

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: March 07, 2017

+ **MAC.APP. 269/2008**

SURESH CHAND JAIN Appellant

Through: Mr. D.D. Singh and Mr. Navdeep
Singh, Advocates

Versus

RAKESH SINGHRespondent

Through: Mr. Pradeep Gaur, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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Impugned Award of 8th February, 2008 grants compensation of ₹4,72,600/- with interest @ 7% *per annum* on account of death of one businessman-Yogesh Chand Jain, aged 23 years, in a road accident on the intervening night of 30th June and 1st July, 2005. The facts are already noted in impugned Award and so needs no reproduction. Suffice to note that deceased – a shop-keeper, was engaged in business of selling garments at Pahari Dheeraj. To assess the income of deceased, learned Tribunal has relied upon Income Tax Return (Ex.PW-5/3), which is of a period prior to his death, and on its basis, the income of deceased has been quantified to be ₹73,200/- *per annum*. Pertinently, the Income Tax

Return filed after the death of deceased has been left out of consideration. While taking the age of claimant to be 52 years and 48 years respectively and by applying the multiplier of 11 and deducting 50% towards '*personal expenses*', '*loss of dependency*' has been assessed by learned Tribunal at ₹4,02,600/-. Under the non-pecuniary heads, ₹10,000/- has been awarded towards '*funeral expenses*', ₹40,000/- towards '*loss of love and affection*' and ₹20,000/- towards '*loss of estate*'. On the basis of evidence recorded, impugned Award has been rendered.

In this appeal, enhancement of compensation is sought by learned counsel for appellant while relying upon Supreme Court's decision in *Munna Lal Jain and Another v. Vipin Kumar Sharma and Others*, (2015) 6 SCC 347 to submit that the multiplier to be adopted is as per the age of deceased and not as per the age of claimants and that learned Tribunal has erred in not applying the appropriate multiplier of 18 while taking the age of deceased into consideration.

It is pointed out by appellant's counsel that the Income Tax Returns filed after the accident ought to have been considered and adequate compensation ought to have been granted towards '*future prospects*'. It is also submitted by appellant's counsel that compensation granted under the non-pecuniary heads is on lower side and it needs to be suitably enhanced.

On the other hand, learned counsel for respondent-Insurer supports impugned Award and submits that no case for enhancement is made out as the age of claimants has been rightly taken into consideration. To submit so, attention of this Court is drawn to a Three Judge Bench

decisions of Supreme Court in *UPSRTC v. Trilok Chandra & Ors.*, 1994 (3) SCC 302 and *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 603. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that Supreme Court in *Trilok Chandra (supra)* and *Shanti Pathak (supra)* has reiterated that age of claimants or the age of the deceased, whichever is higher, is to be taken into consideration while applying the appropriate multiplier whereas in a later decision of same strength in *Munna Lal (supra)* while considering an earlier decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, it has been ruled that multiplier ought to be in reference to the age of deceased.

When there is conflict of opinion between two Benches of same strength, then the decision of earlier Bench has to prevail. It has been so reiterated by Supreme Court in *Union of India v. S.K. Kapoor*, (2011) 4 SCC 589. So, while relying upon Supreme Court's earlier decisions in *Trilok Chandra (supra)* and *Shanti Pathak (supra)*, this Court has no hesitation in holding that learned Tribunal has rightly taken into consideration the age of claimants. It is noted in impugned Award that as per Election I-card, age of mother of deceased comes to 44 years and 7 months, or say, 45 years. However, learned Tribunal, while relying upon statement of Insurer's counsel, has taken the age of mother of deceased to be 50 years. It needs no reiteration that it is the mother of deceased, who is a dependent and not the father of deceased. While relying upon

Election I-card of mother of deceased, her age is to be taken as 45 years and appropriate multiplier as per *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121 is of 14. Learned Tribunal has erred in applying the multiplier of 11. By applying the multiplier of 14, 'loss of dependency' is reassessed as ₹36,600/- X 14 = ₹5,12,400/-.

The submission of appellant's counsel to claim '*future prospects*' is noted to be rejected, for the reason that deceased was self-employed and there is solitary Income Tax Return of a period prior to the accident. Had there been Income Tax Returns of three years preceding the accident, then the aspect of '*future prospects*' could have been considered. Learned Tribunal has rightly not granted any compensation under the head of '*future prospects*'.

So far as compensation granted under the non-pecuniary head is concerned, this Court finds that it is on lower side. Supreme Court in *Rajesh & Ors. V. Rajbir Singh & Ors.* (2013) 9 SCC 54 has granted compensation of ₹1 lac under the head of '*pain and sufferings*' and under the head of '*loss of love and affection*', compensation granted is also of ₹1 lac and the funeral expenses granted are of ₹25,000/-. While relying upon Supreme Court's decision in *Rajesh (supra)*, compensation granted under the heads of '*love and affection*' is enhanced from ₹40,000/- to ₹1 lac and the '*funeral expenses*' are increased from ₹10,000/- to ₹25,000/-. The compensation granted under the head of '*loss of estate*' is also enhanced from ₹20,000/- to ₹50,000/-.

In view of aforesaid, compensation granted to claimants is

reassessed as under: -

1.	<i>Loss of dependency</i>	₹ 5,12,400/-
2.	<i>Loss of love and affection</i>	₹ 1,00,000/-
3.	<i>Loss of estate</i>	₹ 50,000/-
4.	<i>Funeral expenses</i>	₹ 25,000/-
Total		₹ 6,87,400/-

In the light of a recent decision of Supreme Court in *Shivakumar M. v. The Managing Director, BMTC*, 2017 SCC Online SC 148, the interest granted on the awarded compensation is enhanced from 7% to 9% *per annum*.

In light of the aforesaid, compensation awarded is enhanced from ₹4,72,600/- to ₹6,87,400/-. The enhanced compensation shall carry interest @ 9% *per annum* from the date of filing of the claim petition till the date of deposit of the enhanced amount. Respondent-Insurer is granted four weeks time to deposit the enhanced compensation of ₹2,14,800/- with interest @ 9% *per annum* and differential interest on the entire awarded amount with learned Tribunal, who shall ensure that the enhanced compensation is directly transmitted into the bank account of appellant-Claimant upon his furnishing bank account details.

This appeal is disposed of while modifying the impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

MARCH 07, 2017

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