

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**X-OBJ No. 74-CII-2015 in/and
FAO No. 9722 of 2014 (O&M)
Date of decision: 14.01.2016**

United India Insurance Co. Ltd. ... Appellant
versus
Madhu Bala and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vinod Chaudhary, Advocate for the appellant.

Mr. Robin Dutt Advocate for respondent Nos. 1 to 3.

K.Kannan, J. (ORAL)

The appeal is on the issue of negligence and quantum by the Insurance Company for death in motor accident of male aged 45 years. The accident was a result of collision between the motor cycle which the deceased was driving and the vehicle which was coming from the opposite direction. Although at the trial, it was stated that the deceased had contributed to the accident, the Court will rely on the fact that there were oral assertions of eye witnesses account that the insured driver was responsible for the accident and after assessing the negligence of the insured driver as established proceeded to determine the compensation. I will not make any intervention with the finding regarding the negligence of the insured driver and undertake an exercise fully for assessing whether the compensation granted accords

with evidence.

The deceased was an agriculturist and was also a contractor with sugar factory for supply of sugarcane through vehicles. The Income tax deducted at source for the year prior to his death showed that Rs. 76, 762/- had been credited to his tax account by the sugar mill. This was on the sum paid for the sugar mill for the contract work at Rs.7, 64, 620/-. The Court reasoned that his own gross income was shown only as Rs. 1, 70, 262/- and since he was making a plea for refund of the entire tax deducted it only showed that his income was not in the taxable range. The Court, therefore, took the gross income as income for the year and proceeded also to make reckoning of the value of the labour and managerial skills for the agricultural land which he possessed. The Tribunal assessed that it would have cost not less than Rs. 3,000/- to manage the lands per month and took this to be economic loss suffered by the family if they had to carry with the agricultural portions. In the manner of reckoning, therefore, the Tribunal took the aggregate of the gross income from his business of contract of supply at Rs. 1, 70, 292/- and added a sum of Rs. 36,000/- as the value of his labour for his agricultural land and determine Rs. 2, 06, 292/- as the annual income.

I find that the Tribunal has adopted a very reasonable and sane approach to be taking only the gross income as shown as the income from business and not take the entire payments received by the deceased from sugar factory for which TDS was also deducted as the

basis for computation. The issue of whether there should be any further increase, a prospect of future increase in salary has been a subject of wider controversy and many legal systems are still digging deep to find out what would be a fair approach. The decision in Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54, has been engaging the attention of the Hon'ble Supreme Court and what types of employment would clarify the prospect of increase has been referred to a larger Bench. The provisions for increase was nothing novel and we have judicial dispensations right from the mid 90s commencing from General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, 1994 (2) SCC 176. The Tribunal's prospect of certain increase of the existing income in Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77 devised a formula that it shall be in the range of 50% for persons whose age was less than 40 and it should be 30% between the age of 40 to 50. However, judicial innovation came through consideration of 15% increase from even persons above the age of 50 in Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54, and without much of the deliberations proposed taking note of the reality that the most productive years for the individual is just about 50 and the person's prospect of increase in income need not peter out immediately after crossing 50 years. The doubt again arose whether this increase must be brought only to employments in Government service and other settled employment or it could be generally provided for all types of

employments including private employments and in business. The business may result in profit or loss but a person in business always believes that there is more income possible in future. The courts which assess the prospect of increase goes by normal expectations of life, lots of approximations take place while assessing the compensation. If we are trying to bring it to arithmetical equations it is not out of any conceit that we believe that we have evolved an unimpeachable formula. There is nothing scientific about any of the dispensation made by this Court or by Hon'ble Supreme Court. The attempt at all times had been to generate the formula that is homogenous so that there are no huge variations from one Court to another or from one part of the country to another part. We have surrendered the idea of exactitude to what is exigent by the limited understanding of the enigma that is life. Philosophical questions apart, the assessment that makes for gradual increase of income over a period of time upto the age of 60 years is reasonable in growing economy. India is seen as an important destination for investment as well, and make in India is a theme that pulsates at every part of the India. I have no reason to suspect that a common man at the peak of his life around age of 45 could have made better in his life till he had to probably wind up when it was time to hang his boots. He surely had another 15 years for productive life. The income taken at Rs. 12, 292/- making a provision of 30% increase is in my view a fair approximation that is not arbitrary or outlandish. I retain the assessment made by the Tribunal as regards the loss of dependency

and I will make no intervention.

Even some of the notional heads of claim, had their own judicial history over a period of time. Loss of expectancy of life was an important head that was seen as relevant for providing to a person who had injuries and whose life expectation got shortened by the instance of ill health and risks in normal living on account of injuries. If the person died also the deceased himself could not have sought for expectation of longevity. It is invariably the representative of the family that was competent to claim loss of dependency. The judicial reforms in England in 1934 recognized the loss of expectancy as a relevant head, but, the Courts were still very conservative in the estimation and never gave anything beyond \$ 2,500. The further law reforms in the year 1981 decided to completely give up this head of claim and substituted it in the year 1981 for the loss due to bereavement and restricted it to the spouse or immediate members of the family. What is loss of bereavement in England is what was loss of consortium in India. Loss of love and affection is again the head that is recognized as extended principle of bereavement of what the son or a daughter losses by his own bereavement in his inability to secure the guidance or affection of the appellant if he had been alive. This was just as well as nominal sum as laid in the year 2009 in Sarla Verma's case (Supra) when the Court said that loss of consortium could be around Rs.10,000-15, 000/- and loss of estate could be Rs. 5,000 to 10,000/-. The conventional heads took a boom for whatever reasons that is not seen through any of the

Hon'ble Supreme Court judgments but the High Court or subordinate Court's attempts to follow to 'T' what the Supreme Court has held. There has been now an increase for loss of consortium to Rs. 1,00,000/- and loss of love and affection between Rs. 50,000/- to Rs. 2,00,000/- in various cases. Further course of law will dictate to us what is appropriate but as of now I will allow myself no great discretion and follow what the Supreme Court states, to provide for Rs. 1,00,000/- as loss of consortium from Rs. 30,000/- as already granted and raise the loss of guidance and loss of love and affection for the son at Rs. 50,000/- considering that he is a major now. The court has provided funeral expenses at Rs. 5,000/- which I will raise to Rs. 25,000/-. This would mean additional amount of Rs. 1,40,000/-. This is the only addition which I will subject the decision of the Tribunal. I will retain the loss of estate has already determined.

The additional compensation will attract the interest @ 9% from the date when the appeal is filed till the date of payment. The appeal by the insurer is dismissed and the cross objection of the respondent is allowed to the above extent. The additional amount shall be distributed equally amongst the claimants.

**(K.KANNAN)
JUDGE**

14.01.2016

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