

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No. 4977 of 2009  
Date of decision: 21.09.2017

Kamlesh Bansal and Others

...Appellants

Versus

M/s Narindera Road Lines Pvt. Ltd. and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Karamjit Verma, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for respondent No. 5.

Ms. Vandana Malhotra, Advocate for respondent No. 6.

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**AVNEESH JHINGAN, J. (ORAL)**

The present appeal has been filed against the award dated 16.01.2009 passed by the Motor Accident Claims Tribunal, Patiala ( for short, 'the Tribunal').

Sh. Gobind Ram Bansal aged 53 years lost his life on 25/26.12.2004 in an accident involving Maruti Esteem Car bearing registration No. CH-03-K-1697 and Tata Goods Carrier bearing registration No. HR-38D-9163 (for short, 'the Offending Vehicle'). As a result of the accident Sh. Gobind Ram Bansal suffered serious multiple injuries. He was moved to PGI, Chandigarh. He succumbed to injuries on 26.12.2004.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was moved by the widow and three daughters of the deceased.

The Tribunal after considering the evidence and witnesses awarded a sum of ₹ 18,70,400/- along with interest at the rate of 9% per

annum. The said amount included ₹ 6,000/- for funeral expenses and another sum of ₹2,000/- for loss of consortium.

Aggrieved of the said award the present appeal has been filed by the claimants.

I have heard learned counsel for the parties and perused the paper-book and record.

Learned counsel for the appellants argued that the loss of dependency compensation has been wrongly calculated by the Tribunal on two counts. Firstly the deceased was survived by 4 dependents, therefore, the deduction for self expenses should have been  $\frac{1}{4}^{\text{th}}$  instead of  $\frac{1}{3}^{\text{rd}}$ . Secondly that multiplier of 8 has been applied whereas it should have been 11, as deceased was 53 years of age. He further contended that the compensation awarded under the heads of 'loss of consortium' and 'funeral expenses' is on lower side and further compensation should have been awarded under other conventional heads.

Learned counsel for the Insurance-Companies supported the award and argued that the amount awarded by the Tribunal is sufficient and no interference is called for. They were not able to pose any serious objection with regard to enhancement and grant of compensation under various conventional heads. But the counsel contended that if multiplier of 11 is to be applied then it should be a split multiplier as the deceased was to retire after few years.

The contention raised by the learned counsel for the appellants deserves acceptance. Firstly with regard to awarding compensation under various conventional heads and enhancing the amounts already awarded under the heads, loss of consortium and funeral expenses, the matter has

been considered by the Hon'ble Apex Court.

Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767***, held as under:

“17. Further, the High Court has erred in awarding only ₹ 5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award ₹1,00,000/- towards loss of estate according to the principles laid down in the case of ***Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil) 876: 2014 (3) Recent Apex Judgments (R.A.J.) 112: 2014 (5) SCALE 479, ₹ 25,000/- towards funeral expenses and ₹ 1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (3) R.C.R. (Civil) 170; 2013(3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.*****

18. Further, we award ₹ 1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjuamma Mohan & Ors., 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166.** Further, a sum of ₹ 50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd., 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.**

A perusal of the above decision shows that Hon'ble the Apex Court has enhanced the compensation awarded by the High Court under the

**Heads:-** loss of estate, funeral expenses and loss of consortium and also

awarded compensation under the head of loss of love, care and guidance of the minor children.

Hon'ble the Apex Court in *Rajesh and others Versus Rajbir Singh and others*, 2013 (9) SCC 54, has held as under:

“The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of ₹ 2500/- to ₹ 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased.”

A perusal of the above decision shows that the compensation under the heads mentioned therein is to be awarded and needs to increase from time to time.

