

(1) FAO No. 6803 of 2011 (O&M)
Date of decision: January 11, 2016

(2)	FAO No. 6804 of 2011 (O&M)	
Munniba and others		...Appellants
	Versus	
Sanjay Kumar and others		...Respondents

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr. Gurpreet Singh, Advocate,
for respondents No. 2.

CM No. 27760 CII of 2011

Main case

I Subject matter in appeals

1. Both the appeals are connected and relate to the same accident that has taken place on 4.7.2008. FAO No. 6803 of 2011 is a claim relating to a person aged 52 years of age, who has left behind his widow, four minor sons, three major sons and three minor daughters to survive him. The

Tribunal has assessed the income of the deceased at ₹3,000/- and awarded ₹3,36,800/- as compensation payable against respondents No. 1 and 2. The claimants themselves did not disclose the name of the insurer and stated that the details will be given by respondents No. 1 and 2, who were the driver and the owner. Respondents No. 1 and 2, however, did not disclose any name and contended that the vehicle was not insured.

2. In FAO No. 6804 of 2011 the deceased was 42 years of age and the claimants were the widow, two minor sons and four minor daughters. The Tribunal had determined compensation, taking the income to be ₹3,000/- and awarded ₹4,03,200/-.

II Contentions on behalf of respective appellants

3. The appellants would argue that there ought to be prospect of increase for a person of 52 years of age and also higher sum of compensation for loss of consortium and love and affection at ₹1 lakh each for the wife and for each of the children. There ought to be a provision made for loss of expectation of life of the deceased and ₹1 lakh towards loss of estate. The same argument is repeated also for the claimants which are subject of appeal in FAO No.6804 of 2011.

III Mode of computation for personal consumption when family is large.

4. Here is a case where the deceased, who was 52 years of age, was poor in his income but fertile in his procreative faculties. He had 10 children of whom seven were minors. The death has taken place in the year 2005 and I would assume that a person having such a large family would have restricted his own personal consumption and usual provision for 1/5th

in the manner suggested by the Supreme Court in Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121 for number of dependants in excess of six persons cannot be applied. I would take his average income as an agricultural employee to be ₹4,000/- and provide for a 1/10th of the amount as going towards his personal consumption and take the remaining amount as going towards his contribution to the family. I will apply a multiplier of 11 and take the loss of dependency at ₹4,75,200/-. I will make a provision for 1 lakh of rupees as going towards loss of consortium and provide a total amount of ₹2,50,000/- as going towards loss of love and affection, taking note of the reality of the person having 10 children and there cannot be a provision at one lakh rupees for each of the children, for, it would mean an absurd situation of making conventional heads of subjective assessment of love and affection to go even several times more what would be possible for a man contributing for his family, if he would have been alive.

IV Concept of loss to estate, explained

5. The learned counsel for the appellant argues that loss to estate and loss of expectation of life must be provided at one lakh rupees in the manner done in Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation 2014 (2) RCR (Civil) 876. There is bound to be certainty for the tribunal also in the manner of how compensation should be assessed by it and the heads of claim which could be considered. A lakh of rupees provided for loss to estate in Kalpanaraj's case (supra) cannot be a precedent in every case, for, it requires an understanding of the concept of a loss of estate itself. The estate which a person leaves at the time of his death could

be on account of surplus saving made by the deceased during his life time. If a person is in the higher bracket of income say, for example ₹1 lakh and he has to support himself and a child, a 1/3rd deduction as going towards the personal consumption may not really mean that entire amount of ₹33,000/- would have been spent by him. There must be surely some amount of saving which may be done by such a person and this will go to accumulate his estate for inheritance. A saving that reflects the amount over and above the actual necessities of life for self and dependants could either be invested for further accumulation or even left as it is, it would go by inheritance by the legal heirs. Consequently, loss to estate need not be merely a conventional head of claim, as suggested by the Supreme Court in Sarla Verma's case (supra), as ranging between ₹5,000/- to ₹10,000/-, where the constituent of saving is fairly prodigious. In a situation where the person is making his hand to mouth living being an agricultural labour and he has prosperity only in the size of his family, then a realistic approach which we have already adopted to scale down his personal expenses at 1/10th and providing for contribution to the family by taking at ₹4,000/- would meet the ends of justice. A question of saving for such a family is not conceivable and a provision of one lakh rupees as loss to estate would lead to an absurd situation of a person leaving an estate for inheritance larger than what he could have earned during his life. I, therefore, reject his argument that the judgment in Kalpanaraj's case (supra) can be a precedent for any subordinate court, especially this court as a rule of thumb that loss to estate shall always be not less than ₹1 lakh without minding the income that

was capable of being earned by the deceased and the saving that he could have made with the large size of the family as in this case. It has to be, therefore, a nominal head of claim to make possible a provision for a modest sum, as suggested in Sarla Verma's case (supra), it shall be ₹5,000/- and the tabulation is proceeded on such basis.

V Concept of loss due to reduction of life expectancy; inapplicability to fatal accident claims

6. The judgment in Kalpanaraj's case (supra) also makes a provision for ₹1 lakh towards loss of expectation of life. In a case where a person suffers an injury to a vital part of the body, it can reduce his own life span and a provision for a loss due to reduction of expectation of life for an injury that has shortened the life span would be an appropriate head. In R.D Hattangadi Versus M/s Pest Control (India) Pvt. 1995 (1) SCC 551 the Supreme Court was addressing a claim to assessment of damages for some injuries and provided among other heads damages for the loss of expectation of life arising on account of injury, the normal longevity of the person concerned having been shortened. Similarly in Raj Kumar Versus Ajay Kumar (2011) 1 SCC 343, a leading decision on the law relating to injuries and manner of assessment, the Supreme Court held that only a token or nominal amount may have to be awarded under the heads of loss of amenities or loss of expectation of life as otherwise, there may be a duplication of the award of compensation.

