**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-5734-2014 &
XOBJC-222-CII-2018(O&M)
Date of decision : 08.08.2025**

Ram Sudhari Mishra and another ...... Appellants

versus

Vishnu Dutt and Ors. ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. K.D.S. Hooda, Advocate and
Mr. Yashwan Hooda, Advocate
for respondents No.1 and 2/cross-objectors.

Mr. Paul S. Saini, Advocate and
Ms. Alisha Rai, Advocate
for respondent No.3.

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<u>PANKAJ JAIN, J. (Oral)</u>

1. This is an appeal filed by claimants seeking enhancement of compensation awarded by MACT, Chandigarh.

2. Claimants sought compensation on account of death of Anand Kumar Mishra, who lost his life at the age of 23 years in an unfortunate motor vehicular accident dated 04.07.2012. Claimants are mother and father. Father claims to be fully dependent upon his son. The case of the claimants is that the deceased was the only earning member of the family. Father is suffering from chronic illness since long and there are two unmarried sisters in the family. The primary ground for seeking enhancement in the appeal, is deduction of 1/2 made by Tribunal, even though there was evidence that both the parents are

fully dependent upon the deceased son.

3. Counsel for the appellant-claimants asserts that deduction of 1/2 in the case of death of a bachelor in a motor vehicular accident is not a thumb rule. The principle is not inelastic and is subject to exceptions which have been laid down by Supreme Court in the case of ***'Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121*** itself. He submits that the father is supposed to have his own income and is considered not a dependent. Such presumption is rebuttable. Once there is evidence on record to prove that father was dependent upon the deceased, he has to be treated as dependent and deduction of 1/2 will not be applicable in order to calculate the dependency and the same has to be 1/3rd.

4. *Per contra*, Mr. Saini argues that Tribunal has rightly deducted 1/2 to calculate the dependency and the Tribunal has considered ratio of law laid down in ***Sarla Verma's*** case to arrive at a conclusion that the deduction of 1/2 needs to be applied.

5. Having heard counsel for the claimants and the insurance company, this Court finds that the Tribunal completely misread the ratio of law laid down in ***Sarla Verma's case (supra)***. While dealing with the cut to be imposed in the case of bachelor to calculate dependency, it was observed as under:-

> "Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per cent 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 parent(s)

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 dependent and the mother alone will be considered as a dependent.** In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family. However, where 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".

26. It is clear from the above that the reason behind deducting 50% towards personal and living expenses is the possibility of the bachelor getting married in a short time and also because his father is likely to have his own income. The documents Ex P-10, Ex P-11 show that father of the deceased was taking treatment free of costs from the government hospital. **Even if claimant no.2 was dependent on the deceased, it shall not be appropriate to deduct 1/3rd towards his personal living expenses as the deceased would have been married in a short time**.

6. Therefore, perusal of the afore reproduced ratio of law laid down by Supreme Court leads to the inference that even though father is not to be considered as dependent as the law presumes that he is likely to have his own income, however, where the evidence comes to the contrary, the same has to be considered. Applying the aforesaid principle to the present case, Tribunal itself recorded the finding that there is evidence that claimant No.2, i.e. father was dependent upon the deceased, yet denied 1/3 deduction and applied 1/2 deduction without

offering any reason. Merely for the fact that the deceased would have married in a short time does not mean to a conclusion that the son after marriage would have ignored his parents. In view of above, this Court finds that the Tribunal erred in applying 1/2 deduction which ought to have been 1/3. Future prospects of 50% have been rightly applied. Multiplier of 18 is apt. Both the parents will be entitled for an amount of Rs.48,400/- each for loss of consortium. Rs.20,000/- for funeral expenses along with Rs.20,000/- for loss of estate.

7. There is yet another issue raised by the owner, i.e. insured on issue No.2, as the Tribunal has fastened liability upon the insured. Mr. Hooda refers to the findings recorded by the Tribunal regarding absence of a valid license for light goods vehicle and submits that the same is not sustainable in view of ratio of law laid down by Constitution Bench in the case of ***M/s. Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi and others 2025(3) SCC 95***, wherein it has been concluded as under:-

> (I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the MV Act specifically for the 'Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods. (II) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

> (III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.
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> (IV) The decision in Mukund Dewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment."

