



2024:DHC:5826



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

% **Date of order: 2nd August, 2024**

+ **MAC.APP. 857/2015**

SUMAN & ORS

.....Appellant

Through: Mr.Anshuman Bal and Ms.Divya
Saini, Advocates

versus

NATIONAL INSURANCE CO LTD & ORSRespondents

Through: Mr.Amit Kumar Singh, Ms.K.Enatoli
Sema, Ms.Chubalemla Chang and
Mr.Prang Newmai, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present appeal arises out of the award passed by the learned Tribunal in a petition/case bearing no. 526/14 filed by the legal heirs of the deceased late Sh. Raju ('the deceased' hereinafter) for compensation.
2. The appellant in the instant case is the owner of the offending vehicle and the respondent company is the insurer of the said vehicle. On 3rd August, 2014 at about 11:00 PM, the deceased was changing tyres of vehicle bearing no. HR-38P-8352 at RTR flyover, Vasant Vihar, New Delhi and was hit by an Indica car bearing no. HR-99SX(T)-8869 leading to his death.
3. Thereafter, an FIR bearing no. 455/2014 was lodged under Sections 279/337 of the Indian Penal Code, 1860 at PS Delhi Cantonment.

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 07.08.2024
17:24:50

MAC.APP. 857/2015

Page 1 of 23



2024:DHC:5826



4. Subsequently, the legal heirs of the deceased filed a petition/case bearing no. 526/14 before the learned Motor Accident Claims Tribunal. Pursuant to completion of the proceedings, the learned Tribunal passed the award dated 12th August, 2015 ('impugned award' hereinafter), thereby, awarding Rs. 18,77,000/- to the legal heirs of the deceased.

5. In the said impugned award, the learned Tribunal also held that the vehicle was being used without obtaining the requisite permit for commercial use and therefore, the insurance company was legally entitled to recover the amount from the owner/driver of the offending vehicle. Aggrieved by the same, the owner of the offending vehicle, i.e., appellant herein has filed the instant appeal seeking setting aside of the impugned award.

6. Aggrieved by the quantum of the compensation amount, the legal heirs of the deceased, i.e., the appellant herein have approached this Court for enhancement of the compensation amount.

7. Learned counsel appearing on behalf of the appellant submitted that the learned Tribunal erred in taking the salary of the deceased as per the minimum wages, whereas the deceased was a vegetable seller and earning Rs. 20,000/- per month.

8. It is submitted that the learned Tribunal erred in deducting 2/3rd towards the personal expenses of the deceased and not 3/4th as the wife of the deceased was also dependent upon him.



2024:DHC:5826



9. It is submitted that the father of the deceased was also dependent upon the deceased and therefore, the learned Tribunal ought to have considered the said factor while deciding the compensation amount.

10. It is also submitted that at the time of accident, the deceased was survived with two minor school going children and therefore, the learned Tribunal should have taken into consideration the said factor while granting compensation.

11. It is submitted that the learned Tribunal erred in calculating the overall compensation amount as it failed to rightly award compensation due to which the award amount is liable to be enhanced as per the settle position of law.

12. Therefore, in view of the foregoing submissions, the learned counsel for the appellant submitted that the present appeal may be allowed.

13. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 & 3 i.e. driver and the owner of the vehicle vehemently opposed the instant appeal submitting to the effect that the insurance company has already admitted its liability and paid the amount as awarded by the learned Tribunal.

14. It is submitted that children of the deceased going to the school does not conclude that the deceased was earning more than Rs. 20,000/- per month and no proof of payment of the school fees has been placed on the record, thus, the said contention was rightly adjudicated by the learned Tribunal.



2024:DHC:5826



15. It is submitted that the dependency of the father on the deceased is not backed by any substantial evidence and therefore, only statements made on behalf of the appellant cannot be a compelling ground to enhance the compensation amount.

16. It is submitted that the learned Tribunal had already granted a whopping amount to the appellant and seeking further enhancement of the same is not justified in any manner.

17. In view of the foregoing submissions, the learned counsel for the respondents submitted that the present appeal, being devoid of any merits, may be dismissed.

