IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.4918 of 2013 (O&M).
Date of Decision: 17.03.2016.

Sarla Devi and another ....Appellants.

VERSUS

Bansi Lal and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ajay Vijarania, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

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SNEH PRASHAR, J.

CM-20903-04-CII-2013

There being delay of 58 days in filing and 6 days in refiling the appeal, separate applications under Section 5 of the Limitation Act for condonation of delay were filed by the appellants.

Considering the averments made in the applications, the delay is condoned and the applications stand disposed of.

FAO-4918-2013 (O&M)

By way of this appeal, appellants-Sarla Devi and another seek enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Bhiwani (for short, "the Tribunal") vide the award dated

11.02.2013 passed in MACT Petition No.70 of 2011/2012 on account of death of Shashikant son of Shankar Lal who lost his life in a vehicular accident.

Precisely, the facts are that on 28.03.2011 at about 5:15 p.m., Mahender son of Mohan Lal and Bijender were going to Siwani from Nangal Chhoti on a motorcycle. In the same way, Shashikant (since deceased) alongwith one Suresh son of Surat was going to Siwani on another motorcycle bearing registration No.RJ-10SB-2943. The motorcycle was being driven by Shashikant. When they reached near Budhshelli turning, a Tata Ace bearing No.HR-39B-2806 (hereinafter referred to as the "offending Tata), being driven by respondent No.1-Bansi Lal rashly, negligently and in a high speed came from the side of Siwani and struck against their motorcycle. Due to the collision, both of them fell down. Shashikant suffered serious injuries and died at the spot.

A First Information Report No.51 dated 28.03.2011 under Sections 279, 337 and 304-A of the Indian Penal Code in respect of the accident was registered at Police Station Siwani on the basis of statement of Mahender.

Appellants-mother and sister of deceased Shashikant filed a petition invoking the provisions of Section 166 of the Act of 1988 (for short, "the Act of 1988") claiming compensation from the respondents-driver, owner and insurer of the offending Tata. The petition was contested by the respondents.

On the basis of the rival contentions of the parties, issues were framed. Both the parties adduced evidence. Considering the evidence adduced by the parties in support of their respective narration of the accident, learned Tribunal partly allowed the claim petition of the appellants-claimants and an amount of Rs.4,13,200/- was awarded as compensation to them.

Feeling unsatisfied with the award dated 11.02.2013, the appellants preferred the instant appeal.

The submissions made by Mr. Ajay Vijarania, learned counsel for the appellants and Mr. Rajneesh Malhotra, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the deceased was the sole bread earner of the family and by running a dairy farm and grossery shop he used to earn Rs.20,000/- per month. Learned Tribunal wrongly assessed his income as Rs.4800/- per month. Also, no addition was made to the income of the deceased computing future prospects. Deduction of 50% of the income towards personal and living expenses of the deceased and the multiplier of '14' was also wrongly applied as the deceased was aged 21 years. Learned Tribunal also erred in clubbing three heads together i.e. loss of estate, funeral expenses and transportation etc. and awarded only Rs.10,000/- towards the same. Nothing was awarded to the claimants on account of love and affection.

On the other hand, learned counsel for the respondent-insurance company argued that the multiplier of '14' was rightly applied by learned Tribunal as per the age of claimant No.1-mother of the deceased. He relied upon ***New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593***.

The deceased was a young boy aged 21 years. There being no substantive evidence with regard to occupation and income of the deceased, learned Tribunal rightly assessed his income as Rs.4800/- per month. Regarding applying of suitable multiplier, it was held by Full Bench of Hon'ble Supreme Court in ***Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660*** as under:-

> *"33. We have already noticed the table prepared in Sarla Verma for the selection of multiplier. The table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, Susamma Thomas, Trilok Chandra and Charlie for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section*

166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/ deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.

In the end, the conclusion drawn is as under:-

"In what we have discussed above, we sum up our conclusions as follows:
(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.
(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.
(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma. (vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

A similar view has been taken by Hon'ble Supreme Court in ***Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002***. In ***Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347*** following Reshma Kumari's case it has been held as under:-

"The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken."

In the present case, the deceased was 21 years of age when he died during the accident. The Motor Vehicles Act, being a beneficial legislation, this Court relies on Munna Lal Jain's case (supra), which is subsequent to the case law cited by learned counsel for the respondent-Insurance Company in Smt. Shanti Pathak's case (supra). Taking into consideration the age of the deceased, the learned Tribunal should have applied the multiplier of '18' instead of '14'. Deducting 50% of the income of the deceased towards his personal and living expenses, 1/2 of his earnings was assessed as the amount spent for maintenance of the claimants. Apparently, no addition was made for computing future prospects of the deceased. However, as per law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.4800/-
2.	Actual age of the deceased		21 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.2400/-
4.	Annual dependency		1/2 of Rs.7200/- x 12 = Rs.43,200/-
5.	Multiplier		18
6.	Total		Rs.7,77,600/-

In addition to the amount of Rs.7,77,600/- calculated towards dependency, an amount of Rs.25,000/- towards funeral expense; Rs.10,000/- towards loss estate and Rs.50,000/- towards loss of love and affection is allowed which shall include the amount of Rs.15,000/- already awarded by learned Tribunal under the heads of loss of estate, funeral expenses and transportation etc. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 11.02.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.4,49,400/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

17.03.2016.
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