(2018) 04 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1766 of 2014

Smt. Kamla Sharma And Ors. @APPELLANT@Hash Shahnawaj Ahmed & Ors.

Date of Decision : 09-04-2018

Acts Referred:

Citation : (2018) 04 RAJ CK 0092

Hon'ble Judges : SABINA, J

Bench : Single Bench

Advocate : Raunak Dixit, Ram Singh Bhati

Final Decision : Allowed

Judgement

Appellants have filed this appeal, challenging the award dated 25.3.2014 passed by the Motor Accident Claims Tribunal, seeking enhancement of

compensation.

Learned counsel for the appellants has submitted that the compensation granted by the Tribunal was on a lower side and requires enhancement. In

support of his argument, learned counsel has placed reliance on the decision given by the Hon'ble Supreme Court in case of National Insurance

Company Limited Versus Pranay Sethi and others AIR 2017 (SC) 4973 , wherein it was held as under:-

Â Â â??39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly

reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction

towards personal and living expenses. In paragraphs 30, 31 and

Â 32,Â Â Sarla Verma lays down:-Â

â??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

Chandra4, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 37 (2003) 3 SLR (R) 601

31 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.

31. Where the deceased was a bachelorand the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally,

50% 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 dependant and the mother alone

will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they

will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survivedby parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated

as the personal and iving expenses of the bachelor and 50% as the contribution to the family. However, where the 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 nonearning sisters or brothers,

his personal and living expenses may be restricted to onethird and contribution to the family will be taken as two-third.â??

Â â?? 44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of Sarla

Verma read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

â??42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma

Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of

18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by

one unit for every five years, that is M-17 for 26 to 30 years, M16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for

46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-

5 for 66 to 70 years.â??

Â â??59.Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price

index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future

prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be

reasonable.

Â â??61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in SantoshDevi should have been well advised to refer the matter to a larger Bench as it was taking a different view than

what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a

contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note ofthe decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding

precedent.

(iii) While determining the income,an additionof 50% of actual salary to the income of the deceased towards future prospects, where the deceased had

a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less

tax.

(iv) In case the deceased was selfemployed or on a fixed salary, an addition of 40% of the established income should be the warrant where the

deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the

income minus the tax component.

(v) For determination of themultiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30

to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shallbe as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceasedshould be the basis for applying the multiplier.

(viii) Reasonable figures on conventionalheads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/-

and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??

Learned counsel for respondent no.3, has opposed the appeal.

Appellants had filed claim petition seeking compensation on account of death of Dharmendra Indoria in the motor vehicle accident which had occurred

on 16.06.2001. Claimants are the parents and son of the deceased. However, after the case was remanded by this court, mother of the deceased has

also died. As per the postmortem report, deceased was aged 30 years at the time of the accident. Hence, the appropriate multiplier in this case to

work out the dependency of the claimants would be 17. In order to establish the income of the deceased, appellants had proved on record Exhibit-24

salary certificate of the deceased. Copy of the said certificate has been shown by the learned counsel for the appellants during the course of

arguments. A perusal of the said certificate reveals that the deceased was working with Jawahar Navodaya Vidyalaya. As per the salary certificate,

deceased had been paid Rs.4,862/- from the period from 1.6.2001 to 16.6.2001. Thus, the monthly income of the deceased comes to Rs.9,724/-. Out

of the said income one-third (1/3rd) was liable to be deducted towards personal expenses of the deceased to work out the dependency of the

claimants and the said amount comes to Rs.6,483/-.

Thus, the total dependency of the claimants comes to Rs.6,483/- x 12 x 17 = Rs.13,22,532/-. Appellants would be further entitled to receive an addition

of 50% of the said amount towards future prospects of the deceased and the said amount comes to Rs.6,61,266/-. Appellants would be further entitled to receive Rs.15,000/- towards funeral expenses.

Thus, the total compensation comes to Rs.13,22,532/- + Rs.6,61,266/- + Rs.15,000/- = Rs.19,98,798/-.Â

Accordingly, this appeal is allowed. Impugned award dated 25.3.2014 is modified to the extent that the appellants would be entitled to receive

Rs.19,98,798/- by way of compensation instead of Rs.17,17,520/- as awarded by the Tribunal. Remaining terms and conditions of the impugned award

shall remain same. It is further ordered that the enhanced amount of compensation shall be kept in Monthly Income Scheme of the Post Office initially

for a period of three years and the interest accrued on the deposit shall be paid to the claimants proportionately on monthly basis. Secretary, District

Legal Services Authority, Jaipur Metro, in the interest of the claimants shall keep the amount in the Monthly Income Scheme and shall open separate

accounts of the claimants. He shall further apprise the claimants with regard to the enhanced amount and the fact that the enhanced amount shall be

kept in Monthly Income Scheme in the Indian Post Office for their benefit.