18. Heard the learned counsel for the parties and perused the record.

19. The appeal is admitted.

20. The instant appeal has been filed on behalf of the legal heirs of the deceased for enhancement of the compensation of Rs. 18,77,000/- granted by the learned Tribunal to the legal heirs of the deceased. In support of plea of further enhancement of the same, the appellants have contended that the learned Tribunal erred in taking the wages as per the Minimum Wages as the deceased was earning around Rs. 20,000/- per month (being a vegetable seller). To substantiate such a claim, the learned counsel for the appellants have submitted that the deceased is survived by two minor school going children and the same would not have been possible had the deceased been earning the amount taken as a basis by the learned Tribunal.

21. In rival submissions, the learned counsel for the respondents rebutted the above said contentions stating that the said factors are not compelling



reasons for enhancement of the compensation and since the insurance company has already paid the compensation, nothing is left in the instant case and therefore, the instant appeal may be dismissed.

22. The computation of the compensation is no more *res integra* and the decisions rendered by the Hon'ble Supreme Court in the case of ***Sarla Verma v Delhi transport Corporation, 2009 AIR SC 3104*** and ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** whereby, the Hon'ble Court laid down the factors/multipliers for computation of claims to be awarded to aggrieved parties.

23. As per the aforementioned judgments, the compensation as deemed to be awarded to the legal heirs is not subjective, rather has obtained an objective criteria and therefore, the Courts are bound to award the compensation in consonance with the same.

24. Before delving into the compensation awarded, this Court deems it appropriate to comment upon the findings of the learned Tribunal with regard to the compensation. The relevant paragraphs reads as under:

"12. My findings on the specific issues are as under:

Issue No. 1

13. As the petition has been filed U/s 166 M.V Act it was incumbent upon the petitioners to prove that the deceased sustained injuries in an accident caused due to the rash and negligent driving by the driver of the offending vehicle. To determine the negligence of the driver of the offending vehicle it has been held in National insurance Company Ltd. vs Pushpa Rana & Another 2009 Accident Claims Journal 287 as follows:

"The last contention of the appellant insurance company is that the respondents/claimants should have proved negligence on



the part of the driver and in this regard the counsel has placed reliance on the judgment of the Hon'ble Apex Court in Oriental Insurance Company Ltd. V. Meena Variyal (supra). On perusal of the award of the Tribunal, it becomes clear that the wife of the deceased had produced: (i) certified copy of the criminal record of criminal case In FIR No.955 of 2004, pertaining to involvement of offending vehicle (11) criminal record showing completion of investigation of police and issue of charge sheet under sections 279/304A, Indian Penal Code against the driver;(iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under the Motor Vehicle Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on part of the driver."

*It is established law that in a claim petition under Motor Vehicle Act, the standard of proof to establish rash and negligent driving by the driver of the offending vehicle Is not at par with the criminal case where such rashness and negligence is required to be proved beyond all shadow of reasonable doubt. In **Kaushnamma Begum and others v. New India Assurance Company Limited**, it was inter alia held by the Hon'ble Supreme Court that the issue of wrongful act or omission on the part of the driver of the motor vehicle Involved in the accident has been left to a secondary importance and mere use or involvement of motor vehicle In causing bodily injury or death- to a human being or damage to property would make the petition maintainable under Sections 166 and 140 of the Motor Vehicle Act.*

14. The case of the petitioners is that on 03.08.2014 at about 11:00 PM, the deceased was changing the tyre of vehicle



No.HR-38P-8352 which had got punctured after parking the vehicle on the correct side of the road at RTR Flyover on road towards Vasant Vihar, Delhi Cantt., Delhi when an Indica car bearing No.HR-99SX(T)-8869 came from behind at a very high speed driven most rashly and negligently and hit the deceased and the parked vehicle as a result of which the deceased was grievously Injured In the accident. The car after hitting the deceased and the parked vehicle overturned. It was averred that the accident was caused due to the negligence on the part of the driver of the Indica car. It was stated that in respect of the accident FIR No.455/2014 under sections 279/337 IPC was registered at PS Delhi Cantt. The post mortem was conducted at JPN Trauma Centre, Delhi. In para 1 of her affidavit Ex.PW1/A the petitioner No.1 stated that the deceased met with an accident on 3.8.2014 with car bearing No.HR-99SX(T) 8869 and died. The petitioners in support of their case had examined PW2 who in para 1 of his affidavit EX.PW2/A had reiterated the mode and manner of the accident as stated in the claim petition.

