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

Date of decision: 22.11.2023

+ **MAC.APP. 1018/2018**

SUNITA & ANR

..... Appellants

Through: Mr.Jagdev Singh and Mr.Sachin Saini, Advs.

versus

RAKESH RANGA & ANR (ICICI LOMBARD GENERAL INSURANCE CO LTD)

..... Respondents

Through: Mr.Pankaj Gupta & Ms.Suman Bagga, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 23.07.2018 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, South-West District, Dwarka Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACP No. 735/2016, titled ***Smt.Sunita & Anr. v. Sh.Rakesh Ranga & Anr.*** (hereinafter referred to as the 'Claim Petition').

2. It is the case of the appellants herein/claimants before the learned Tribunal, that on 19.09.2013, the son of the appellants, namely Mr.Mandeep Saini, was going from Rohtak to Gurgaon in a Maruti Ritz car of his friend bearing no. HR 30L 0027 (hereinafter referred to as the 'Offending Vehicle'). The same was being driven by the respondent no. 1 in a rash and negligent manner. As they reached near Reliance Petrol Pump, Jhatikara



Mor, the Offending Vehicle struck against a tree and due to the impact, the deceased suffered fatal injuries.

3. The learned Tribunal in the Impugned Award has held that the appellants have proved that the accident had taken place due to the offending vehicle being driven by the respondent no.1 in a rash and negligent manner. The accident resulted in the deceased suffering fatal injuries.

4. As far as the compensation is concerned, the learned Tribunal has awarded the following compensation in favour of the appellants:

S. No.	HEAD	AMOUNT
1	Loss of dependency	Rs. 14,98,788/-
2	For funeral expenses	Rs. 15,000/-
3	Loss of estate	Rs. 15,000/-
	TOTAL	Rs.15,28,788/- rounded of Rs.15,29,000/-

Deductions Towards Personal and Living Expenses:

5. The learned counsel for the appellants submits that the learned Tribunal in paragraph 13 of the Award, applying the judgment of the Supreme Court in *Sarla Verma (SMT) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, has held that only 1/3rd of the income of the deceased is liable to be deducted from his total income towards the personal and living expenses, however, while calculating the loss of dependency, has erred in deducting 50% of the income of the deceased towards his personal and living expenses. He submits that this inadvertent error is liable to be rectified in appeal.



6. In reply, the learned counsel for the respondent no.2 submitted that the father of the deceased cannot be treated as a dependant. He submits that the father of the deceased was aged around 52 years at the time of the accident. He submits that, in terms of the judgment of the Supreme Court in *Sarla Verma* (Supra), in the case of a bachelor, unless there is cogent evidence to the contrary showing that the father of the deceased was also dependant on him, it is only the mother who is generally treated as a dependant.

7. In rejoinder, the learned counsel for the appellants submits that the father of the deceased was not employed on the date of the accident. In support, he places reliance on the testimony of the appellant no.1, the mother of the deceased, who appeared before the learned Tribunal as PW-1. He submits that, in her evidence by way of affidavit, the appellant no.1 had stated that the deceased was contributing his entire income for the support of the family. She had also deposed that she and her family members were dependant on the earnings of the deceased son.

8. The learned counsel for the appellant further submits that in her cross-examination recorded on 30.07.2014, PW-1 further stated that the appellants have two more children who are younger to the deceased. He submits that the respondent no.2 did not challenge the testimony of the appellant no.1(PW-1) when she made the above assertions in her cross-examination.

9. He submits that, therefore, the father of the deceased was rightly treated as a dependant and, in fact, there is an error in the Impugned Award inasmuch as the other two children of the appellants should also have been treated as dependant on the deceased and the deduction towards personal and living expenses should have been confined only to 1/4th.



10. I have considered the submissions made by the learned counsels for the parties.

11. In *Sarla Verma* (Supra), the Supreme Court has held as under:

“30. 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 standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50%



as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

(Emphasis Supplied)

12. As it is evident from the above, where the deceased was a bachelor and the Claimants are the parents, as a general rule, 50% is to be deducted towards the personal and living expenses of the deceased. Further, subject to any evidence to the contrary, the father is not to be treated as a dependant and it is only the mother who would be treated as a dependant. In the absence of any evidence to the contrary, the siblings of the deceased are also not to be considered as dependants on the deceased.

13. In the present case, apart from the general statements in the Evidence by way of Affidavit made by PW-1 that the deceased was contributing his entire income towards the well-being of the family and that the family members were all dependant on the earnings of the deceased son, there was no mention in the Evidence by way of Affidavit that the father of the deceased was not working nor was there any mention of two more siblings being dependant on the deceased. It is only in the course of cross-examination, that the appellant no.1 (PW-1) stated that her husband is not employed and that they have two more children who are younger to the deceased. In fact, these children were not even made parties to the Claim Petition. Merely, because the appellant no.1, at the time of her cross-examination, makes an assertion that the husband of the deceased was not



working at the time of the accident or that they had two more children, the same cannot be accepted as proved.

