



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 5451/2008

1. Indra Devi W/o Late Shri Mahaveer Prasad aged about 31 years.
2. Rahul S/o Late Shri Mahaveer Prasad aged about 7 years 6 months.
3. Priya D/o Late Shri Mahaveer Prasad aged about 4 years 6 months.

Appellant No.2 and 3 through Natural Guardian Mother Smt. Indra Devi

4. Barji Devi W/o Late Shri Beejaram aged about 61 years.
5. Lalluram S/o Late Shri Beejaram Teacher, Govt. Secondary School Bada Was, Kotputali.

All residents of Ganga Colony, Kotputly, District Jaipur

-----Appellants

Versus

1. Satveer Singh S/o Shri Jagdish Prasad R/o Karoli Bans Pahadi, Police Station Sadar District Alwar-Driver
2. Ramjilal S/o Shri Dhaniyaram R/o Ganj Teh. Kishangarhgaas District Alwar-Ower.
3. The New India Insurance Com. Ltd. Through Regional Manager, Regional Office, Nehru Palace, Tonk Road, Jaipur.

-----Respondents

For Appellant(s)	:	Mr. Rakesh Bhargava through VC
For Respondent(s)	:	Mr. R.P. Vijay through VC

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment

03/02/2022

1. This appeal is for enhancement of compensation awarded by the Motor Accident Claims Tribunal (Fast Track) Kotputali, District Jaipur in MAC No.1103/2005(489/04) by judgment and award



dated 31.05.2007 passed by the Motor Accident Claims Tribunal (Fast Tract) Kotputali, District Jaipur.

2. The learned Tribunal allowed Rs.8,74,000/- along with 6% interest from the date of application against claim of Rs. 96,90,000/-made in the claim petition.

3 Deceased Mahaveer Prasad was a Constable in Jaipur Police.

On 14.02.2004 along with other Constables including AW/2-Kallu Ram, Mahaveer Prasad was also engaged in checking of Vehicle. A rash and negligent Truck bearing registration No. RJ-02G-2649 dashed and dragged 50 to 60 feet to Mahaveer Prasad as a result whereof Mahaveer Prasad dead at the spot.

4. The incident is proved by documentary evidence such as FIR, charge sheet, post mortem report and evidence of AW-2-Kaluram, who was present at the place of accident.

5. The case and claim of the claimants is that the deceased had salary of Rs.8,000/-. Besides that, he had monthly income of Rs.7,000/- from Animal Husbandry. The deceased was aged about 33 years at the time of death. The claimants are widow, two minor children and mother of the deceased.

6. One more claimant Lallu Ram, who is a teacher in the Government School and he is brother of the deceased also got added as dependent of the deceased.

Learned Tribunal has declined to award him any amount. The order of the Tribunal is hereby affirmed as Lallu Ram was not a dependent on the deceased at the time of incident.

7. Mr. Rakesh Bhargava, learned counsel for the appellants contends that deduction against personal expenses of the deceased should have been 1/4th considering the number of dependents, who are four in number as held in **Sarla Varma's**



case and affirmed by the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others, reported in (2017) 16 SCC 680***. The Tribunal has wrongly deducted 1/3rd. Learned counsel further submits that considering the age of the deceased which was in between 30 to 35 years, the multiplier should have been used of 16 but the Tribunal wrongly used 15. Since each of the dependents have lost consortium of the deceased they all are separately entitled for loss of consortium.

8. Reliance has been placed in ***New India Assurance Company Limited Vs. Somwati and Others, reported in (2020) 9 SCC 644***, wherein the Hon'ble Supreme Court relying on ***Magma General Insurance Company Limited Vs. Nanu Ram, reported in (2018) 18 SCC 130*** held that "consortium" includes "spousal consortium", "parental consortium" as well as "filial consortium". It is not the law that consortium is payable only to the spouse and is not payable to children and parents.

9. On the other hand, Mr. R.P. Vijay, learned counsel for the insurer contends that there is breach of Policy of Insurance in as much as the Driver had licence to drive only Light Motor Vehicle whereas the offending Vehicle was a commercial heavy vehicle. However, the Tribunal has given right of recovery to the insurer in the event it was found that there was violation of the terms of Insurance Policy.

10. Since the offending vehicle was insured with respondent No. 3, the respondent No. 3 cannot be absolved of the responsibility to compensate the victim of road accident, however, if a case is made out for violation of terms and conditions of the policy of Insurance, in several cases the insurer's right to recovery from



owner of the offending vehicle was upheld. Hence, the finding of the Tribunal stands affirmed to that extent.

11. I do not find any force in the submission of learned counsel for the Insurance Company that since the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others, reported in (2017) 16 SCC 680***

was by a Constitution Bench, the subsequent Bench of two Judges in ***Somwati's case (supra)*** is not a binding law. The reason is very simple because in ***Pranay Sethi's*** case it was not under consideration before the Hon'ble Supreme Court as to who are entitle for compensation for loss of consortium. The Hon'ble Supreme Court simply directed that under head loss of consortium Rs.40,000/- is to be paid whereas in ***Somvati's case*** this issue was specifically dealt with considering earlier judgment in ***Magma General Insurance Company (supra)***.

12. The learned Tribunal has wrongly deducted 1/3rd from the income of the deceased for his personal expenses against the settled issue in ***Sarla Verma*** and subsequent judgments wherein it was held that considering the number of dependency as in the case on hand 1/4th should be deducted. Likewise considering the age of the deceased multiplier of 16 would have been only appropriate option. Since the deceased was a government servant and there is no material on record to substantiate that he had income from animal husbandry, I affirm the view of the Tribunal that nothing is payable in respect of income from animal husbandry for one more reason that even if that business was there, that is still with the family members.

Therefore, considering the documentary evidence of salary of the victim at the time of death, Rs.7000/- was his monthly



income, which is multiplied with 12 months, the calculation is Rs.84,000/- per annum. After deduction of 1/4th, the amount comes to Rs.63,000/-. If this amount is multiplied with 16, it comes to Rs.10,08,000/-. If 50% of the aforesaid amount of Rs.10,08,000/- is added as under the head of future prospect, the payable compensation comes to Rs.15,12,000/-. All the four claimants i.e. widow, mother and two minor children are separately entitled for Rs.40,000/- under the head of loss of consortium. Besides that Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses are also payable. Thus, under conventional head Rs.1,90,000/- is payable. After adding this amount, the total payable compensation come to Rs. Rs.17,02,000/-. This Court is not inclined to interfere with 6% simple interest awarded by the Tribunal. This amount would be payable minus already paid amount along with interest of 6%.

13. This appeal stands allowed to the aforesaid extent.

(BIRENDRA KUMAR),J

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