15. The IO had filed Detailed Accident Report containing the criminal record consisting of copy of charge sheet; copy of tehrir, copy of FIR; copy of site plan;- copy of DD; copy of MLG and copy of post mortem report, copy of arrest memo and personal search memo, copy of seizure memos; copy of mechanical inspection report of the offending vehicle, copy of the notice under Section 133 MV Act, copy of temporary registration certificate of the offending vehicle and of the vehicle of the deceased bearing No.HR-38P-8350, copy of the insurance policy of the offending vehicle and Its verification report and verification report of DL of the respondent No.1 with a copy of the DL, copy of order on application for release of the offending vehicle on superdari along with a copy of the superdarinama, copy of superdarinama in respect of the vehicle of the deceased and copies of statements under section 161 Cr.P.C. As per the FIR No.455/14 under sections 279/337 IPC,



PS Delhi Cantt. the case was registered on the basis of complaint of SI Satyaveer (on DD). As per the charge sheet the respondent No.1 has been charge sheeted for the offence under sections 279/337/304A IPC.

16. The respondents No.1 and 2 had filed the written statement averring that the allegations made against the driver of the vehicle were totally false and the deceased himself was negligent on his part. It was averred that the allegations of the claimants made in the FIR as well as in the statement of the claimants were totally false and without any base. It was denied that the accident was caused due to the sole rash and negligent driving of the driver of the offending vehicle and it was submitted that there was no negligence on the part of the respondent No.1. It was contended that on the date of the occurrence, the respondent No.1 was driving the alleged offending vehicle at a moderate speed, while complying with all traffic norms and regulations, but at the same time one other truck which was coming from backside of the alleged offending vehicle forcefully hit from backside due to which the vehicle of the respondent No.1 became imbalanced naturally and hit the divider of the road due to which the vehicle turned turtle. If then the vehicle touched or came into contact with any other vehicle, then the same was not due to any act of negligence or mistake on the part of its driver, rather the same was due to the scientific reason of force, which was given by the other truck, which was coming from the backside of the vehicle of the respondent No.1. It was averred that it was very natural that when the vehicle of the respondent No.1 was hit by the truck from behind, then all of a sudden, the balance of the vehicle of the respondent No.1 was unhandled and he himself became unconscious and sustained many injuries on his body, therefore neither he nor any other person could see the number of that actual offender truck, who remained as villain in the case. It was contended that the respondent No.1 himself sustained injuries in the accident and was medically examined at Army



Hospital, Delhi Cantt. vide MLC No.223/14 dated 03.08.2014. It was submitted that the claimants were blaming the driver of the offending vehicle only to gain compensation whereas there was no fault on the part of the driver and the driver of the offending vehicle could not be held responsible and he could not be made a scapegoat, only to satisfy the lust of compensation of the claimants. It was averred that the driver of the offending vehicle was totally innocent and had been falsely named and implicated by the claimants. The respondent No.2 had also appeared in the witness box as RIW1 but he did not state anything specifically about the manner of the accident.

17. During cross-examination by the learned counsel for the insurance company PW1 stated that her deceased husband was not alcoholic. The petitioners in support of their case had produced PW2 in the witness box and during cross-examination by the learned counsel for the Insurance company PW2 stated that the deceased Raju was uncle from his village. He used to do agricultural work. He stated that on the day of the accident, he had a holiday.

