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**(2014) 03 RAJ CK 0023**  
**In the Rajasthan High Court**  
**Case No : Civil Misc. Appeal No. 5278/2009**

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|-------------------------|----|------------|
| Niyamat Bano and Others | Vs | APPELLANT  |
| Tara Chand and Others   |    | RESPONDENT |

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**Date of Decision :** 21-03-2014

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 166, 173

**Citation :** (2014) 03 RAJ CK 0023

**Hon'ble Judges :** J.K. Ranka, J

**Bench :** Single Bench

**Advocate :** Harsh Saini, Advocates for the Appellant; Praveen Jain, Advocates for the Respondent

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## Judgement

J.K. Ranka, J.—The instant civil misc. appeal has been filed by the appellant Insurance Company under Section 173 of the Motor Vehicles Act against the impugned award dated 10.8.2009 passed by the MACT Sikar (Raj.) in claim case No. 166/2008, whereby the Tribunal passed an award granting a sum of Rs. 13,85,304/- as compensation on different counts to the claimants.

2. The brief facts as emerging on the face of record are that a claim petition came to be filed by the claimants namely wife and daughters and mother of the deceased for grant of compensation to the tune of Rs. 2,15,10,000/- before the Tribunal under Section 166/140 of the M.V. Act stating therein that deceased Yakub Khan aged 37 years was engaged in the profession of Green International & Travels Service, which was registered with Indian Labour Ministry, in addition thereto he was possessing Agency, sub-dealership, brokership for the purpose of putting shares on account of which he was earning monthly Rs. 35000/-. It was averred that on 1.3.2007 deceased Yakub Khan was going by his car bearing No. R.J. 14 C 3838 from Fatehpur to Sikar side in which Company Agent Deepa Mathur was also in the car, he was driving his car at his side with a moderate speed. In the evening at about 5 O' Clock they reached near Bathod Bus Stand at that time a half body Truck bearing No. R.J. 23 G 2320 came from Sikar side

with high speed and was being driven by non-petitioner No. 1 rashly and negligently, on seeing that deceased Yakub Khan stopped his car near road side, but the non-petitioner No. 1 brought the Truck on wrong side and hit the car of the deceased and dragged the car four about 100 ft. and on account of dragging the car fell down in a ditch and thereafter the Truck moved over the car due to which deceased and Deepa Mathur got stuck in the car and they came out after removing the truck. Both were got admitted in Fatehpur hospital from where they were carried to Sikar. Deceased Yakub Khan died on the way. The report of the incident was lodged at Police Station, Fatehpur on which case No. 16/2007 was registered and after investigation a charge-sheet was submitted before the ACJM Court, Fatehpur. It was alleged that the accident occurred due to rash and negligent driving by the driver non-petitioner No. 1. The non-petitioner No. 2 is registered owner of the said Truck and for his benefit the non-petitioner No. 1 was driving the Truck. The said Truck of non-petitioner No. 2 was insured with non-petitioner No. 3 and they were liable to pay the compensation. It was stated in the claim petition that after the death of deceased Yakub Khan there was no source of income in the family. The claimants claimed a sum of Rs. 2,15,10,000 as compensation on different counts.

3. In reply to claim petition, the non-petitioners No. 1 & 2 denied the averments made in Paras Nos. 1 to 15 and admitted that Truck bearing No. R.J. 23 G 2320 was under ownership of non-petitioner No. 2 and was insured with non-petitioner No. 3. It was alleged that the claimants have made an exorbitant claim. Therefore, it was prayed that the claim against non-petitioners Nos. 1 & 2 should be dismissed.

4. In the preliminary objections of the reply the non-petitioner No. 3 Insurance Company stated that at the time of the accident, the driver of the offending vehicle was not having an effective and valid licence and on violation of condition of insurance policy they are not liable to pay compensation. Contributory liability should be taken into consideration as the deceased himself was driving the car rashly and negligently. In para-wise reply to the petition, they denied the averments on account of lack of knowledge of the facts. It was alleged that the claimants have filed an exorbitant claim and in the light of preliminary objections, the Insurance Company is not liable to pay any compensation and prayed to dismiss the petition.

