
(2011) 04 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1529 of 2003 and Civil Cross Objection No. 48 of 2010

Smt. Sangeeta Parihar

APPELLANT

Vs

Smt. Suraj Parihar and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 22(1), Order 41 Rule 22(4), Order 41 Rule 33, Order 41 Rule 4

Citation : (2011) 04 RAJ CK 0058

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Both, the appeal and the cross-objection arise out of the award dated 19.06.2003, passed by the Motor Accidents Claim Tribunal, Jaipur, whereby the learned Tribunal has awarded a compensation of Rs. 5,14,200/- and has apportioned the compensation amongst the Appellant-claimant, Smt. Sangeeta Parihar, claimant-Respondent, Smt. Suraj Parihar, Respondent No. 5, Mr. Raghav Parihar and Respondent No. 6, Smt. Bhawna Patel.

2. Smt. Sangeeta Parihar has filed the appeal before this Court, while Mr. Raghav Parihar has filed the cross-objection. Since both the appeal and the cross-objection arise out of the same award, they are being decided by this common judgment.

3. The brief facts of the case are that on 18.12.1994, Mr. Ravindra Parihar and his wife, Smt. Sangeeta Parihar and an another lady, Smt. Aruna Swami, were travelling in a Fiat Car, bearing Registration No. RNI 45, from Bheror to Jaipur. Around 9:00 PM, when they reached near the village Aantela, one of the back tires was punctured. Mr. Ravindra Parihar, who was driving the car, got out of the car in order to replace the flat tire. Smt. Sangeeta Parihar and Smt. Aruna Swami were standing nearby, while Mr. Ravindra Parihar was trying to change the

tire. However, at that time, a truck, bearing registration No. HR-27-8561, while trying to overtake, in a most rash and negligent manner, hit Mr. Ravindra Parihar. Consequently, he expired on the spot. Since Smt. Sangeeta Parihar, and Smt. Suraj Parihar, the mother of the deceased, lost the sole bread earner of the family, they filed a claim petition before the learned Tribunal. In the claim petition, both Mr. Raghav Parihar, son of Mr. Ravindra Parihar, and Smt. Bhawna Patel, daughter of Mr. Ravindra Parihar, were arrayed as proforma Respondents. The claim petition was filed against the owner, the driver and the Insurance Company. The owner and the driver chose not to file any written statement. However, the Insurance Company contested the claim petition. In order to buttress their contentions, Smt. Sangeeta Parihar examined herself as a witness and submitted about ten documents. On behalf of Mr. Raghav Parihar, Mr. Dharendra Parihar was examined as a witness, as the power of attorney holder of Mr. Raghav Parihar. Smt. Aruna Swami was also examined as a witness on behalf of Mr. Raghav Parihar. The Insurance Company chose not to examine anyone on its behalf. After going through the oral and documentary evidence, the learned Tribunal, vide award dated 19.06.2003, granted the compensation along with an interest @ 9% per annum from the date of filing of the claim petition i.e. 15.05.1995. It further directed that in case the said amount was not paid within a period of two months, then the compensation would carry an interest @ 12% per annum. While directing the payment of compensation, it apportioned the amount as under:

- (i) 50% of the amount to be awarded to Mr. Raghav Parihar.
- (ii) 25% of the amount to be awarded to Smt. Sangeeta Parihar.
- (iii) 15% of the amount to be awarded to Smt. Suraj Parihar.
- (iv) 10% of the amount to be awarded to Mr. Bhawna Patel.

4. Hence, this appeal and cross-objection against the said award.

5. Mr. K.N. Tiwari, the learned Counsel for the Appellant, has raised the following contentions before this Court : firstly, Mr. Ravindra Parihar was an advocate of this High Court. He had joined the Bar in 1967. He was not only a standing counsel for PHED Department, but also had quite a good practice in the civil, criminal and writ branches of law. Although initially in the claim petition it was mentioned that he was earning Rs. 4,000/- per month, the Appellant brought it to the notice of the learned Tribunal that the said amount had been typed inadvertently in the claim petition. She sought the permission of the learned Tribunal to change the said amount. The permission was duly granted by the learned Tribunal.