He did not remember what day it was. He stated that he had himself taken a holiday. He stated that one driver was driving the vehicle but he did not remember the name. He stated that the deceased Raju was not driving the vehicle at the time of the accident. He denied the suggestion that the deceased Raju was driving the vehicle and he was not having DL at the time of the accident. He did not know who had called on 100 number. He stated that the police had come after 10-15 minutes after the accident at the spot. He stated that the police had taken his signatures on some documents. He stated that their vehicle was stationary at the time of the accident, it was stationary as the tyre was punctured. He stated that his vehicle was parked on the left side of the road. The back lights were on and bories of vegetables were kept on the road behind the vehicle to indicate to other vehicles that the vehicle was stationary. They were kept at some distance from the vehicle. He stated that the offending



vehicle hit their vehicle from behind. He stated that the vehicle which had hit their vehicle had turned upside down. He denied the suggestion that the offending vehicle had overturned not because of hitting their vehicle but on hitting the bories. He stated that the offending vehicle had overturned immediately on hitting their vehicle and fell to its right. There were two persons in the said vehicle. He denied the suggestion that some other vehicle had hit the offending vehicle from behind due to which it hit their vehicle volunteered it was at high speed. He denied the suggestion that Raju was not injured due to the offending vehicle but by some other vehicle. He denied the suggestion that as the number of the vehicle which had hit Raju could not be traced out so the vehicle which had overturned was falsely implicated in the present case. He stated that there were 8-9 other persons in his vehicle. They were their village persons. He stated that he had taken Raju to the hospital. He denied the suggestion that he was deposing falsely in the said regard or that Raju was taken to hospital by the police volunteered they had accompanied the police persons. He denied the suggestion that their vehicle did not have a permit so the alleged offending vehicle was falsely implicated in the present case. He denied the suggestion that the accident had taken place due to the negligence of their vehicle. He denied the suggestion that he was not present in the vehicle at the time of the accident or that he had not witnessed the accident. During cross-examination by the learned counsel for the respondents No.1 and 2 PW2 denied the suggestion that there was a divider between the two vehicles. He stated that since there was no divider the question of the height of the divider being 3 feet did not arise. He denied the suggestion that as there was a divider between the two vehicles he could not see the speed of the offending vehicle.

18. PW2 was thus extensively cross-examined and. he stated that the deceased Raju was uncle from his village but nothing much turns on the same as according to PW2 he along with several other persons was travelling with the deceased. He



stated that on the day of the accident, he had a holiday and he himself had taken a holiday. He stated that the deceased Raju was not driving the vehicle at the time of the accident and there is nothing to show to the contrary and he also stated that their vehicle was stationary at the time of the accident, it was stationary as the tyre was punctured. It is true that the mechanical inspection report of the vehicle of the deceased does not specifically mention that the tyre was punctured but it states that the right side back bumper and jali were damaged and right back side light and indicator were broken which implies that it had been hit by another vehicle. PW2 reiterated that his vehicle was parked on the left side of the road and the site plan also shows that the accident had taken place towards the left side of the road. He also stated that the back lights were on and bories of vegetables were kept on the road behind the vehicle to indicate to other vehicles that the vehicle was stationary, it is significant that he stated that they were kept at some distance from the vehicle. He stated that the offending vehicle hit their vehicle from behind. It was argued by the learned counsel for the insurance company that if the bories were kept behind the vehicle of the deceased the offending vehicle could not have hit the vehicle or the deceased. However it is not necessary that the bories were kept directly behind the vehicle and PW2 had stated that the bories were kept at some distance from the vehicle. PW2 had stated that the vehicle which had hit their vehicle had turned upside down and a suggestion was put to PW2 that the offending vehicle had overturned not because of hitting their vehicle but on hitting the bories which he denied but even the respondents No.1 and 2 had not contended that their vehicle had hit the bories kept behind the vehicle and overturned.