The Tribunal ought to have granted compensation under various conventional heads as has been held by the Hon'ble Apex Court. Further the amount already granted should be enhanced. Accordingly, the compensation under various conventional heads is enhanced/granted as under:-

| Head                       | Awarded by Tribunal | Now granted by this Court |
|----------------------------|---------------------|---------------------------|
| Loss of Consortium         | ₹ 2,000/-           | ₹ 50,000/-                |
| Funeral Expenses           | ₹ 6,000/-           | ₹ 25,000/-                |
| Loss of Love and Affection | Nil                 | ₹ 50,000/-                |
| Loss of Estate             | Nil                 | ₹ 25,000/-                |

So far as the issue regarding calculation of loss of dependency is

concerned, contention of the appellant is fully supported by Hon'ble Apex Court in, Smt. Sarla Verma and Ors Vs. Delhi Transport Corporation and Another 2009(6) SCC 121, it was held as under:-

*“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deductions towards personal and living expenses of the deceased, should be one-third ( $1/3^{rd}$ ) where the number of dependent family members is 2 to 3, one fourth ( $1/4^{th}$ ) where the number of dependent family members is 4 to 6, and one-fifth ( $1/5^{th}$ ) where the number of dependent family members exceed six.”*

The law enunciated in the above decision is that in order to achieve uniformity the multipliers have been fixed which are to be applied vis-a-vis the age of the deceased. Similarly, the deduction for self expenses have also been mentioned depending upon the number of dependents survived by the deceased.

As per the above decision after deducting  $1/4^{th}$  on account of self expenses and applying multiplier of 11, the loss of dependency is re-calculated as under:-

Income of the deceased = ₹29,000x12=₹3,48,000/-  
(as assessed by the Tribunal)

Less  $1/4^{th}$  deduction = ₹3,48,000-87,000= ₹ 2,61,000/-  
for self expenses

Loss of dependency by applying multiplier of 11. = ₹ 2,61,000x11= ₹28,71,000/-

So far as the issue raised by counsel for the Insurance Companies that a split multiplier should have been applied, the same cannot be accepted in the facts of the present case.

Because, firstly, there is no cross appeal filed by the Insurance Companies challenging the amount awarded by the Tribunal. At this juncture the counsel for the Insurance Companies objected that since the multiplier of 8 was applied there was no occasion to file an appeal. Even this argument has a fallacy. On receipt of notice of the enhancement appeal filed by the claimants, it was well within the knowledge of the Insurance Companies that the multiplier applied by the Tribunal is under challenge. At that juncture also no cross appeal/objections were filed. Further, there was no discussion by the Tribunal, with regard to the issue of split multiplier. It appears that this issue was not raised before the Tribunal. Be that as it may in the enhancement appeal it is not appropriate to adopt the split multiplier. The reliance is placed upon the decision of the Hon'ble Apex Court, in **Sri K.R. Madhusudhan and Others Vs. Administrative Officer and Another 2011 (4) SCC 689**, and it was held as under:-

“In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal reduced the same. In doing so, the High Court not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore.

The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6”

(emphasis supplied)

In the above mentioned decision the Apex Court specifically stated that the High Court erred in introducing split multiplier and departing from the multiplier used by the Tribunal without disclosing any reason. In the present case also I have no occasion at this stage to substitute my own reasoning for departing from well settled law of applying multiplier as has been held by the Hon'ble Apex Court in **Smt.Sarla Verma's case** (supra).

Further, this Court in **FAO No. 4615 of 2013 'Giano Devi and Others Vs. Hariom and Others', decided on 18.10.2016** following the decision of the Hon'ble Apex Court in **Sri, K.R. Madhusudhan's case** (supra) has held as under:-

“The learned Tribunal has applied the split multiplier. The learned Tribunal has mentioned that since the deceased was going to retire beyond the age of 58 years i.e. the age of superannuation, so the actual loss of dependency has only been multiplied for a period of six years. This approach of the learned Tribunal is erroneous in view of the ratio of law laid down by Hon'ble Apex court in case **Sri, K.R. Madhusudhan and Others Vs. Administrative Officer and Another** (supra). So, the multiplier of 9 shall be applicable. Thus, the total loss of dependency comes to ₹15,83,550/-”.

Further, this Court in FAO No. 5452 of 2012, **the New India**

**Assurance Company Ltd. Versus Kuldeep Singh and Others**, decided on 02.08.2013 following the case of **Smt. Sarla Verma and Others** (supra) and case of **Sri K.R. Madhusudhan** had held as under:-

“Taking the point of split multiplier, firstly it has to be seen that the deceased was to retire within a period of two years and definitely his salary would have been converted into a pension, which would have been about ½ of the same. However, the multiplier system does not call for taking of different annual dependencies of two different periods. The judgment in **Smt. Sarla Verma's case** (supra) makes no distinction in this regard.