6. Thereafter, the income was changed from Rs. 4,000/- per month to Rs. 6,000/- per month. In fact, during her testimony, the Appellant had clearly stated that her husband, Mr. Ravindra Parihar, was giving her Rs. 6,000/- per month in order to run the house. According to the learned Counsel, this

testimony has not been shattered in the cross-examination. Yet, still the learned Tribunal has assessed Mr. Parihar's income as merely Rs. 4,000/- per month. Therefore, the very basis for assessing the loss of dependency is misplaced. In fact, the income of Mr. Parihar should have been taken to be Rs. 6,000/- per month.

7. Secondly, Since Mr. Ravindra Parihar was an upcoming advocate of this High Court, since a practice begins to flourish after few years, the future prospects of increase in Mr. Parihar's income should have been considered by the learned Tribunal. But the learned Tribunal has failed to do so.

8. Thirdly, the learned Tribunal has applied a wrong multiplier as it has applied a multiplier of 13, whereas it should have applied a multiplier of 15.

9. Fourthly, the apportionment done by the learned Tribunal is highly unfair. For, the Appellant happens to be the widowed wife of Mr. Ravindra Parihar; she was both financially and otherwise dependent on Mr. Parihar. Since Mr. Raghav Parihar was a young man, he had the ability to earn a living of his own, therefore, there is no valid reason for granting 50% of the compensation amount to him. Hence, the percentage of compensation granted to the Appellant should be increased from 25% to 50%.

10. Lastly, the learned Tribunal has granted merely Rs. 15,000/- for the loss of estate, for the expenses incurred in the last rites and for loss of consortium. Moreover, the said amount could not be apportioned to the mother, the son and the daughter. After all, the loss of consortium is a specific loss of the wife.

11. Mr. Alok Sharma, the learned Counsel for the cross-objector, at the outset has stated before this Court that he does not challenge the status of the Appellant, Smt. Sangeeta Parihar as the wife of Mr. Ravindra Parihar. Although the said status was challenged before the learned Tribunal, he does not wish to press the said contention before this Court. Mr. Sharma has supported the case of the Appellant as far as the enhancement of compensation amount is concerned. He, too, has argued that the learned Tribunal has erred in assessing Mr. Ravindra Parihar's income; he, too, has argued that the future prospects should have been considered. However, he has vehemently contended that at the time of Mr. Parihar's death, Mr. Raghav Parihar was merely eighteen years old boy, who suddenly lost his father. At the relevant time, Mr. Raghav Parihar was studying in collage. With the loss of the father, the bread earner of the family, Mr. Raghav Parihar faced an extremely bleak future. He had to struggle to put himself through collage. His life course had dramatically changed due to the sudden demise of his father. After all, the financial and the emotional support that a son receives from the father was no longer available. Considering the fact that the Appellant, Smt. Sangeeta Parihar, was young at the time of incident, considering the fact that she had no children from Mr. Ravindra Parihar, she still had the prospect of remarriage. Therefore, the learned Tribunal was certainly justified in apportioning 50% of the compensation amount in his favour. But, he

has contended that the learned Tribunal had erred in apportioning 15% of the compensation amount to Mr. Ravindra Parihar's mother, Smt. Suraj Parihar. According to him, considering her old age, 15% of compensation amount, being granted to her, is on the higher side. Considering her age, she did not have many years to live. Thus, the amount of percentage of compensation being granted to her should be reduced and the same should be added in favour of Mr. Raghav Parihar. Lastly, he, too, has challenged the grant of Rs. 15,000/- in the category of loss of love and affection. According to him, the learned Tribunal has erred in clubbing three different elements, namely loss of love and affection, expenses incurred in the last rites and the loss to the estate together. It has also erred in granting merely Rs. 15,000/- for the three categories. According to the learned Counsel, since Mr. Raghav Parihar had suddenly lost the love and affection of his father, the psychological and the emotional support of his father; he should have been granted at least Rs. 50,000/- for his loss of love and affection.