5. The Tribunal after hearing the counsel for the parties framed as many as 3 issues including the issue of relief for the purpose of decision of the claim petition. In support of their claim, the claimants adduced evidence of A.W. 1 Mukesh Mathur, A.W. 2 Niyamat Bano, A.W. 3 Suresh Kumar and got exhibited number of document in documentary evidence. The Tribunal after hearing the counsel for both the parties and perusing the evidence and material available on record passed the impugned award granting compensation to the tune of Rs. 13,85,304/- on different counts to the claimants. Hence this appeal.

6. Counsel for the appellants submitted that on account of this unfortunate

accident, the deceased died on 01/03/2007 and was engaged in the profession of tour & travel and had been tax payer and had sufficiency of income. As per the Tribunal, though his income ranged about Rs. 1,50,000/- but the Tribunal has wrongly computed the income after consolidating the income for the last three years and averaging the same, is not proper. He contended that income for the last assessment year i.e. before the death should have been the proper basis for computing the income. He further contended that the dependents are six and therefore, deduction ought to have been 1/5 rather than 1/3 as per judgment of the Hon''ble Apex Court in the case of Sarla Verma and this finding of the Tribunal that since the Tribunal is following 1/3, therefore, it seems proper, is not proper. Judgment of the Hon''ble Apex Court is supreme and ought to have been followed in letter and spirit. He further contended that the Tribunal has allowed only Rs. 35,000/- by way of loss of love and affection etc. which is too little in the facts and circumstances of the case as the dependents are more. With reference to future prospects, he contended that it deserves to be allowed in the light of the judgment rendered by the Hon''ble Apex Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, as also in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, and accordingly pleaded for enhancement of the claim based on the judgments rendered by the Hon''ble Apex Court from time to time.

7. Per-contra, Id. counsel for the respondents submitted that the Tribunal, after having considered the issue at length for an incident which happened on 01/03/2007, has allowed the claim of Rs. 13,85,000/- which is quite reasonable, just and proper, hence no interference is required to be called for. He further contended that the future prospects is not to be allowed as the deceased was only an agent and he may not have permanency or sufficiency of income and even as per the income tax returns, he had incomes which had wide variation. He further contended that the amount allowed by way of love and affection at Rs. 35,000/- cannot be said to be unreasonable or low. He further contended that if the income tax returns is to be based and the income is computed on the basis of income tax return, then income tax payable has to be reduced as per the judgment of the Hon''ble Apex Court rendered in the case of Shyamwati Sharma and Others Vs. Karam Singh and Others, . With reference to future prospects, he relied upon judgment rendered in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Counsel for the respondents further contended that income even as per the income tax return has to be seen on the basis of income under the head of business and profession and not fixed income, say the property income or income from interest and he contended that the same deserves to be excluded for consideration of actual income.

8. I have considered the arguments advanced by counsel for the parties and perused the impugned order as also the judgments, cited at bar.

9. In my view, the Tribunal has rightly accepted the income shown in the returns

of Income under Income Tax Act. Though submission of counsel for the respondents may be correct to an extent that if the person has fixed income namely; income from house property or income from other sources, then the same is required to be reduced as even after death the legal heirs would continue to get such an income which is fixed, however, in my view, the same can be said to be proper only with reference to the income from house property but not the income from other sources which may be arising out of the interest on fixed deposits or other bank interest etc. and one cannot say that the legal heirs will continue to maintain or have regularity of income from other sources namely; interest etc and therefore, in my view, the contention can be accepted only in so far as the income from house property is concerned.