19. It was the contention of the respondents No.1 and 2 that one truck had hit the offending vehicle due to which it became imbalanced and hit a divider and a suggestion was put to PW2 that some other vehicle had hit the offending vehicle from



behind due to which it hit their vehicle which he denied and volunteered that it was at high speed. In fact, the very fact that the offending vehicle overturned shows that it must have been at great speed irrespective of whether it was hit by another vehicle or not. The mechanical inspection report of the offending vehicle shows extensive damage to it but there is no specific damage to the backside of the offending vehicle which would have been there if it had been hit forcefully on the backside by a truck. Thus there is nothing to substantiate the contention that the offending vehicle was hit by another vehicle and it is also significant that the respondents No.1 and 2 had stated that due to hit by the truck their vehicle became imbalanced naturally and hit the divider of the road due to which the vehicle turned turtle and If then the vehicle touched or came Into contact with any other vehicle, then the same was not due to any act of negligence or mistake on the part of its driver, rather the same was due to the scientific reason of force, which was given by the other truck and as such it was not denied that the offending vehicle might have touched the vehicle of the deceased. Moreover there is nothing to show that the offending vehicle had hit the divider. A suggestion was put to PW2 that Raju was not Injured due to the offending vehicle but by some other vehicle which he denied as also that as the number of the vehicle which had hit Raju could not be traced out so the vehicle which had overturned was falsely implicated in the present case and there is even nothing to show the involvement of another vehicle in the accident. PW2 denied the suggestion that their vehicle did not have a permit so the alleged offending vehicle was falsely implicated in the present case but whether their own vehicle had a permit or not would be immaterial when it is the specific allegation that the accident had taken place due to the negligence of the offending vehicle. A suggestion was also put to PW2 that there was a divider between the two vehicles which he denied and there is even nothing to show the same and the site plan also does not show



any divider between the two vehicles. It is thus seen that nothing material has come out in the cross-examination of PW2 to doubt his testimony or to doubt that he had witnessed the accident. It was also contended by the learned counsel for the insurance company that as per the MLC the deceased was a pedestrian but nothing much turns on the same in light of the specific testimony of the witnesses. Even there is nothing to show that he was hit by some other vehicle.

20. Though RIW1 had not stated anything about the manner of the accident during cross-examination by the learned counsel for the insurance company RIW1 stated that the accident had taken place on 03.08.2014. On the day of the accident the vehicle had gone to Gurgaon as the driver wanted to visit a Temple. He stated that the police had recorded his statement volunteered he had reached the hospital. He stated that he did not go to the spot of the accident. He stated that he had met his driver Narinder in the hospital on the day of the accident. He had told him that some vehicle had hit his vehicle from behind due to which the vehicle became dis-balanced and hit against the divider and thereafter he became unconscious. He denied the suggestion that his driver Narinder was drunk when he met him in the hospital. He denied the suggestion that as the driver was drunk the police had not filed the MLC, in court. Thus RIW1 stated that he had met his driver Narinder in the hospital on the day of the accident who had told him that some vehicle had hit his vehicle from behind due to which the vehicle became dis-balanced and hit against the divider and thereafter he became unconscious but there is nothing to corroborate the same. A suggestion was put to him that his driver Narinder was drunk when he met him in the hospital which he denied and even the MLC does not show that the respondent No.1 was drunk.

21. It is thus seen that from the evidence that has come on record it is clear that the deceased and the vehicle of the deceased were hit by the offending vehicle which had



overturned. The respondents No.1 and 2 who are the driver and owner of the offending vehicle have not adduced any evidence regarding the manner of the accident to dispute the version put forth by the petitioners or in the criminal record. The criminal record has been placed on record which shows that the respondent No.1 has been charge sheeted for the offence under Sections 279/337/304A IPC. In **Basant Kaur and others v. Chattar Pal Singh and others** 2003 ACJ 369 MR (DB) it was observed that registration of criminal case against the driver of the offending vehicle was enough to record a finding that the driver of the offending vehicle was responsible for causing the accident. The respondents have also not led any evidence to prove any other version of the accident. There is no evidence from the respondents to disprove the particulars of the accident or the involvement of vehicle No.HR-99SX(T) 8869. in view of the testimony of PW1 and PW2 and the documents on record which have remained unrebutted, the negligence of the respondent No.1 has been prima facie proved. At the same time there is nothing to show the negligence of the vehicle No.HR-38P-3850 and there is nothing to show that it was parked in the middle of the road and as such there is even no merit in the contention of the respondent No.3 that the driver, owner and insurance of the vehicle No.HR-38P-3850 had not been joined as parties.