12. Although the Insurance Company has neither filed an appeal, nor a cross-objection against the impugned award, still Mr. Ashok Mehta, the learned Counsel for the Insurance Company, has vehemently raised the following contentions before this Court : firstly, since Smt. Bhawna Patel, Mr. Ravindra Parihar's daughter, was already married, the learned Tribunal could not have included her as a unit while calculating the number of units for assessing the loss of dependency. Therefore, it has faulted in considering the unit as ten. Instead, the learned Tribunal should have taken the unit as merely eight. Moreover, it has misapplied the multiplier as thirteen. In fact, it should have applied a multiplier of eleven.

13. Both Mr. Tiwari and Mr. Sharma have objected to Mr. Mehta's contentions inter alia on the ground that since the Insurance Company has neither filed an appeal, nor a cross-objection, it could not attack the finding of the learned Tribunal. On the other hand, in order to defend his stand, Mr. Mehta has relied upon Order 41 Rule 22 CPC read with Order 41 Rule 33 CPC in order to contend that under Order 41 Rule 22 Code of Civil Procedure, even if an appeal or a cross-objection has not been filed by a Respondent, a Respondent can orally challenge a finding which has gone against the Respondent in the impugned judgment. Moreover, under Order 41 Rule 33 Code of Civil Procedure, the Appellate court has ample power to do complete justice with all the parties. Therefore, if the Appellate court is convinced that a wrong unit has been assessed, and a wrong multiplier has been applied, the Appellate court would still be within its jurisdiction to set aside the said basis of the impugned judgment.

14. In rejoinder, Mr. Alok Sharma has relied upon the case of Banarsi and Others Vs. Ram Phal, in order to buttress his contention that Order 41 Rule 22 CPC does not permit oral objections to be raised. Moreover, a Respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour. However, if he proposes to attack any part of the decree, he must file a cross-objection. Since the Insurance Company is attacking the decree, it should

have filed a cross-objection or an appeal against the impugned judgment. As it has failed to do so, its oral objection to the impugned judgment cannot be entertained. Moreover, Order 41 Rule 33 CPC has to be read along with Order 41 Rule 4 Code of Civil Procedure. According to the learned Counsel, Order 41 Rule 33 CPC bestows a wide power to the Appellate court. However, wider the power, higher the need for caution and care while exercising the power. The said power has been bestowed on the Appellate court in order to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. However, in the present case, these elements do not exist. Therefore, this Court should not exercise its power under Order 41 Rule 33 Code of Civil Procedure.

15. As far as the merits of Mr. Mehta's contentions are concerned, Mr. Sharma has contended that at the time of accident, Smt. Bhawna Patel was unmarried. Therefore, she was entitled to a compensation, as she too was financially or emotionally dependent upon her father and she too had suffered the loss of dependency. It is only during the pendency of the case that she was married. Thus, he has supported the grant of 10% of the compensation amount to Smt. Bhawna Patel.

16. Heard the learned Counsel for the parties, perused the impugned award, and examined the record.

17. The following issues arise for the consideration of this Court:

(i) Whether the oral objections raised by the Insurance Company can be heard under Order 41 Rule 22 Code of Civil Procedure, even if it has failed to file an appeal or a cross-objection, or not?

(ii) Whether the power under Order 41 Rule 33 CPC should be exercised or not?

(iii) Whether the learned Tribunal has correctly assessed Mr. Ravindra Parihar's income or not?

(iv) Whether the learned Tribunal should have considered the future prospects of the increase in the earning of Mr. Ravindra Parihar or not? If yes, the percentage by which the income should be increased?

(v) Whether an award of merely Rs. 15,000/- for the triple categories of loss of love and affection, for the expenses incurred for the last rites and loss to the estate, is just and reasonable or not?

(vi) Whether the Appellant is entitled to loss of consortium separately or not?

(vii) Whether Mr. Raghav Parihar, the son, is entitled to a higher compensation for the loss of love and affection or not?

(viii) Whether Smt. Suraj Parihar and Smt. Bhawna Patel are equally entitled to compensation for the loss of love and affection or not?

(ix) Whether the loss of consortium can be apportioned to the other members of

the family or not?

(x) Relief?

