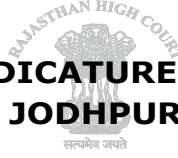




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Misc. Appeal No. 1924/2004

Smt. Chuki Devi and Ors.

----Appellants

Versus

Kesa Ram and Ors.

----Respondents

For Appellant(s)	:	Mr. Mudit Vaishnav for Mr. Rajesh Panwar, Sr. Advocate
For Respondent(s)	:	Mr. Mahesh Thanvi

HON'BLE MR. JUSTICE SANDEEP SHAH
Order

14/07/2025

1. The present Civil Miscellaneous Appeal has been filed by the claimants praying for enhancement of the amount as awarded in their favour by the learned Motor Accident Claim Tribunal, Barmer in M.A.C. case No.143/2001 (Smt. Chuki Devi and Ors. v. Kesa Ram and Ors.) whereby by way of judgment and award dated 10th May 2004 an amount to the tune of Rs.2,92,600/- along with interest @9% per annum (from the date of filing of the application i.e. 02.07.2001) was awarded in favour of the claimants.

2. The brief facts of the case, as stated in the claim petition, are that on 05.05.2001, deceased Jetha Ram along with one Ganga Ram were traveling on a scooter from Barmer to their house situated in village Chitar Ka Par. As they reached Uttarlai, a utility jeep having No.RJ04Z1253 which was being driven rashly and negligently came and tried to overtake a tanker having No.RJ12T9779 and during this the utility vehicle and tanker collided which in turn resulted in the collusion between the jeep



and the scooter being driven by Jetha Ram. It was stated that the respondent Jetha Ram expired on the spot itself and post that a criminal case was also lodged wherein the police after investigation filed charge-sheet against Kesa Ram who was driving the tanker in question. The claimants thus filed a claim petition while stating that Jetha Ram was working as a goldsmith and used to earn monthly income of around Rs.6,000/- and was 32 years of age. Thus a claim to the tune of Rs.29,90,000/- was filed by the claimants.

3. The learned Tribunal issued notices to the respondent and framed four issues for its adjudication. The issue no.1 was with regard to fact of the accident as well as death of Jetha Ram and Ganga Ram. The second issue was with regard to the amount of claim which the claimants were entitled to. The third issue was with regard to violation of terms of the policy and the consequential liability of the insurance company. The fourth issue with regard to the relief clause.

4. The learned Tribunal while adjudicating the issue no.2, as far as the claim of the appellants is concerned, came to a conclusion that the income of Jetha Ram was Rs.2,100/- and after deducting a sum of 1/3rd amount under the head of personal expenses from the income, monthly income was calculated to Rs.1,400/- and the relevant factor applied was 17. The learned Tribunal thus awarded a sum of Rs.2,85,600/- as compensation, Rs.5,000/- as consortium and Rs.2,000/- as funeral expenses, thus a total sum of Rs.2,92,600/- was awarded.

5. Being aggrieved against the same the appeal in question has been filed for enhancement of the claim amount. The learned



counsel for the appellant has not raised any dispute with regard to the income of Rs.2,100/- per month as determined by the Tribunal. However, he submitted that the deduction made was incorrect, since there are more than six dependants therefore deduction to be made from the income should have been $1/5^{\text{th}}$ rather than $1/3^{\text{rd}}$. He further submits that the future prospects had not at all been considered by the learned Tribunal, as also the loss of consortium, loss of estate and funeral expenses have not been awarded as per the judgment of Hon'ble Apex Court in case of "*Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*" (2009) 6 SCC page 121 and the judgment in case of "*National Insurance Co. Ltd. v. Pranay Sethi & Ors.*" (2017) 16 SCC 680. The learned counsel for the appellant has thus prayed for enhancement of the amount based upon the judgments cited above.

6. The learned counsel for the respondent has submitted that the multiplier applied itself was on a higher side inasmuch as multiplier was 17 applied by the Tribunal whereas as per the judgment in *Sarla Verma* (as referred to supra) the multiplier applicable was 16. He thus submits that no case of enhancement is made out. However he is not in a position to refute the fact that deduction of personal expenses undertaken was not as per the judgment in *Sarla Verma* and further the future prospects, consortium etc. have not been paid in consonance with both the judgments of *Sarla Verma* and *Pranay Sethi* (referred as supra).