22. It was stated that due to the accident the deceased was grievously injured and died. The post mortem report is on record as per which the cause of death was hemorrhagic shock due to abdominal and pelvic injuries by blunt external force which could be possible in the circumstances mentioned. Thus it stands established that the deceased had sustained injuries in the alleged accident. This issue is accordingly decided in favour of the petitioners and against the respondents.

Issue No.2

23. Since issue No.1 has been decided in favour of the petitioners they would be entitled to compensation as per the



provisions of the Act. The petitioners are the legal representatives of the deceased being the wife, children and parents of the deceased. PW1 was cross-examined on the point of dependency and during cross-examination by the learned counsel for the insurance company PW1 stated that she was 31 years old. She stated that she got married 20 years earlier. When she was married her age was 18 years. She did not have any proof of marriage. She stated that her elder daughter Ms. Pooja was 14-15 years old. She denied the suggestion that the deceased Raju was not her husband. Thus PW1 stated that she did not have any proof of marriage but there is nothing to dispute that the petitioner No.1 is the wife of the deceased and the voter identity card of the petitioner No.1 which is Ex.PW1/3 mentions her as the wife of Rajoo and even the copy of the ration card is on record. During examination by the Tribunal the petitioner No.1 stated that she had two children. She stated that Pooja was aged about 14 years and Manish was aged about 11 years. She stated that both the children were studying. She stated that she did agricultural work and earned Rs.20,000/- to Rs.25,000/- per month. As such the petitioner No.1 had her own income and in fact the income of the deceased was stated to be also Rs.20,000/- per month and though no document has been placed on record In this respect, she would not be regarded as dependent on the deceased. However the petitioners No.2 and 3 being minor children would be regarded

as dependent on the deceased. During examination by the Tribunal the petitioner No.4 Hukum Chand stated that he was 65 years old. He stated that

he also did agricultural work and earned Rs.25,000/- to Rs.30,000/-. Thus the petitioner No.4 also had his own source of income and even otherwise being the father he would not be regarded as dependent on the deceased as per the well settled law. The petitioner No.5 Shanti stated that she was 62 years old. She stated that apart from the deceased she had two



daughters who were already married. Being the mother the petitioner No.5 would be regarded as dependent on the deceased. As such only the petitioners No.2, 3 and 5 would be regarded as dependent on the deceased.

24. The petitioners have claimed loss of dependency on the basis that the deceased was aged about 31 years at the time of the accident and he was doing his own business and was earning Rs.20,000/- per month, it was stated that the deceased used to contribute his entire income to the petitioners. It was contended that the deceased was expected to live up till the age of 80 years if he had not died in the unfortunate accident. It was submitted that the petitioners had suffered great pain, agony, mental torture and shock due to the death of the deceased. They had lost the love, affection and company of the deceased and the loss could not be compensated in terms of money. PW1 in paras 1, 2 and 3 of her affidavit Ex.PW1/A had deposed to that effect. She stated that at the time of the accident the deceased was doing business and was earning Rs.20,000/- per month. She stated that they were completely dependent upon the earnings of the deceased and he was contributing his entire income for household expenses. She stated that her husband was having very good health at the time of the accident. However the petitioners have not placed on record any document to show what the deceased was doing or how much he was earning at the time of the accident. During cross-examination by the learned counsel for the insurance company PW1 stated that her deceased husband used to sell vegetables at Azad Pur Mandi from Rajasthan. She admitted that she had not filed any proof of salary of her deceased husband. Thus PW1 stated that her deceased husband used to sell vegetables at Azad Pur Mandi from Rajasthan. She admitted that she had not filed any proof of salary of her deceased husband and as such she herself stated that she had not filed any proof of salary of her deceased husband. There is" nothing on record to show



what the deceased was doing or how much he was earning or to show that he was earning Rs.20,000/- per month.

