident took place due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 2-Girdhari Lal. The matter was reported to the police vide FIR No. 107 dated 08.07.2007, registered at Police Post Pauni, District Reasi, Jammu and Kashmir.

3. I have heard learned counsel for the parties and perused the paper-books and record of the Tribunal with their assistance.

4. The Tribunal took up three claim petitions relating to the death of Anuj, Saurav and Vishal and disposed of the same vide common award dated 14.01.2011. It was observed by the Tribunal that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 2. Income of the deceased Anuj and Saurav was assessed as ₹8000/- each per month and the compensation was allowed as follows:-

For the death of Anuj (MACT No. 17 of 2010, FAO No. 5837 of 2011)

Sr. No.	Heads	Calculation
(i)	Income of deceased Anuj	₹8000 per month

(ii)	1/2 nd of (i) deducted as personal expenses of the deceased	₹8000 - ₹4000 = ₹4000 per month
(iii)	Amount of dependency after applying multiplier of 12. (Multiplier of 12 applied keeping in view the age of parents)	(₹4000X12X12) = ₹ 576000
(iv)	Funeral expenses	₹2000
<i>Total</i>		₹578000

For the death of Saurav (MACT No. 18 of 2010, FAO No. 5838 of 2011)

Sr. No.	Heads	Calculation
(i)	Income of deceased Saurav	₹8000 per month
(ii)	1/2 nd of (i) deducted as personal expenses of the deceased	₹8000 - ₹4000 = ₹4000 per month
(iii)	Amount of dependency after applying multiplier of 12. (Multiplier of 12 applied keeping in view the age of parents)	(₹4000X12X12) = ₹ 576000
(iv)	Funeral expenses	₹2000
(v)	Medical expenses	₹63,227
<i>Total</i>		₹641227

5. Learned counsel for the appellants has argued that as per observations in case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**, the claimants are entitled to addition of 50% in income of the deceased towards future prospects. The Tribunal has not allowed compensation towards loss of estate, love and affection to the claimants. Funeral expenses allowed are also on lower side. He has further argued that as per observations in case of **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**,

the Tribunal was required to calculate the amount of compensation by applying the multiplier of 18. The Tribunal has applied the multiplier of 12 keeping in view the age of claimants instead of taking the age of deceased into consideration.

6. It is no more *res integra* that while calculating the amount of dependency, the multiplier is to be applied taking into account the age of the deceased and not the age of the claimants as has been held by a three Judges' Bench of Hon'ble Supreme Court in **Reshma Kumari and ors. vs. Madan Mohan and Anr., 2013 (9) SCC 65** and affirmed by another three Judges' Bench of Hon'ble Apex Court in **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447.**

7. Learned counsel for respondent no. 4-Insurance Company has argued that the matter regarding allowing of compensation towards future prospects as decided by the Apex Court in the case of **Rajesh (supra)** is pending consideration before the larger Bench of the Apex Court in case **National Insurance Company Limited vs. Pushpa and others, Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014).**

8. In the case of **Pushpa (supra)**, while differing with the view taken in case of **Sarla Verma and others vs. Delhi Transport Corporation and anr., (2009) 6 SCC 121,** it was observed as follows:-

“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.”

9. In case of **Rajesh and others vs. Rajbir and others** (2013) 9 SCC 54, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

“11. Since, the Court in **Santosh Devi's case**¹ (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

1 Santosh Devi v. National Insurance Co. Limited, (2012) 6 SCC 421

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. ”

10. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the recent judgment dated 15.05.2015 in case titled **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447**, a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of ***Rajesh (supra)***.

11. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased, which is the 'inflationary trend' in which we all are living. For instance, I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequent increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is

required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

12. As per norms fixed in case of **Sarla Verma (supra)**, multiplier required to be applied while calculating the amount of compensation is 18. The claimants are also entitled to compensation towards loss of love and affection. The amount of compensation to which the claimants are entitled, is calculated as follows:-

For the death of Anuj (MACT No. 17 of 2010, FAO No. 5837 of 2011)

Sr. No.	Heads	Calculation
(i)	Income of the deceased Anuj	₹8000 per month (as assessed by Tribunal)
(ii)	50% of (i) above to be added as future prospects	₹8000 + ₹4000 = ₹12000 per month
(iii)	1 / 2 nd of (ii) deducted as personal expenses of the deceased	₹12000 - ₹6000 = ₹6000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹6000X12X18) = ₹1296000
(v)	Loss of estate, love and affection	₹100000
(vi)	Funeral expenses	₹25000
<i>Total</i>		₹1421000

For the death of Saurav (MACT No. 18 of 2010, FAO No. 5838 of 2011)

Sr. No.	Heads	Calculation
(i)	Income of the deceased Saurav	₹8000 per month (as assessed by Tribunal)

(ii)	50% of (i) above to be added as future prospects	₹8000 + ₹4000 = ₹12000 per month
(iii)	½ nd of (ii) deducted as personal expenses of the deceased	₹12000 - ₹6000 = ₹6000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹6000X12X18) = ₹1296000
(v)	Loss of estate, love and affection	₹100000
(vi)	Funeral expenses	₹25000
(vii)	Medical expenses	₹63227
<i>Total</i>		₹1484227

13. The appeals are accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Anuj is enhanced from ₹5,78,000/- to ₹14,21,000/- and for death of Saurav from ₹6,41,227/- to ₹14,84,227/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization.

January 11, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No