7. Having considered the argument raised by both the sides and after considering the record of the case, it is evident that the age of the deceased was treated as 34 years at the time of his death



by the learned Tribunal and the same has not at all been challenged by either of the parties. Thus considering the age of the deceased, the multiplier applicable was 16 and not 17 as had been applied by the learned Tribunal. Hon'ble Apex Court in case of *"Sarla Verma and Ors. v. Delhi Transport Corporation and Anr."*

(2009) 6 SCC page 121 has held in para 42 as under:-

"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 Thomas³, Trilok Chandra⁴ and Charlier⁹), 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, M-16 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."

8. Thus as far as the multiplier is concerned there is no dispute that the multiplier applicable should have been 16 and not 17.

9. As far as the deduction for personal expenses is concerned, the income taken was Rs.2,100/- and the Tribunal has deducted 1/3rd amount whereas as per the judgment of Sarla Verma the deduction should have been 1/5th in view of the fact that the dependents are more than six. The Hon'ble Apex Court in judgment of *"Sarla Verma & Ors. v. Delhi Transport Corporation & Anr."*, as referred to (supra), has held as under:-

"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 Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this 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"



10. Since in the present case the claimants/dependents are seven in number thus the deduction should have been $1/5^{\text{th}}$. Thus the total to be calculated for compensation after adding the multiplier of 16 would be as under:-

Income per month = $2,100 - 1/5^{\text{th}} (420) = 1,680$

Compensation = $1,680 \times 12 \times 16 = 3,22,560$

11. As far as, the future prospects are concerned, the Hon'ble Apex Court in the judgment of "National Insurance Co. Ltd. v. Pranay Sethi & Ors. (2017) 16 SCC 680" referred to (supra) has held in para 59.4 as under:-

"59.4. In case the deceased was self-employed 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."

12. In the present case, since the deceased was not a salaried employee but a self-employed and was below the age of 40 years at the time of accident, therefore, 40% future prospects were required to be added which have not been considered by the learned Tribunal. Thus, the sum would be as under:-

$3,22,560 \times 40\% (1,29,024) = 4,51,584$

13. Learned counsel for the petitioner has also prayed for compensation under the head of loss of consortium, loss of estate and funeral expenses. Under the abovementioned head, Rs.5,000/- has been granted as a combined consortium for all the dependents and Rs. 2,000/- has been awarded as funeral expenses by the learned Tribunal. After elaborate consideration to



the various factors under which compensation is to be granted and the reasonable figures on conventional heads, the Hon'ble Apex Court in the case of "*National Insurance Co. Ltd. v. Pranay Sethi & Ors.*" (2017) 16 SCC 680 in para 59.8 has held as under:-

"59.8 Reasonable figures on conventional heads, 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."

14. The judgment in abovementioned case was pronounced in the year 2017 and as far as conventional head is concerned, there is a specific direction that the amount as mentioned in the judgment (i.e. Rs.15,000 for loss of estate, Rs.40,000/- as loss of consortium and Rs.15,000/- for funeral expenses) is required to be enhanced @10% in every 3 years. Thus, the figures abovementioned are required to be enhanced in every 3 years. While taking guidance from the same, the loss of estate to be awarded to the claimant would come to Rs.18,000/-, funeral expenses would again work out to Rs.18,000/- and as far as loss of consortium is concerned, the same would come out to be Rs.48,000/- per claimant. Thus, in total, the amount under the head of loss of consortium should be $48,000 \times 7 = 3,36,000$. This, of course, would be subject to adjusting the amount of Rs.5,000/- as far as loss of consortium and Rs.2,000/- under the head of funeral expenses as granted by the learned Tribunal.

15. The award in question is modified accordingly and total sum for which claimant is entitled is worked out asunder:-



Calculation of Award

Compensation	1,680 x 12 x 16 = 3,22,560
Future Prospects (40%)	40% of 3,22,560= 1,29,024
Loss of consortium	48 X 7 (7 claimants) = 3,36,000
Loss of estate	18,000
Funeral expenses	18,000
Total compensation	8,23,584
Amount already awarded	-2,92,600 (including loss of consortium and funeral expenses)
Enhanced Award	5,30,984/-

16. It is thus held that the appellants are entitled for enhanced compensation to the tune of Rs.5,30,984/- over and above, what has been awarded by the learned Tribunal by way of impugned award. It is further directed that the appellant shall be entitled to interest @6% per annum from the date of filing of the claim petition (i.e. 02.07.2001) upon the enhancement amount till the date of its realisation. The respondent-Insurance Company is directed to make the payment of the enhanced amount within a period of two months from today, failing which the amount so calculated would carry an additional interest of 9% per annum. The award impugned is thus modified accordingly, while enhancing the amount of compensation.

17. The appeal is thus allowed of in terms of the enhancement as specified above.

18. Record of the trial Court be sent back forthwith.

(SANDEEP SHAH),J