8. The owner has also filed cross-objections to the said effect even though with a delay of 1636 days. Mr. Saini has raised serious objection regarding maintainability of the cross-objections. It has been contended that cross-objections are not maintainable against co-respondent. The liability having been fastened upon the cross-objector. The proper course would have been to file separate appeal by paying statutory amount of Rs.25,000/-. He further submits that the cross-objections have been filed after an inordinate delay of 1636 days, that too, pleading that they were under the impression that it is the insurance company which is held liable which is an afterthought and is not sustainable being against the record. Mr. Hooda submits that subsequent to filing of the cross-objections, now the owner has also deposited statutory amount of Rs.25,000/- and on his oral request, the cross-objections be treated as appeal.

9. In the considered opinion of this Court, keeping in view that the pure legal issue has been now laid to quietus by the larger Bench, this Court is under bounded duty under Order XLI Rule 33 CPC

to correct the finding recorded by the Tribunal.

10. In ***Rameshwar Prasad & Ors. v. Shambehari Lal Jagannath & Anr., 1964 (3) SCR 549***, the three-Judge Bench speaking through Raghubar Dayal, J. observed that Rule 33 provides as to what the Appellate Court can find the appellant entitled to and empowers the Appellate Court to pass any decree and make any order which ought to have been passed or made in the proceedings before it and thus could have reference only to the nature of the decree or order in so far as it affects the rights of the appellant. It further empowers the Appellate Court to pass or make such further or other, decree or order, as the case may require.

11. In ***Harihar Prasad Singh & Ors. v. Balmiki Prasad Singh & Ors. (1975) 1 SCC 212***, the following statement of law made by Venkatarama Aiyar, J. (as His Lordship then was) in the Division Bench decision in ***Krisham Reddy v. Ramireddi, AIR 1954 Madras 848*** was cited with approval which clearly brings out the wide scope of power contained in Rule 33 and the illustration appended thereto, as also the limitations on such power:

> "Though Order 41, Rule 33 confers wide and unlimited jurisdiction on Courts to pass a decree in favour of a party who has not preferred any appeal, there are, however, certain well-defined principles in accordance with which that jurisdiction should be exercised. Normally, a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him under Order 41, Rule 33.
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> But there are well-recognised exceptions to this rule.

> One is where as a result of interference in favour of the appellant it becomes necessary to readjust the rights of other parties. A second class of cases based on the same principle is where the question is one of settling mutual rights and obligations between the same parties. A third class of cases is when the relief prayed for is single and indivisible but is claimed against a number of defendants. In such cases, if the suit is decreed and there is an appeal only by some of the defendants and if the relief is granted only to the appellants there is the possibility that there might come into operation at the same time and with reference to the same subject-matter two decrees which are inconsistent and contradictory. This, however, is not an exhaustive enumeration of the class of cases in which courts could interfere under Order 41, Rule 33. Such an enumeration would neither be possible nor even desirable."

12. In three-Judge Bench, Supreme Court in ***Nirmala Bala Ghose & Anr. v. Balai Chand Ghose & Anr. 1965 (3) SCR 550*** held that:-

> "The rule is undoubtedly expressed in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. Where in an appeal the Court reaches a conclusion which is inconsistent with the opinion of the Court appealed from and in adjusting the right claimed by the appellant it is necessary to grant relief to a person who has not appealed, the power conferred by O.41 R.33 may properly be invoked. The rule however does not confer an unrestricted right to re-open decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from." (Para 22)"

13. The ratio laid down by Supreme Court being law of land, this Court thus finds it to be a fit case where the error committed by Tribunal needs to be corrected, irrespective of the fact that appeal has not been filed against the same.

14. In view of the aforesaid ratio, this Court finds that finding recorded by the Tribunal holding owner to be liable run contrary to the law laid down by Constitution Bench and thus cannot be sustained. Resultantly, the findings are ordered to be reversed. Enhanced amount shall also bear interest @ 6% interest from the date of filing of the petition till the date of actual realization.

15. In view of above, appeal as well as cross-objections are disposed off.

(PANKAJ JAIN)
JUDGE

08.08.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No