14. On the other hand, the statement of the appellant no.2 was recorded by the learned Tribunal on 30.05.2018, wherein he admitted that he was running a bakery shop and was earning around Rs.5,000/- per month. Though, the learned counsel for the appellants submits that it is only after the death of the deceased that the father of the appellant, to sustain his family, had to open the bakery shop by taking a loan in that regard, he has not been able to draw my attention to any evidence in support this submission.

15. For claiming compensation, the appellants are also to prove that the other two children of the appellants were also dependant on the deceased. It is only when they meet this test that they would be entitled to claim a lesser deduction towards the personal and living expenses of the deceased. As noted hereinabove, there was no evidence before the learned Tribunal to this effect nor was the respondent no.2 granted an opportunity to test this claim of the appellants.

16. Clearly, the learned Tribunal had erred in observing that only 1/3rd of the income of the deceased is to be deducted towards his personal and living expenses. This seems to be a result of a typographical error, inasmuch as the learned Tribunal has, in fact, deducted 1/2 of the income of the deceased while calculating the loss of dependency. Allowing the present appeal on the contention raised by the appellants would, in fact, be implementing the typographical error which is contrary to the judgment of the Supreme Court in *Sarla Verma* (Supra). It appears that it is for this reason that the appellants did not approach the learned Tribunal seeking correction in the



Impugned Award insofar as it deducts 50% of the income of the deceased towards his personal and living expenses, but instead filed the present appeal. The learned Tribunal, on such application, would have clarified that the mistake in the Award is, in fact, in stating that 1/3rd of the income of the deceased is to be deducted towards his personal and living expenses and not in the calculation of the compensation payable towards loss of dependency.

17. Accordingly, I find no merit in the above challenge of the appellants. The same shall stand rejected.

Loss of Consortium:

18. The learned counsel for the appellants submits that the learned Tribunal has also erred in not awarding loss of consortium in favour of the appellants.

19. The learned counsel of the appellants submits that loss of consortium is also to be awarded to the two siblings of the deceased.

20. Placing reliance on the judgment of the Supreme Court in **Rajesh & Ors. v. Rajbir Singh & Ors.** (2013) 9 SCC 54; and **Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors.** (2009) 13 SCC 530, he submits that merely because the other two children of the appellants were not parties to the Claim Petition or the present appeal, this Court would not, on technicalities, reject or reduce the just claim of compensation of the appellants.

21. While I find merit in the submission of the learned counsel for the appellants that the appellants are entitled to compensation towards loss of consortium at the rate of Rs.40,000/- each in terms of the judgment of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi &**



Ors., (2017) 16 SCC 680, such compensation cannot be granted to the alleged siblings of the deceased who are not even parties to the claim petition or the present appeal. In fact, their very existence is sought to be established from a mere statement in the cross examination of the appellant no. 2. They are not even parties to the present appeal. They are also not the Legal Heirs of the deceased.

22. Accordingly, the Impugned Award shall stand modified to the limited extent that the Claimants shall also be entitled to compensation towards loss of consortium of Rs.80,000/-.

Rate of Interest:

23. The learned counsel for the appellants submits that the learned Tribunal has awarded interest only at the rate of 9% per annum. He submits that the same deserves to be enhanced to, at least, 12% per annum.

24. I do not find any merit in the submission made by the learned counsel for the appellants.

25. The learned counsel for the appellants has not been able to support the above challenge by any proof/material on record to show the rate of interest, as was prevalent around the period of the accident or the Award. Even otherwise, I find the rate of interest awarded by the learned Tribunal in the Impugned Award to be reasonable.

26. The challenge is accordingly, rejected.

Conclusion:

27. The compensation awarded to the appellants is enhanced by Rs.80,000/-. The same shall carry interest at the rate of 9% per annum from the date of the filing of the Claim Petition, that is, 09.01.2014, till the



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deposit thereof by the respondent no.2 with the learned Tribunal. The same shall be deposited by the respondent no. 2 with the learned Tribunal within a period of six weeks from today, with the calculations justifying the amount deposited. Intimation regarding the deposit, along with the calculations, shall also be sent by the respondent no. 2 to the learned Counsel for the appellants.

28. The amount deposited shall be released in favour of the appellants in a lump sum.

29. The appeal is disposed of in the above terms.

30. There shall be no orders as to costs.

NAVIN CHAWLA, J

NOVEMBER 22, 2023/ns/AS

Click here to check corrigendum, if any