

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: April 11, 2017*

+ MAC.APP. 398/2009  
RAJASTHAN STATE ROAD TRANSPORT CORPORATION &  
ORS. .... Appellants

Through: Dr. Ritu Bhardwaj, Advocate

Versus

MANJUBALA MOHAPATRA & ORS. .... Respondents

Through: Nemo

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**

%

**ORAL**

1. Impugned Award of 9<sup>th</sup> April, 2009 grants compensation of ₹30,47,000/- with interest @ 7% p.a. on account of death of one *Chandrashekhar Mohapatra*, aged 37 years, in a road accident on 7<sup>th</sup> September, 2006. The deceased was working as Product Manager (Weaving) in Spintex Private Limited. Appellant No.1 is the owner of bus in question which had suddenly turned towards right near Prahladpur and had hit a Corolla car in which the deceased was an occupant. The facts as noted in the impugned Award need no reproduction. Suffice to note that all the four occupants in the Corolla car had died in this road accident, which was witnessed by one *Ikram (PW-5)*. Pertinently, *Ram Niwas (RIW1)*, driver of bus in question had also deposed before the Motor Accident Claims Tribunal (*hereinafter referred to as the*

“Tribunal”). On the basis of evidence led, impugned Award has been rendered. While entertaining this appeal, appellants were called upon to deposit the awarded amount, which has been done.

2. As per order of 7<sup>th</sup> October, 2009, both the sides were represented and out of the deposited amount, a sum of ₹4,00,000/- was directed to be released to respondents-claimants. However, at the final hearing of the appeal, none has appeared on behalf of respondents.

3. With the assistance of learned counsel for appellant-owner, impugned Award and evidence on record has been perused. The precise submission of appellants’ counsel is that in view of the site plan of the spot and evidence of bus driver *Ram Niwas (RIWI)*, it is a case of contributory negligence. It is pointed out by learned counsel for appellants that as per Supreme Court’s decision in *Smt. Sarla Verma & ors. v. Delhi Transport Corporation & Anr.*, AIR 2009 SC 3104, the appropriate multiplier to be applied is of 15 whereas multiplier of 16 has been applied by the Tribunal, who has wrongly taken income of deceased to be ₹32,000/- whereas it should be taken as ₹16,000/- per month by excluding House Rent Allowance of ₹5,500 p.m. Thus, it is submitted that quantum of compensation needs to be suitably reduced. Nothing else is urged on behalf of appellant.

4. Upon hearing and on perusal of impugned Award, evidence on record and Supreme Court’s decision in *Sarla Verma (Supra)*, I find that the Tribunal has rightly relied upon evidence of eye witness *Ikram (PW-5)* and has discarded the evidence of bus driver-*Ram Niwas (RIWI)*, as it is not the case of appellant that there was any diversion due to which the

bus had crossed on to the opposite side from where the traffic on the highway was coming at a high speed. It has come in evidence of *Ram Niwas (RIWI)* that there was no traffic jam on the other side. However, in the chief examination he does say that there was a traffic jam and traffic was moving slowly but this gives him no right to cross on the other side of the road by taking a cut. So, in the considered opinion of this Court, no case for contributory negligence is made out. To conclude so, site plan of the spot is relied upon.

5. So far as application of multiplier is concerned, this Court finds that in view of Supreme Court's decision in *Sarla Verma (Supra)*, the applicable multiplier is of 15 and the Tribunal has erred in applying multiplier of 16. Regarding exclusion of House Rent Allowance while computing the monthly / annual income of deceased is concerned, this Court finds that in view of Supreme Court's decision in *Sunil Sharma & ors. Vs. Bachitar Singh & ors.* (2011) 11 SCC 425, in the matter of reassessment of income in cases under the Motor Vehicle Act, Dearness Allowance, House Rent Allowance etc. should be included in computation of income of deceased. Accordingly, annual income of deceased is reassessed as under:-

$\text{₹}21,500 \times 12 = \text{₹}2,58,000/-$ . After deducting 1/3 towards personal expenses and by applying the correct multiplier of 15, the loss of dependency is reassessed as  $\text{₹}25,80,000/-$

Thus, quantum of compensation granted under the head of '*loss of dependency*' is reduced from  $\text{₹}30,72,000/-$  to  $\text{₹}25,80,000/-$ .

6. This Court is conscious of the fact that in an appeal filed by

Insurer/ owner, the quantum of compensation cannot be increased even if it is found that the compensation granted under the non-pecuniary heads is on the lower side but if after appropriately enhancing the compensation granted under the non-pecuniary heads, still the quantum of compensation remains the same, then it is not to be disturbed. Such a view is being taken in view of Supreme Court's decision in *Ranjana Prakash & ors. Vs. Divisional Manager & anr.* (2011) 14 SCC 639. In the instant case, under the non-pecuniary heads, composite compensation of ₹15,000/- only has been granted for '*loss of estate and consortium*'.

7. Supreme Court in *Asha Verman & ors. Vs. Maharaj Singh & ors.* (2015) 11 SCC 389 relating to an accident of the year 2006, has granted compensation of ₹1,00,000/- under the head of '*loss of consortium*'. In the instant case also, the accident is of the year 2006 and so, the compensation under the head of "*loss of consortium*" ought to be ₹1,00,000/-. There is a minor child of deceased, aged 11 years and no compensation under the head of '*loss of love and affection*' has been granted to him. In view of Supreme Court's decision in *Asha Verman (Supra)*, compensation of ₹50,000/- ought to be granted to respondent No.2 i.e. the minor child of deceased under the head of '*loss of love and affection*'. In light of Supreme Court's decision in *Asha Verman (Supra)*, the funeral expenses are liable to be increased from ₹10,000/- to ₹25,000/-. It is pertinent to note that Supreme Court in *Asha Verman (Supra)* has granted compensation of ₹1,00,000/- under the head of '*loss of estate*' and so, in the instant case also, under this head, compensation of ₹1,00,000/- ought to be granted.

8. In view aforesaid, the compensation payable to Claimant/Injured is reassessed as under: -

|              |                                                |                     |
|--------------|------------------------------------------------|---------------------|
| 1.           | <i>Loss of dependency</i>                      | ₹25,80,000/-        |
| 2.           | <i>Loss to estate</i>                          | ₹1,00,000/-         |
| 3.           | <i>Loss of consortium</i>                      | ₹1,00,000/-         |
| 4.           | <i>Loss of love and affection to the child</i> | ₹50,000/-           |
| 3.           | <i>Funeral expenses</i>                        | ₹25,000/-           |
| <b>Total</b> |                                                | <b>₹28,55,000/-</b> |

9. So far as grant of rate of interest on the compensation awarded is concerned, this Court finds that rate of interest granted by the Tribunal is on the lower side and in view of Supreme Court's decision in *Asha Verma (Supra)*, interest @ 9% p.a. ought to be awarded.

10. Consequentially, impugned Award is modified to the extent of reducing the compensation amount from ₹30,47,000/- to ₹28,55,000/- with interest @ 9% from the date of filing of the claim petition, till the deposit. If there is any excess deposit by appellant, it be refunded with proportionate interest. Rest of the deposited amount be released to respondent-claimants in the manner indicated in the impugned Award. Statutory deposit, if any, be also refunded to appellant-Insurer as per rules.

11. With aforesaid directions, this appeal is disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**APRIL 11, 2017**

r