10. I have perused the computation of income so also acknowledgements of the return of income of the deceased and I do notice that apart from the income from business the deceased had no income from house property and therefore, the question of deduction/reduction in so far as income from property is concerned, goes away. Even on income from other sources (income from interest etc.) it is noticed that the deceased had just an FDR of Rs. 75,000/- only as on 31/03/2006 the last return submitted by the deceased/legal heirs and which shows accrued interest on the said FDR at Rs. 4,470/- only. Therefore, in my considered view, it is also not required to be reduced as the amount of FDR is too small and could have been spent immediately after death and I would proceed with the income as adopted by the Tribunal at Rs. 1,25,278/-. However, the contention of counsel for the respondents about deduction of tax is acceptable and on the aforesaid income of Rs. 1,25,278/- the tax liability was to the extent of Rs. 2,528/- and accordingly the same is required to be reduced. Since the dependents are six in number, therefore, in the light of the judgment rendered by the Hon''ble Apex Court in the case of Sarla Verma (supra), the deduction should be 1/4 and the multiplier to be adopted should be 15.

11. With reference to future prospects, while the counsel for the appellant relied upon judgments rendered by the Hon''ble Apex Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, as also judgment in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, , the counsel for the Insurance Company relied upon the judgment rendered by the Hon''ble Apex Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, as also the judgment rendered in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . This Court in the case of Jagdish & Ors. v. Abdul Habib & Ors. (S.B. CIVIL MISC. APPEAL No. 3690/2008) decided on 4th March, 2014 has considered this issue at length after considering the judgments rendered by the Hon''ble Apex Court in the case of Rajesh and Ors. v. Rajbir Singh and Ors. (supra), Santosh Devi v. National Insurance Company Ltd. and Ors.(supra), Reshma Kumari & Ors. v. Madan Mohan & Anr.(supra), Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (supra) as also the latest judgments of the Hon''ble Apex Court in the case of Sanjay Verma Vs. Haryana Roadways, , G. Dhanasekar v. M.D., Metropolitan Transport Corporation Ltd.

(Civil Appeal Nos. 2008-09/2014 arising out of SLP Nos. 35565-35566 decided on 12.2.2014, Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, and also earlier judgments rendered by this Court in the cases of RSRTC Vs. Pusha Ram and Others, , Savita Sharma Vs. Kailash Chand, and this Court in the case of Sona & Ors. v. Ajit Mohammad & Ors. (CMA No. 3120/2009) decided on 18.9.2013. In my view, considering the above authorities, the future prospects is to be allowed both in case of a person who had permanency in employment may be government or otherwise so also to be allowed in a case of self employed person with having sufficient stability and steadiness in source of income and can be allowed in the case, where a person may be earning on daily basis, monthly basis or even seasonal basis as they also increase their income/charges after some time as the cost of living increases and the prices of essentials go up. The Government also increases wages as also other emoluments on periodical basis based on the index, accordingly it would be appropriate to allow future prospects as it can be said that there was steady income. Since the deceased was aged about 38 years, therefore, future prospects will be enhanced by 50% of the income. Thus, the compensation is recomputed here under:--

12. Accordingly the appeal is partly allowed. The total compensation is enhanced by Rs. 7,35,100/- i.e. Rs. 21,20,410/- as against Rs. 13,85,304/-. The enhanced amount will also carry interest at the rate of 6% per annum from the date of award till the actual payment. The Tribunal is directed to deposit 40%, 10%, 10%, 10%, 10% & 20% of the enhanced amount along with interest rounded off to the nearest thousands in the joint names of wife, three daughters, one son and separately in the account of mother of the deceased in the Monthly Income Scheme(MIS) of the nearest Post Office of the residence of the claimants for a period of five years with the direction to permit withdrawal of monthly interest/quarterly interest on the said Monthly Income Scheme to their account. It is made clear that the appellants will be allowed interest only as aforesaid and full amount on its maturity and will not be allowed to take loan or pledge the same with Post Office or raise loan on the said MIS. The above exercise to be done within a period of two months from the date of receipt of certified copy of this order. It is also made clear that MIS will be renewed from time to time in the case of minor sons and daughters till they attain the age of majority.