

(2017) 03 JH CK 0110
In the Jharkhand High Court
Case No : 314 of 2013

Sarita Devi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 140](#),
[Section 140](#) - Liability to pay compensation in certain cases
on the principle of no fault

Citation : (2017) 03 JH CK 0110

Hon'ble Judges : Amitav K. Gupta

Bench : SINGLE BENCH

Advocate : Rajiv Anand, Nikhil Ranjan, Prashant Vidhyarthi

Judgement

1. This appeal has been preferred by the respondentclaimants for enhancement of the awarded compensation amount of Rs.3,16,400/with interest at the rate of 9% from 03.09.2008 by the Principal District JudgecumPresiding Officer, Motor Accident Claims Tribunal (for short M.A.C.T) Lohardaga, in Compensation Case No.42/2008.

2. The claimants are the wife and daughters of the deceased, Banmali Singh, who was employed in GDS BPM Masmano Post Offoce in Lohardaga district. That he was drawing a salary of Rs.3,000/per month and also had agricultural income of Rs.3,000/per month. That he died in a motor accident on 20.02.2007 on being run over by truck no.BR42G2424 at Kanda Chowk, Lohardaga. On account of the said accident, Senha P.S Case No.16/2007 corresponding to G.R No.89/2007 was registered and on investigation, chargesheet was laid against the driver of the offending vehicle.

3. Learned counsel for the appellantclaimants has argued that admittedly deceased is survived by th daughters i.e. five daughters and his wife (widow). That considering the number of dependents, the court below should have deducted only 1/10th of the income of the deceased towards his personal

expenses and has relied on the decision rendered in the case of Santosh Devi Vs. National Insurance Company Ltd. & Ors. reported in 2012 (3) TAC 1 (SC). It is argued that the Tribunal has erred in assessing the income of the deceased only on the basis of salary and not adding the agricultural income of Rs.3,000/-. It is argued that a meager amount of Rs.2,000/-, Rs.5,000/and Rs.2,500/respectively, has been awarded towards the conventional heads of funeral expenses, loss of consortium and loss of estate but no amount has been awarded for loss of love and affection suffered by the children. Learned counsel has relied on the decision of Hon''ble the Supreme Court in the case of Asha Verma & Ors. Vs. Maharaj Singh & Ors. reported in 2015 (2) T.A.C 299 (SC) and urged that the amount should be enhanced under the conventional heads. It is contended that respondentclaimants have not been paid a single farthing of compensation amount or the interim compensation awarded under section 140 of the M.V. Act, till date.

4. Mr.Prashant Vidhyarthi, learned counsel for the respondentInsurance Company, while supporting the impugned judgment/award has admitted that considering the number of dependents the Tribunal should have deducted 1/5th towards personal expenses and not 1/3rd. It is argued that Tribunal has not committed any error in not adding the agricultural income, while assessing the actual income, because no document was produced by the appellants in support of the claim of agricultural income. It is submitted that the deceased was aged more than 50 years on the date of accident and ratio laid down in Santosh Devi (supra) is not applicable in view of the decision laid down in Sarala Verma's case [(2009) 6 SCC 121] and Reshma Kumari's case [(2013) 9 SCC 65] wherein it has been held that no addition of income towards future prospect is to be made in case the deceased is aged more than 50 years. It is submitted that one daughter is married and other daughters were of marriageable age at the time of the accident and the possibility cannot be ruled out that they might have been married by now. It is argued that amount awarded towards funeral expenses, loss of consortium and loss of estate is in accordance with the price index prevailing at that point of time, hence the contention that the amount is required to be enhanced is not tenable. It is submitted that the decisions relied on by the counsel for the appellants are not applicable to the facts of the instant case.

5. Heard. Admittedly the deceased was a salaried person and aged about 54 years. In the case of Rajesh & Ors. Vs. Rajbir Singh & Ors. reported in (2013) 9 SCC 54, Hon''ble Supreme Court has considered the ratio laid down in the case of Sarala Verma Vs. Delhi Transport Corporation [(2009) 6 SCC 121] and the discussions made in Santosh Devi Vs. National Insurance Co. Ltd. [(2012) 6 SCC 421] and held that Supreme Court in Sarala Verma's case did not intend to lay down an absolute rule neither any straightjacket formula was intended to be laid down barring addition of income towards future prospect. It was held that decisions in such cases required reversion and in the absence of any absolute rule, there is no bar for the court or tribunal in awarding fair, reasonable and equitable compensation. As noticed the deceased was 54 years of age and had

he survived, he would have continued to be in the service upto the age of 60 years and there would be increment in salary due to increment in dearness allowance. In the case of *Rajesh & Ors. Vs. Rajbir Singh & Ors.*, it has been held that 15% of the income should be added towards future prospect when the deceased is more than 50 years. Therefore, keeping in view the beneficial scheme of the Act, the income of the deceased is computed at Rs.3058/+ addition of 15% towards future prospect = Rs.3517/. On the relevant date, the deceased had four daughters some of whom were of marriageable age and in such circumstances the deceased would have spent frugally on himself, so as to save money with a view and in order to provide and meet the expenses for marriage of his daughters. In the obtaining evidence and circumstances of the case, deduction of 1/10th of the income towards the personal expenses of the deceased will be just and reasonable. No document has been produced by the claimants in support of the agricultural income, moreover, even if it is presumed that he had agricultural income, the land is still available for cultivation and enjoyment of the produce of the land. The Tribunal has not awarded any amount towards nonpecuniary damages i.e loss of love and affection suffered by the children and the amount awarded towards funeral expenses and loss of estate and loss of consortium is very meager, accordingly it will be just, reasonable and equitable to award a lump sum of Rs.3,50,000/towards funeral expenses and loss of estate and loss of love and affection and loss of consortium.

6. Therefore, the annual income of the deceased is assessed at $\text{Rs.}3517 \times 12 = \text{Rs.}42,204/$. 1/10th of the income is deducted towards personal expenses, accordingly the annual loss of dependency is assessed at Rs.37,980/. The deceased was aged 54 years hence the multiplier applicable is 11. The total loss of dependency is assessed at $\text{Rs.}37,980 \times 11 = \text{Rs.}4,17,780/$. Lump sum amount of Rs.3,50,000/is awarded towards loss of consortium, love and affection, suffering and pain, loss of estate and funeral expenses. Therefore, the claimants are entitled to be paid the compensation amount of Rs.4,17,780/plus Rs.3,50,000/= Rs.7,67,780/. The respondent Oriental Insurance Company Limited is directed to pay the amount of Rs.7,67,780/with interest at the rate of 9% in terms of the order of the court below within two months from the date of receipt of this order, failing which they shall be liable to pay interest @ 12% on the outstanding amount from the date of the order of this Court. The impugned judgment and award is modified to the extent as indicated above. Accordingly the appeal stands disposed off.