There is even nothing to show the educational qualifications of the deceased or to show that he had acquired any skill. In the absence of any documentary evidence, the income of the deceased would have to be computed on the basis of minimum wages for an unskilled worker prevalent on the date of the accident i.e. 3.8.2014 which were Rs.8,554/- per month. Accordingly the income of the deceased for the computation of loss of dependency is taken as Rs.8,554/- per month.

25. It is the case of the petitioners that the deceased was 31 years of age at the time of the accident and it was so stated in the claim petition and PW1 had also deposed to that effect. During cross-examination by the learned counsel for the insurance company PW1 stated that she did not know the age of her deceased husband at the time of the accident. Thus PW1 stated that she did not know the age of her deceased husband at the time of the accident. Copy of the voter identity card of the deceased is Ex.PW1/2 as per which the age of the deceased as on 1.1.2003 was 21 years. Thus the age of the deceased would be more than 32 years on the date of the accident i.e.3.8.2014. As per the judgment of the Hon'ble Supreme Court in Saria Verma and others v. Delhi Transport Corporation and others 2009 ACJ 1298 (SC) the multiplier of 16 applies for calculating the loss of income where the age of the deceased is 31 to 35 years.

*26. As observed above the dependents on the deceased are his two children and mother. As per the judgment of the Hon'ble Supreme Court in Saria Verma's case as the number of dependents was 3 there would be 1/3rd deduction towards personal and living expenses of the deceased. As regards the future prospects a 3-judge bench of the Hon'ble Supreme Court in a recent judgment in **Munna Lai Jain and another v. Vipin Kumar Sharma and others** Civil Appeal No.4497 of 2015 decided on 15.5.2015 has relied on the judgment in **Rajesh and***



Ors. v Rajbir Singh and Ors. 2013 (6) SCALE 563 where in the Hon'ble Supreme Court held as under (In the case decided on 15.5.2015 the question was of grant of future prospects to self-employed victim below 40 years):

"11. Since, the Court in Santosh Devi's case (supra) actually Intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; It will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% In the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

As such the petitioners would be entitled to addition of 50% of the income towards future prospects as the deceased was less than 40 years old. Accordingly the loss of dependency as per the monthly income i.e. Rs.8,554/- is calculated as under:

Rs.8,554/- X 12 (annual) - Rs.34,216/- (i.e. 1/3rd towards personal expenses) = Rs.68,432/- + Rs.34,216/- (50% towards future prospects) = Rs.1,02,648/- X 16 (multiplier) = Rs.16,42,368/- (rounded off to Rs.16,42,000/-).



27. The petitioners are also entitled to compensation for loss of love and affection, loss of consortium, loss of estate and funeral expenses.

The total compensation is determined as under:

Loss of dependency: Rs.16,42,000/-

Love and affection: Rs.1,00,000/-

Loss of Consortium: Rs.1,00,000/-

Loss of Estate: Rs.10,000/-

Funeral expenses: Rs.25,000/-

Total: Rs.18,77,000/-

Thus, the total compensation would amount to Rs.18,77,000/-

RELIEF

28. The petitioners are awarded a sum of Rs.18,77,000/- (Rs.Eighteen Lacs

Seventy Seven Thousand only) along with interest @ 9% per annum from the date of filing of the claim petition till its realization including, interim award, if any already passed against the respondents and in favour of the petitioners. Ito petitioners No.2 and 3 Pooja and Manish would be entitled to 20% share each in the awarded amount; the petitioner No.4 Shri Hukum Chand would be entitled to 5% share in the awarded amount; the petitioner No.5 would be entitled to 15% and the petitioner No.1 i.e. Smt. Suman would be entitled to 40% share in the awarded amount (as she would also have the responsibility of bringing up the children).

25. Upon perusal of the impugned award, it is made out that the learned Tribunal had calculated the amount on the basis of table provided by the Hon'ble Supreme Court in the *Sarla Verma Case (supra)* whereby, the future prospects were taken into account while calculating the compensation to be awarded to the legal heirs of a deceased.



26. In the impugned award, the learned Tribunal had quantified the compensation on the basis of the minimum wages as the deceased was not employed at a fixed salary, and was engaged in the profession of vegetable vendors.