Further this Court in **FAO No. 1837 of 2015 United India Insurance Company Ltd. Vs. Parveen and Others** decided on 19.03.2015 following the decision of the Hon'ble Apex Court in “**Reshma Kumari and Others Vs. Madan Mohan and another**”, 2013(9) SCC 65 and the decision of the Hon'ble Apex Court in **Smt. Sarla Verma's and Others** case (supra) had not applied the split multiplier.

Keeping in view the decisions of the Hon'ble Apex Court and the consistent view taken by this Court, I do not find any reason to apply split multiplier in the present case.

At this stage it would be fair to mention that the counsel for the Insurance Companies relied upon the decision of the Hon'ble Apex Court reported in **Puttamma and Others Vs. K.L. Narayana Reddy and Another 2013 (15) SCC 45.**

From a perusal of the said decision it would be clear that rather it is in support of the view taken by this Court that the split multiplier should not be applied in the present case.

A perusal of paras 32 and 34 of the said judgment are reproduced for the ready reference.

- 32 “For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in selection of multiplier, this Court in *Sarla Verma* prepared a table for selection of multiplier based on age group of the deceased/ victim, The Motor Vehicle Act, 1988 does not envisage application of split multiplier.
- 34 We, therefore, hold that in absence of any specific reason and evidence on record the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of *Sarla Verma*(supra) as affirmed in the case of *Reshma Kumari* (supra)”.

A reading of above two paragraphs makes it clear that the Hon'ble Apex Court has specifically held that the Act does not envisage application of split multiplier. Further, it was held that the Tribunal or the Court in absence of any specific reason and evidence on record, should not apply split multiplier in routine course and should apply multiplier as per the decision of the Hon'ble Apex Court in case of **Sarla Verma** (supra).

The reasoning given by the counsel for the Insurance Companies is that after his retirement the deceased would have been entitled to the pension, the compensation calculated should not be resulting in bonanza to the family. The said argument is not acceptable. Death of an individual cannot be calculated in monetary terms. Loss of head of a family cannot be compensated simply by awarding compensation calculated on the basis of pension. Act is a welfare legislature and the Courts have to arrive at a just and equitable compensation. Simply split multiplier should not be applied merely because the deceased was going to retire in a few years. His role as a head of family is bound to increase after retirement. Moreover,

there are fair chances of his getting re-employed. Retirement does not mean that worth of the person has reduced. Rather, his experience is there and he is able to contribute more towards his family. The matter cannot be viewed only commercially while dealing with such like cases, it also involves loss of human life.

Thus, keeping in view the law laid down by the Hon'ble Apex Court and various decisions cited above, enhancement under conventional heads and re-calculation of loss of dependency and multiplier, compensation is enhanced in table given below:-

| Head                       | Awarded by Tribunal | Now Awarded by this Court |
|----------------------------|---------------------|---------------------------|
| Loss of Dependency         | 18,62,400           | 28,71,000                 |
| Loss of Consortium         | 2000                | 50000                     |
| Funeral Expenses           | 6000                | 25000                     |
| Loss of Love and Affection | Nil                 | 50000                     |
| Loss of Estate             | Nil                 | 25000                     |
|                            | 18,70,400/-         | 30,21,000/-               |

The award dated 16.01.2009 is modified to the extent that the amount of ₹ 18,70,400/- awarded by the Tribunal is enhanced to ₹ 30,21,000/-.

The claimants shall be entitled to the enhanced compensation along with interest at the rate of 6% per annum from the date of filing of the claim petition, till its realization.

The appeal is partly allowed in the aforementioned terms.

It is clarified that the liability would remain in the same ratio as held by the Tribunal.

September 21, 2017

Poonam (II)

(AVNEESH JHINGAN)  
JUDGE

Whether speaking/reasoned:Yes

Whether reportable:Yes