7. Loss of expectation of life is a non-pecuniary head of claim, which is transferred to the legal representatives on death. In England, by virtue of the Law Reforms (Miscellaneous Provisions) Act, 1934, under

Section 1, a provision is made that “on the death of any person, all causes of action subsisting against or vesting in him shall survive against or for the benefit of his estate.” This made possible a claim by the legal representatives to include also a claim for loss of expectancy of life or damages for shortening of life expectancy. But, this head of claim was always treated as nominal even after the Law Reforms Act of 1934 as held by the House of Lords in Rose Versus Ford (1937 AC 826). The same principle was reiterated in Benham Versus Gambling (1941 AC 157) where Goddard L.J. pointed out “stripping of technicalities, the compensation (for loss of expectation of life) is not being given to the person who has been injured at all, for the person who is injured is dead. These considerations lead me to the conclusion that whether in the case of a child or an adult very moderate sums should be given”. The law has undergone a further change in England with the passing of the Administration of justice Act 1982. Damages under the head loss of expectation of life, the assessment of which was felt very unsatisfactory was abolished and in its place, the Act provides for the bereavement for the spouse or the parents of a minor who was never married.

8. In India, the situation is far worse. Personal claims do not survive to the representatives under the Scheme of Section 306 of the Indian Succession Act except when injuries result in death. The loss due to bereavement is better understood in India as a loss of consortium to the wife or of love and affection to the child or a parent. A provision for loss of expectation in the case of death is unknown to law and I will take that a provision so made in the Kalpanaraj's case (supra) was in exercise of the

power that the Supreme Court has under Article 142 of the Constitution and cannot be said as a law binding for the subordinate courts. A certainty ought to prevail in the subordinate courts to apply parameters which are legally tenable. What is possible for the Supreme Court to do in the interest of justice under Article 142 of the Constitution cannot be mindlessly applied without seeing the particular circumstances and the compensation that could be assessed. I will not, therefore, also take the judgment in Kalpanaraj's case (supra) as laying down any proposition of law in case of death that there should also be a provision made for loss of expectation of life, apart from loss of dependency, loss of consortium and love and affection. An expectation of life which gets curtailed is at all times translated in terms of the contribution to the family and the loss that is occasioned by consortium withdrawn and the love and affection unexpressed. If they are provided for sizably in monetary terms as contributions to the family and also as loss of consortium and love and affection, there is no further scope for making a provision for any loss of expectation of life. I will understand that if such a claim for loss of expectation of life were to be at all times considered, it must be taken as having been absorbed, while addressing the claim for loss of dependence, consortium and love and affection.

VI Tabulation of claim under the circumstances the compensation in FAO No. 6803 of 2011 as follows:

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	52	4.7.2008	
Occupation	Agriculture labour		
Claimants:	Widow, four minor sons, three major sons and three minor daughters		
	Heads of claim	Tribunal	High Court

Sr. No.		Amount (₹)	Amount (₹)
1	Income	3000	3000
2	Add, % of increase		4000
3	Deduction (1/10)		3600
4	Multiplicand (annualized)		43200
5	Multiplier	11	11
6	Loss of dependence	3,16,800	4,75,200
7	Medical expenses		
8	Loss of Consortium	10,000	1,00,000
9.	Loss of love and affection for children		2,50,000
10	Loss to estate	5,000	5000
11	Funeral Expenses	5,000	10,000
	Total	3,36,800	8,40,200

9. As regards the claim in FAO No. 6804 of 2011, the deceased was 42 years of age and I will take a similar assumption of an average income of ₹4,000/-, even making a provision of 30% increase, if his income were to be taken in the manner assessed by the Tribunal. In this case, he had four minor daughters and two minor sons and a widow and considering again large size of the family, I will take 1/10th as going towards his personal consumption and rest going to as contribution to the family. I will apply a multiplier of 14 and take the loss of consortium to the wife and love and affection in the manner provided in the case above. I will take also the loss of the estate and the funeral expenses in the manner done in the case above.

10. On overall consideration, the compensation assessed in FAO No. 6803 of 2011 shall be ₹9,69,800/-. The tabulation of various heads of claim as as under:-

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	42	4.7.2008	
Occupation	Agriculture labour		

Claimants:	Widow, two minor sons, four minor daughters		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1	Income	3000	3000
2	Add, % of increase for future prospects		4000
3	Deduction (1/10)		3600
4	Multiplicand (annualized)	28,800	42120
5	Multiplier	14	14
6	Loss of dependence	4,03,200	6,04,800
7	Medical expenses		
8	Loss of Consortium	10,000	1,00,000
9.	Loss of love and affection for children		2,50,000
10	Loss to estate	5,000	5,000
11	Funeral Expenses	5,000	10,000
	Total	4,23,200	9,69,800

11. All the liability shall be on respondents No. 1 and 2. As regards interest, I will allow the interest only from the date of filing the appeals considering that there was delay of more than two years and the explanation given was hardly worthy of acceptance. If I condone the delay, I take the interest payable as possible from the date of filing the appeals at the rate of 7.5% for the additional amount determined. The additional amount with interest accrued shall be distributed in the same proportion in which the Tribunal has already provided for distribution amongst the respective claimants.

12. The awards are modified and the appeals are allowed on the above terms.

January 11, 2016
prem

(K. KANNAN)
JUDGE