27. In the instant appeal, the learned counsel for the appellants has argued that the deceased was earning around Rs. 20,000/- per month, however, the material on record does not substantiate the same and in absence of any concrete proof, this Court is bound to take the minimum wages as the earning of the deceased.

28. Since the profession of the deceased is that of an unskilled labor, this Court does not have a choice but to uphold the minimum wages as granted by the learned Tribunal as the dictum laid down by the Hon'ble Supreme Court is binding upon the Courts dealing with the matters pertaining to motor accident claims.

29. On the aspect of deduction towards personal expenses, the learned Tribunal deducted 1/3rd amount towards personal expenses, and calculated the compensation on the rest of the amount.

30. With regards to the same, it is the contention of the appellants that the deceased survived with a wife and two children and the father of the deceased was also dependent on him, therefore, the said deduction should have been restricted to 1/4th of the income.

31. In response to the same, the findings given by the Hon'ble Court in the case of *Sarla Varma (supra)* needs to be met. The relevant paragraphs with regard to the same reads 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 [(1996) 4 SCC 362] , 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.”

32. Since the aforesaid case provides for deduction of 1/4th amount towards personal expenses if the number of dependents are in the range of 4-6, this Court deems it appropriate to calculate the same on the basis 1/4th deduction and not 1/3rd as calculated by the learned Tribunal.

33. The above said matrix was also upheld by a larger bench of the Hon’ble Court in **Pranay Sethi (supra)** and therefore, there is no dispute about the validity of the matrix as provided by the Hon’ble Court.

34. In the instant case, along with 2 children and a wife, the deceased was also responsible for the caretaking of his father and therefore, this Court deems it appropriate to consider his father as a dependent of the deceased.

35. In view of the above, the deduction towards personal expenses would decrease to 1/4th of the monthly income and hence, this Court deems it appropriate to change the total compensation in the following manner:

36. Monthly income of the deceased = Rs. 8,554/-

Multiplier = 16



2024:DHC:5826



37. Annual income = Rs. 8,554/- x 12 - Rs. 2,562/- ($\frac{1}{4}$ towards personal expenses) = Rs. 76,986

- Addition of 50% towards future prospects = Rs. 76, 986/- + 38, 493/-
= Rs. 1,15,479 /-

- Application of multiplier of 16 = Rs. 1,15,479/- x 16
= Rs. 18, 47, 664/-

Thus, the total compensation is determined as under:

Loss of dependency	Rs. 18, 47, 664/-
Loss of love and affection	Rs. 1,00,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of Estate	Rs. 10,000 /-
Funeral expenses	Rs. 25, 000 /-
Total	Rs. 20, 82, 664 /-

Accordingly, the impugned order stands modified only in terms of the amount awarded under the head of 'loss of dependency'.

38. The dictum of the Hon'ble Supreme Court with regard to the compensation to be awarded to the victims of the motor accidents clearly makes it evident that the legislation has been drafted with the intent of social welfare.

39. Since the legislation is a social welfare legislation, a duty has been cast upon the Courts of this country to give justice to the aggrieved families, therefore, the Courts are duty bound to act in a sympathetic manner and provide compensation on the said basis.



2024:DHC:5826



40. In the instant case, the appellants herein have suffered an irreparable loss and the deceased being the sole earner was responsible to make ends meet for the entire family, therefore, this Court has taken the sympathetic view and enhanced the compensation in light of the matrix provided by the Hon'ble Supreme Court in *Sarla Verma (supra)* case.

41. In view of the foregoing discussions, the impugned award dated 12th August, 2015 passed by the learned Motor Accident Claims Tribunal-2, New Delhi in case bearing no. 526/14 stands modified in view of the aforesaid terms and the instant appeal is allowed.

42. This Court directs the respondent insurance company to pay the difference in compensation as against the amount awarded by the learned Tribunal to the appellant within a period of thirty days from today after adjusting the amount already deposited/paid.

43. Accordingly, the appeal stands disposed of along with the pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 2, 2024 DY/AV/RYP

Click here to check corrigendum, if any