

Before Jitendra Chauhan, J.

**ICICI LOMBARD GENERAL INSURANCE
CO. LTD.—Appellant**

versus

RAJ RANI AND OTHERS—Respondents

FAO No.2148 of 2011

February 13, 2014

Motor Vehicles Act, 1988 - Claimants, widowed mother and unmarried sister of the deceased who was a bachelor, were awarded compensation, calculated on the basis of 1/3rd deduction, and multiplier applied on basis of age of the deceased - Insurance company in appeal contended, that application of deduction and multiplier were erroneous, considering that deceased was unmarried - Contention of Insurance company repelled, holding that even if the deceased was unmarried, the multiplier has to be calculated on the age of deceased and not on the age of claimants - Deduction to the extent of 1/3rd also upheld - Appeal by Insurance Company dismissed.

Held, that as far as the point of deduction is concerned, this Court feels that the same has been rightly applied to the extent of 1/3rd in view of the authoritative pronouncement by Hon'ble the Apex Court in Smt. Sarla Verma's case (supra), wherein, it has been proved that where the claimants include widowed mother, the deduction shall be 1/3rd. As regards, the multiplier, again the contention raised by the learned counsel for the appellant is not acceptable in view of the law laid down by Hon'ble the Apex Court, in Amrit Bhanu Shali Vs. National Insurance Co. Ltd., 2012(4) RCR (Civil) 343, wherein, it has been specifically provided that even if the deceased was unmarried, the multiplier should be applied considering the age of the deceased, and not the claimants.

(Para 5)

Nitin Mittal, Advocate, for Subhash Goyal, Advocate, *for the appellant.*

Pankaj Mehta, Advocate, for the cross-objector/respondent Nos. 1 and 2.

Ajay Gulati, DAG Haryana, Mr. Kunal Garg, AAG Haryana.

JITENDRA CHAUHAN, J. (ORAL)

(1) The present appeal has been filed by the appellant- Insurance Company, challenging the impugned Award dated 02.12.2010, passed by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'). The cross-objections have been filed by the claimants for enhancement of compensation amount.

(2) Learned counsel for the appellant contends that the deduction made by the learned Tribunal to the extent of 1/3rd is against the law laid down by Hon'ble the Apex Court in *Smt. Sarla Verma versus DTC (1)*, as the deceased was a bachelor. The multiplier is also applied on the basis of the age of the deceased, which is unsustainable. He further contends that in the absence of any proof of income, the deceased could not have been held as unskilled labourer.

(3) On the other hand, the learned counsel for the crossobjector/ claimants submits that the deduction and multiplier have been rightly applied as the claimants are widowed mother and unmarried sister of the deceased. It is further contended that the compensation assessed by the learned Tribunal is on the lower side and deserves to be enhanced.

(4) I have heard learned counsel for the parties and perused the record.

(5) As far as the point of deduction is concerned, this Court feels that the same has been rightly applied to the extent of 1/3rd in view of the authoritative pronouncement by Hon'ble the Apex Court in *Smt. Sarla Verma's case (supra)*, wherein, it has been proved that where the claimants include widowed mother, the deduction shall be 1/3rd. As regards, the multiplier, again the contention raised by the learned counsel for the appellant is no acceptable in view of the law laid down by Hon'ble the Apex Court, in *Amrit Bhanu Shali Vs. National Insurance Co. Ltd., 2012(4) RCR (Civil) 343*, wherein, it has been specifically provided that even if the deceased was unmarried, the multiplier should be applied considering the age of the deceased, and not the claimants.

(6) The deceased was a matriculate. It has specifically come in the deposition of Des Raj, that the deceased was the sole bread earner of the family and was engaged in dairy business. Otherwise also, no other source of income has come in the evidence, therefore, in the absence of the father, it can safely be presumed that he was the sole bread earner of the family. Considering his qualification and the fact that he was engaged in dairy farming, the deceased cannot be treated at par with an unskilled labourer. Therefore, he is treated as a skilled labour and another amount of Rs.500/-, is enhanced towards monthly income of the deceased. Another 50% increase is ordered on account of future prospects in view of the judgment in *Rajesh Vs. Rajbir Singh and others (2)*. In this way, the amount of compensation towards the head, 'loss of dependency' would come to Rs.5,000/- + 50% X 2/3 X 12 X 18 = Rs.10,80,000/-, as against the amount of Rs.6,48,000/-, awarded by the learned Tribunal. The amount of Rs.5,000/-, awarded on account of funeral expenses and transportation expenses, is increased to Rs.25,000/-. The claimant-mother shall also be entitled to an amount of Rs.1,00,000/-, on account of 'loss of love and affection'.

(7) In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.5,52,000/- [Rs.4,32,000/- (enhancement towards loss of dependency) + Rs.20,000/- (enhancement towards funeral and transportation expenses) + Rs.1,00,000/- (towards loss of love and affection to be paid to the mother of the deceased)], over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

(8) With the aforesaid modification in the impugned award, the FAO No.2148 of 2011, is dismissed, whereas, cross objections No.38-CII of 2011, are partly allowed.

(9) The statutory amount, deposited at the time of filing this appeal, be placed at the disposal of the learned Tribunal for reimbursement.

P.S. Bajwa