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**(2015) 05 RAJ CK 0096**

**In the Rajasthan High Court**

**Case No :** Civil Misc. Appeal Nos. 733 and 734 of 2000

Sarla and Others

APPELLANT

Vs

Ramesh Chandra and Others

RESPONDENT

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**Date of Decision :** 08-05-2015

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 279, 304A

**Citation :** (2015) 05 RAJ CK 0096

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** Rajesh Panwar and Vikas Balia, for the Appellant

**Final Decision :** Disposed off

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## **Judgement**

Vineet Kothari, J.—Both these misc. appeals filed by the appellants/claimant are being disposed of by this common order. In the present misc. appeals, service upon the first respondent/driver was dispensed with vide order dated 04.04.2003.

2. The appellants/claimants laid a claim before the learned Motor Accident Claims Tribunal, Jodhpur, claiming compensation of Rs. 24,22,000/- and Rs. 23,62,000/- respectively on account of death of Sh. Hukmaram (CMA No. 734/2000) and Sh. Mooldan Charan (CMA No. 733/2000), who lost their life in an accident which took place 06.02.1997. In the claim petition, it was asserted by the claimants that at about 10.15 PM while Hukma Ram and Mooldan, who both were teachers in Govt. School, were proceeding on a motorcycle (CHI-6669) from Jodhpur to Dangiyawas, which owned by deceased Sh. Hukma Ram. While they reached in front of Suncity Automobiles Petrol Pump, a Truck (RJ-14-G-1878) which was plied by its driver (first respondent) and was insured with the third respondent, United India Insurance Company Ltd. at the relevant point of time, in rash and negligent manner, hit the motorcycle and its riders with a violent force. On account of said accident both the deceased persons sustained severe injuries and succumbed to the injuries instantaneously. An FIR to the said accident was also lodged at Police Station - Dangiyawas and in which the police filed Challan

against the first respondent (driver) for the offence under Section 279 and 304A of IPC.

3. The only point pressed before this Court is about the effect of judgment of Hon"ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 regarding the issue of grant of future prospects in the increase in salary income of the deceased since the deceased was in Government service.

4. The learned Judge, Motor Accident Claims Tribunal-I, Jodhpur, vide its judgment and award dated 08.06.2000 while deciding the Claim Petition No. 331/1997, Smt. Sarla and Ors. Vs. Ramesh Chandra and Ors. and Claim Petition No. 330/1997 - Smt. Girija Kanwar and Ors. Vs. Ramesh Chandra and Ors., has not granted any compensation towards the future prospects on account of increase in the salary income of the deceased. The learned Tribunal after considering the evidence of the parties awarded compensation of Rs. 5,02,000/- to the claimants/appellants in each claim petition along-with interest @ 12% per annum. The judgment in the case of Sarla Verma (supra) was rendered by the Hon"ble Apex Court on 15.04.2009 was not obviously available before the learned Tribunal. The thumb rule about the award of future prospects of increase in the salary income is given in para 24 of the aforesaid judgment, which is quoted herein below for ready reference:-

"24. .... In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

5. As far as applicability of the said Apex Court's decision is concerned, learned counsel for the third respondent i.e. United India Insurance Co. Ltd., Mr. V.K. Vyas, is not in a position to controvert the same and, therefore, the enhancement to the extent of increase of salary income to the extent of 50% on account of deceased, Sh. Mooldan Charan being 31 years, and the deceased, Sh. Hukmaram, being 30 years respectively, are concerned, is not disputed and, therefore, to this extent, the instant appeals deserve to be allowed and the

award appealed against deserve to be suitable modified.

6. Learned counsel for the appellants/claimants, Mr. Vikas Balia, also sought to raise certain arguments about the revision of pay scale and applicability of the revision of pay on account of recommendations of 6th Pay Commission. These arguments no more survive in view of same having been specifically dealt-with and rejected by the Hon"ble Apex Court in para 45 and 46 of the judgment in the case of Sarla Verma (supra), which are also quoted herein below for ready reference:-

"45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstances and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said decades. If the claim petition filed in 1988 had been disposed of in the year 1988-1989 itself and if the appeal had been decided by the High Court in the year 1989-1990, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales."

The said similar argument of the learned counsel for the appellants/claimants is, therefore, rejected.

7. The other arguments advanced by the learned counsel for the appellants on the issue of loss of estate and loss of consortium etc. are also rejected since in the opinion of this Court, the learned Tribunal has considered the submissions made in this regard and has awarded appropriate compensation under these heads.

8. Accordingly, in view of above discussion, the appeals filed by the appellants/claimants are partly allowed and the amount of compensation in view of above-referred Apex Court decision in the case of Sarma Verma (supra), the same shall be computed by the learned Tribunal and the said enhanced amount shall be paid by the third respondent - United India Insurance Company with interest @ 9% per annum from the date of filing of the suit till the date of payment within a period of six months from today and determining of the amount shall be done by the learned Tribunal. In the first instance, both the parties may appear before

the learned Tribunal for computation of compensation in accordance with directions given above on 08.06.2015 (Monday).

9. The appeals are disposed of accordingly. No costs. A copy of this order be sent to the concerned parties and the learned M.A.C.T., Jodhpur, forthwith.