18. The first and second issues raised before this Court are no longer *res integra* as the same have been answered by the Hon'ble Supreme Court in the case of Banarsi (Supra). The issue before the Hon'ble Supreme Court was whether the Appellate court had the power to interfere with and reverse or modify the decree appealed against by the Appellants in the absence of any cross-appeal or cross-objection by the Respondent under Order 41 Rule 22 CPC and the scope of power conferred on the Appellate court under Order 41 Rule 33 Code of Civil Procedure.

19. The facts of that case are that Mr. Banarsi and others, and Mr. Ram Phal had entered into an agreement to sell a land. The consideration for the land was Rs. 2,90,000/-, out of which, Mr. Ram Phal had paid Rs. 2,40,000/- to Mr. Banarsi. Rs. 50,000/- were to be paid at the time of execution and registration of the sale deed. Since Mr. Banarsi failed to execute and register the sale deed, Mr. Ram Phal filed a suit for specific performance of the agreement. Meanwhile, Mr. Banarsi also filed a suit for cancellation of the agreement on the ground that the nature of transaction between the parties was one of loan, on the ground that Rs. 60,000/- was taken as a loan by Mr. Banarsi, but Mr. Ram Phal added advance interest and capitalized the same. Although the loan amount was fully paid, Mr. Ram Phal failed to discharge the agreement. Both the suits were consolidated and tried together by the learned Civil Judge. The learned Civil Judge did not pass decree for specific performance. Instead, he directed the Defendant, Mr. Banarsi, to deposit Rs. 2,40,000/- for the Plaintiff in the court. The learned Judge further directed the Plaintiff, Mr. Ram Phal, that in case the said amount were to be deposited, he would return the original agreement after endorsing the receipt of the entire amount on the back of the original agreement and return this to the Defendant, or do the alienation at their expense in their favour and get it registered.

20. Aggrieved by this judgment and decree, Mr. Banarsi and others filed two appeals. The Appellate court dismissed the appeals and modified the suit of the Plaintiff, Ram Phal, and decreed for specific relief be granted to him, meanwhile it rejected the original suit filed by Banarsi against Ram Phal. Mr. Banarsi thereafter filed two second appeals before the High Court. However, vide judgment dated 10.08.2001, the High Court dismissed the second appeals on the ground that no substantial question of law arose. One of the pleas advanced on behalf of Mr. Banarsi before the High Court was that the first Appellate court could not have, in the purported exercise of power under Order 41 Rule 33 Code of Civil Procedure, reversed the decree in respect of the refund of money and directed the suit for specific performance to be decreed in favour of the Respondent without there being any appeal or cross-objection preferred by the Respondent. The High Court opined that it was open for the Respondent not to file any appeal against the Trial Court's decree on the belief that he would either get his money back within the short time provided under the decree or would have the contract

specifically performed. However, on account of the stay order obtained by the Appellants, the payment of decretal amount was not made by the Appellants to the Respondent as per the terms of the decree and in such circumstances, the first Appellate Court committed no error of law in exercising power under Order 41 Rule 33 of the CPC and passing a decree for specific performance in favour of the Respondent.

21. Feeling aggrieved by the judgment and decree of the High Court the Appellants filed two appeals by special leave before the Apex Court.

22. According to the Apex Court, the appeals raise a short but interesting question of frequent recurrence as to the power of the Appellate court to interfere with and reverse or modify the decree appealed against by the Appellants in the absence of any cross-appeal or cross-objection by Respondent under Order 41 Rule 22 of the CPC and the scope of power conferred on Appellate court under Rule 33 of Order 41 of the Code of Civil Procedure.

23. The Apex Court answered the issue as under:

The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22(1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. A Respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the Appellant and partly in favour of the Respondent.

(ii) The decree is entirely in favour of the Respondent though an issue has been decided against the Respondent.

(iii) The decree is entirely in favour of the Respondent and all the issues have also been answered in favour of the Respondent but there is a finding in the judgment which goes against the Respondent.

In the type of case (i) it was necessary for the Respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the Respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended Code of Civil Procedure, read in the light of the explanation, it is still not necessary for the Respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-

objection; the amendment made in the text of Sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by Sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the Respondent shall still be available to be adjudicated upon on merits which remedy was not available to the Respondent under the unamended Code of Civil Procedure. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the Respondent to question the correctness or otherwise of any finding recorded against the Respondent.

