

# **SUPREME COURT OF INDIA**

Kala Devi

Vs.

Bhagwan Das Chauhan

C.A.No.9972 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

31.10.2014

## **JUDGMENT**

### **V. GOPALA GOWDA, J.**

1. Leave granted.
2. This appeal has been filed by the appellant-claimants against the Judgment and order dated 31.07.2013 passed in First Appeal No. 413 of 2007 by the High Court of Himachal Pradesh at Shimla, wherein the High Court has partly allowed the appeal filed by the appellant-claimants.
3. The necessary relevant facts are stated hereunder to appreciate the case with a view to ascertain whether the appellants are entitled for relief as prayed in this appeal.

On 15.12.2003, Roshan Chauhan, husband of the appellant Kala Devi was travelling in a vehicle bearing No. HP-09A-0897(207 TATA), which was being driven by respondent No. 3 Keshav Ram. When they reached near Narla, Tehsil Theog, District Shimla, the vehicle got stuck due to snow surfaced road. Roshan and few others alighted and tried to push the vehicle. In the process of pushing the vehicle, suddenly the vehicle slipped and hit Roshan and went off the road. This lead to the death of Roshan and seriously injured others who later succumbed to the same.

4. The claimants i.e. the wife, 2 minor children and mother of the deceased filed a claim petition before the Motor Accidents Claims Tribunal, Shimla (in short ~the Tribunal™) claiming Rs.12,96,000/- as compensation on the ground that the deceased was 25 years of age, a matriculate and a driver by vocation, earning Rs.9,000/- p.m. at the time of his death. The Tribunal took the income of the deceased at Rs.3,000/- p.m. for the purpose of quantifying loss of dependency of the appellants. 1/3rd of the monthly income was deducted towards personal expenses of the deceased. As the deceased was 25 years of age at the time of his death, therefore by applying the appropriate multiplier of 17, the compensation determined by the Tribunal towards the loss of dependency was arrived at Rs.4,08,000/- (Rs.2,000 x 12 x 17). A sum of Rs.32,000/- was awarded towards conventional heads. Thus, a total compensation of Rs.4,40,000/- was awarded by the Tribunal with interest at the rate of 7.5% p.a. to the appellants.

5. Being aggrieved by the judgment and award passed by the Tribunal, the claimant-appellants preferred First Appeal No. 413 of 2007 before the High Court of Himachal Pradesh at Shimla for enhancement of compensation, whereas the respondent-Insurance Company preferred First Appeal No.498 of 2007 for the reduction of the compensation awarded by the Tribunal.

6. After hearing the parties, the High Court was of the view that there was nothing to dislodge the income of the deceased as assessed by the Tribunal. However, it could not be applied for all of the forthcoming years had the deceased survived. Therefore, keeping in view the potentiality that the deceased could have had, a benefit of 40% increase in the income was given by the High Court. Thus, arriving at an income of Rs.4,200/- p.m. and after deducting 1/3rd amount towards personal expenses, the dependency was arrived at Rs.2,800/- p.m. (Rs.33,600/- p.a.). The appropriate multiplier of 18 was adopted by the High Court and arrived at a loss of dependency of Rs.6,04,800/-. It was further held that the appellant-wife was entitled for a compensation of Rs.30,000/- for loss of consortium and the minors were entitled to a compensation of Rs.40,000/- for loss of love and affection. Further, the appellants were also entitled for Rs.25,000/- under the head of conventional charges. Thus, the total amount of compensation calculated by the High Court was Rs.6,99,800/- with 9% interest p.a. with costs quantified at Rs.5,000/-. The appeal filed by the respondent-Insurance Company was dismissed by the High Court.

Not satisfied with the order of the High Court, the appellants have filed this appeal, urging various grounds.

7. It has been contended by the learned counsel for the appellants that the income of the deceased at the time of his death was Rs.9,000/- p.m. and therefore, the assessment of loss of dependency based on Rs.3,000/- p.m. as the income of the deceased is wrong.

8. On the other hand, the learned counsel for the respondents contended that the computation of the compensation is after thorough analysis of the evidence on record in detail and the High Court has correctly assessed the monthly income of the deceased as Rs.3,000/- and thereafter gave a further increase of 40% towards future prospects and enhanced the total compensation of Rs.6,99,800/- at 9% interest p.a.

9. We have heard the learned counsel for the parties. The deceased was 25 years of age at the time of death and was a matriculate, working as a driver with a valid license for driving heavy motor vehicles. A driver in Himachal Pradesh on an average earns Rs.9,000/- p.m. as per Minimum Wages Act. Therefore, the courts below have failed to take judicial notice of the same and the fact that the post of a driver is a skilled job. Thus, considering the facts and circumstances of the case, we take the gross monthly income of the deceased at Rs.9,000/- p.m., i.e. Rs.1,08,000/- p.a. On deduction of 20% towards income tax, the net income comes to Rs.86,400/- p.a. Further, deducting 1/3rd towards personal expenses and applying the appropriate multiplier of 18, the loss of dependency is calculated at Rs.10,36,800/-.

10. Further, the High Court has failed in not following the principles laid down by this Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*[1] and erred in awarding a meagre sum of just Rs.30,000/- under the head of loss of consortium, Rs.40,000/- towards loss of love and affection. Accordingly, we award Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- to each minor child of the deceased (i.e. Rs.2,00,000/-) towards loss of love and affection as per the guidelines laid down by this Court in *Juju Kuruvila & Ors. v. Kunjuamma Mohan & Ors.*[2].

11. The High Court has further erred by not awarding compensation towards loss of estate to the appellant-wife. We accordingly award Rs.1,00,000/- towards the same, as

per the principles laid down by this Court in Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation[3].

12. In the result, the appellants shall be entitled to compensation under the following heads:

1.	Loss of dependency	Rs. 10,36,800/-	
2.	Loss of Consortium	Rs. 1,00,000/-	
3.	Loss of Estate	Rs. 1,00,000/-	
4.	Loss of love and affection	Rs. 2,00,000/-	
5.	Funeral expenses	Rs. 25,000/-	
	TOTAL	Rs. 14,61,800/-	

Thus, the total compensation payable to the appellants by the respondent-Insurance Company will be Rs.14,61,800/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment. Accordingly, we allow this appeal in awarding Rs.14,61,800/- with interest @9% p.a. The compensation awarded shall be apportioned between the appellants equally with proportionate interest. The respondent-Insurance Company shall either pay by way of demand draft in favour of the appellants or deposit the same with interest as awarded by this Court, before the Motor Accidents Claims Tribunal, after deducting the amount already paid to the appellants pursuant to the impugned Judgment and Award, if any, within six weeks from the date of receipt of the copy of this judgment. No Costs.

[1] [2] (2013) 9 SCC 54 [3] [4] (2013)9 SCC 166 [5] [6] 2014(5)SCALE 479