Both Sections 96 and 100 CPC provide for an appeal against decree and not against judgment. No appeal lies against a mere finding. To be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal.

24. Thus, it is clear that the Respondent, Insurance Company, may defend itself without filing any cross-objection to the extent to which the decree is in its favour. However, if it proposes to attack any part of the decree, it must make a cross-objection. However, in the present case, the Insurance Company has failed to file its cross-objection to a finding given by the learned Tribunal.

25. As far as the issue with regard to the power under order 41 Rule 33 CPC is concerned, the Hon"ble Supreme Court in the above mentioned case has observed as under:

Rules 33 and 4 of Order 41 CPC have to be read necessarily together, Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of the widest amplitude on the Appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject-matter of the appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the Appellate court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the appellate court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the Appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the Appellate court. The object sought to be achieved by conferment of such power on the Appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable

decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the Appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations : firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in favour of the Respondent by the Appellate court exercising power under Rule 33 of Order 41.

26. According to the Apex Court, the said power should not be exercised under three circumstances, namely firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party". In the present case, if the Insurance Company were aggrieved by the erroneous multiplier applied or by the erroneous deduction made in the salary of Mr. Ravindra Parihar, it ought to have filed an appeal against such finding. Since it has permitted that part of the judgment to achieve finality, the same cannot be reversed under Order 41, Rule 33 Code of Civil Procedure, that, too, to the advantage of the Insurance Company. Therefore, the present case of the Insurance Company is hit by the third limitation imposed by the Apex Court in the case of Banarsi (Supra). Moreover, for the reasons stated below, this Court does not find that there is any inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order has come into existence. Therefore, this Court is not inclined to invoke its power under Order 41 Rule 33 Code of Civil Procedure. Hence, at the outset, this Court rejects the contentions raised by the learned Counsel for the Insurance Company.

27. The Appellant had clearly stated that initially she had filed the claim petition along with Mr. Ravindra Parihar's mother. However, when she was ejected out of the house, she decided to fight the case on her own. It is at that juncture that she noticed the fact that inadvertently her husband's income had been shown as Rs. 4,000/- per month. Wanting to amend the plaint, vis-a-vis the income, she sought the permission of the learned Tribunal. The learned Tribunal granted her

the permission to amend the plaint. Thereafter, she pleaded that, in fact, Mr. Ravindra Parihar was giving her Rs. 6,000/- per month for running the house. This part of her testimony has not been demolished by the Insurance Company. Thus, the learned Tribunal was not justified in taking the income of Mr. Ravindra Parihar as merely Rs. 4,000/- per month. In fact, it should have taken his income as Rs. 6,000/- per month. In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, the Apex Court was certainly of the opinion that where the testimony of a claimant is not demolished on the point of the income of the deceased, the same should have been accepted by the learned Tribunal. Thus, this Court takes the income of the deceased as Rs. 6,000/- per month in place of Rs. 4,000/- per month.

28. As far as the future prospects are concerned, in the case of Sarla Verma v. Delhi Transport Corporation MACD 2009 (SC) 353 , the Hon''ble Supreme Court has held that the future prospects should be considered only in cases of Government employee, but should not be considered in a case of self-employed person. However, the Apex Court has not placed a blanket ban on consideration of the future prospects of a person who is self-employed. After all, the Apex Court is of the opinion that in exceptional cases future prospects can be taken into account. In the case of Reshma Kumari and Others Vs. Madan Mohan and Another, the Hon''ble Supreme Court had held that the grant of compensation in a case involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.

29. If this be the guiding principle in a case of compensation, obviously future prospects of increase in the income of an advocate would have to be kept in mind. Undoubtedly, at the beginning of his practice, a lawyer has to struggle to establish his reputation and to increase his practice. The professional life of a lawyer, unlike cases of government servants, is a life of hardship and of struggle. The fruits of his labour come to him during the course of time. His practice also depends on various factors which may be beyond his control. However, one cannot forget the fact that litigation has been on the increase for the last two decades; one cannot overlook the fact that the economic prosperity has been ushered in. The economic prosperity and the increase in litigation have certainly contributed to the economic upliftment of the lawyers as a professional community. For, with the increase in the paying capacity of the clients, the lawyers have benefited therefrom. In the present case, Mr. Ravindra Parihar was middle aged and had many years to go before he would have withdrawn from the legal practice. Having put in two decades of practice, having represented semi-government organization, having a practice both in the civil and in the criminal sides, his practice was bound to increase. Therefore, the learned Tribunal should have considered the future prospects of increase in his income while calculating the loss of dependency. If it is taken that he would have practiced till the age of

seventy, as normally the lawyers do practice till that age, he would still have had twenty-three more years to go, if the cruel hand of death had not snatched him away. Considering the fact that he still had twenty-three years to go, 50% of his income i.e. 50% of Rs. 6,000/- should have been taken as the future prospect. Therefore, the learned Tribunal should have assessed his income as Rs. 9,000/- per month.

30. According to the II schedule attached with Motor Vehicle Act, Mr. Ravindra Parihar would have spent 1/3 of his income upon him. Thus, he would have spent Rs. 3,000/- upon him, and Rs. 6,000/- upon his family. Therefore, in order to assess the loss of dependency, the learned Tribunal should have taken his income as Rs. 6,000/- per month.

31. Admittedly, the daughter was unmarried on the date of the accident. Therefore, the learned Tribunal was certainly justified in including her as a unit. Hence, the learned Tribunal was legally justified in concluding that the family should be taken as ten units, as it consisted of Mr. Ravindra Parihar, the mother, the wife, the son and the daughter.

32. As far as the multiplier is concerned, according to the II schedule attached with the Motor Vehicles Act, in case the deceased is between the age of 45 and 50, then a multiplier of 13 is to be applied. Hence, the learned Tribunal was certainly justified in applying a multiplier of 13. Therefore, the contention raised by the learned Counsel for the Appellant that a higher multiplier should have been applied is unacceptable.

33. Both Mr. Tiwari and Mr. Sharma have argued much on the apportionment made by the learned Tribunal. Apportionment of a compensation is a discretion vested in the learned Tribunal. Unless the apportionment is arbitrary or irrational or unreasonable or unfair, this Court should be reluctant to interfere with the same. A bare perusal of the judgment clearly reveals that the learned Tribunal has fairly apportioned the compensation amount amongst the four person involved in the case. Considering the fact that Mr. Raghav Parihar was merely a lad of eighteen years, considering the fact he had just entered collage and had to pursue his educational career suddenly without the financial help of his father, considering the fact that his future was adversely affected without the financial and psychological support of his father, the learned Tribunal was certainly justified in granting 50% of the compensation amount to him.

34. As far as the Appellant, Smt. Sangeeta Parihar, is concerned the learned Tribunal has rightly divided the compensation between her, Smt. Suraj Parihar and Smt. Bhawna Patel. Of the three ladies, naturally the wife had to suffer the most at the sudden demise of her husband. Thus, the lion share amongst the three ladies has been given to her. Considering the old age of mother, considering the fact that she was a widowed lady and could not earn a living for herself and considering the fact that she would require medical attention in her old age, the learned Tribunal was certainly justified in granting 15% of the

compensation amount to her. As far as Smt. Bhawna Patel is concerned, the learned Tribunal was justified in granting her 10% of compensation amount. For, on the date of the incident, Smt. Bhawna Patel was unmarried daughter. Moreover, in the case of Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, the Hon''ble Supreme Court has clearly held that a married daughter of the deceased would be entitled to maintain a claim petition as she is a beneficiary of the estate. Moreover, even if the claimant were not dependent on the deceased, being a legal representative, she will be entitled to compensation. Smt. Bhawna Patel being unmarried daughter at the time of the accident was naturally dependent both financially and emotionally, on her father. Merely because she has been married during the pendency of the proceedings, it would not disentitle her from a compensation. However, considering the fact that she was already married, the learned Tribunal was justified in giving the least amount of the compensation to her. Therefore, this Court does not find any illegality or perversity in the apportionment made by the learned Tribunal. Therefore, the contentions raised by Mr. Tiwari and by Mr. Sharma are unacceptable.

35. Mr. Tiwari is certainly justified in claiming that Rs. 15,000/- is too meager in amount for loss of consortium, for the expenses incurred in the last rites and for the loss of estate. The learned Tribunal should not have clubbed all these categories together. Instead, it should have given separate compensation under separate category. Furthermore, Mr. Tiwari is justified in pleading that amount of loss of consortium cannot be disbursed to other person. Therefore, this Court modifies the said part of the award and directs that Smt. Sangeeta Parihar should be paid Rs. 15,000/- for loss of consortium, and Rs. 5,000/- for the funeral expenses incurred by her, and Rs. 5,000/- for the loss of estate.

36. Similarly Mr. Sharma is justified in claiming that the amount of Rs. 15,000/- is too little as only a fraction of the said amount has been given for loss of love and affection. The learned Tribunal has failed to appreciate the fact that Mr. Raghav Parihar came from a disturbed family background. His mother, who was the second wife of Mr. Ravindra Parihar, had separated from Mr. Ravindra Parihar. Mr. Ravindra Parihar, on the other hand, had married with the Appellant. With the sudden death of father, Mr. Raghav Parihar was deprived of love and affection of the father. Coming from a broken home, the loss of father is almost catastrophic. Therefore, he should have been compensated reasonably for the loss of love and affection. Hence, this Court directs that Mr. Raghav Parihar should be paid Rs. 15,000/- for the loss of love and affection suffered by him due to the sudden demise of his father. He need not be compensated for the loss of estate as according to the parties through a will left by Mr. Ravindra Parihar, he has inherited his estate. Moreover, he need not be compensated for the expense of the last rites as there is no evidence that he had contributed for the same.

37. Although Smt. Suraj Parihar and Smt. Bhawna Patel have not filed an appeal before this Court, but it has come to the notice of this Court that even they deserve to be compensated for the loss of love and affection. In order to do

complete justice to all the parties, this Court directs that Rs. 15,000/- each should be paid to Smt. Suraj Parihar and Smt. Bhawna Patel. After all, an elderly widowed lady has lost her son in the prime of his life ? a son she would have dependend upon in her old age. Similarly, Smt. Bhawna Patel has suddenly lost her father. The bond between a daughter and a father is strong one. Therefore, even she needs to be compensated for the loss of love and affection.

38. Hence, for the reasons stated above, the award dated 19.06.2003 stands modified as under:

The loss of dependency suffered by the claimants is as under:

Rs. 6,000 ? 12 ? 13 : Rs. 9,36,000/-

Out of total amount of Rs. 9,36,000/-, 50% of the said amount i.e. Rs. 4,68,000/-, along with Rs. 15,000/- (as mentioned above), i.e. a total of Rs. 4,83,000/- shall be paid to Mr. Raghav Parihar.

Out of total amount of Rs. 9,36,000/-, 25% of the said amount i.e. Rs. 2,34,000/-, along with Rs. 25,000/- (as mentioned above), i.e. a total of Rs. 2,59,000/- shall be paid to Smt. Sangeeta Parihar.

39. Similarly, out of total amount of Rs. 9,36,000/-, 15% of the said amount i.e. Rs. 1,40,400/-, along with Rs. 15,000/- (as mentioned above), i.e. a total of Rs. 1,55,400/- shall be paid to Smt. Suraj Parihar.

40. Likewise, out of total amount of Rs. 9,36,000/-, 10% of the said amount i.e. Rs. 93,600/-, along with Rs. 15,000/- (as mentioned above), i.e. a total of Rs. 1,08,600/- shall be paid to Smt. Bhawna Patel.

41. However, it is clarified that the amount already paid by the Insurance Company to Mr. Raghav Parihar, Smt. Sangeeta Parihar, Smt. Suraj Parihar and Smt. Bhawna Patel shall be deducted from the amount directed above to be paid to them. The remaining amount shall be paid along with an interest @ 6% per annum to the parties, mentioned above, from the date of filing of the appeal i.e. 02.07.2003 till the final payment.

42. The appeal and the cross-objection stand partly allowed.