

Jyni and Others Vs. P.T. Raphel Rachan Wood Industries and Others

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Court : Kerala

Decided On : Jan-05-2016

Judge : P.R. Ramachandra Menon & Anil K. Narendran

Appeal No. : MACA. No. 3215 of 2015

Appellant : Jyni and Others

Respondent : P.T. Raphel Rachan Wood Industries and Others

Judgement :

Anil K. Narendran, J.

1. The appellants are the claimants in O.P.(MV)No.580 of 2010 on the file of the Motor Accidents Claims Tribunal, Perumbavoor, an application filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of one Rajeev in a motor accident occurred on 25.02.2010. The appellants are the wife, children and mother respectively of the deceased. On 25.02.2010, while the deceased was standing on the side of a public road, a tipper lorry bearing Registration No.KL-7/T-7668, owned, driven and insured by respondents 1 to 3 came in a rash and negligent manner and hit the deceased, resulting fatal injuries. Claiming a total compensation of Rs.42,30,000/- under different heads, the appellants filed claim petition before the Tribunal.

2. Before the Tribunal, respondents 1 and 2 remained absent and they were set ex-parte. The 3rd respondent insurer alone filed written statement. On the side of the appellants Exts.A1 to A8 were marked. On the side of the respondents Ext.B1 was marked. Both sides have not chosen to adduce any oral evidence. As per the order in I.A.No.1672 of 2014, the Tribunal permitted the insurer to contest the matter under Section 170 of the Motor Vehicles Act.

3. After considering the pleadings and the materials on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the tipper lorry by the 2nd respondent. Under different heads, the Tribunal awarded a total compensation of Rs.29,84,760/- and allowed the appellants to recover the said amount from the respondents, to be apportioned in the proportion 15:40:40:5, together with interest at the rate of 9% per annum from the date of petition till realisation. Since the vehicle was validly covered by a policy of insurance issued by the 3rd respondent insurer, the said respondent was directed to deposit the amount of compensation before the Tribunal together with interest. The 3rd respondent insurer was directed to produce one cheque for Rs.41,673/- towards court fee in favour of the Tribunal and four cheques for the balance amount in favour of appellants 1 to 4 in the proportion 15:40:40:5, within one month from the date of award. On such production, the 1st appellant was permitted to withdraw Rs.2,00,000/- retaining the remaining amount out of her share in fixed deposit for a period of three years, with liberty to withdraw quarterly interest. The Tribunal permitted the 4th appellant to withdraw her share in full. Since the 2nd and 3rd appellants are minors, the Tribunal ordered retention of their share in fixed deposit, till they attain majority. On attaining majority they are permitted to withdraw Rs.3,00,000/- each, retaining the remaining amount out of their share in fixed deposit for a further period of three years, with liberty to withdraw quarterly interest.

4. Inadequacy of the compensation awarded by the Tribunal is the subject matter of this appeal.

5. We heard the arguments of the learned counsel for the appellants. The learned counsel would contend that the Tribunal grossly erred in not awarding just and

reasonable compensation under various heads.

6. The pleadings and materials on record would show that at the time of accident the deceased was aged 39 years and was working as Shipwright at the Naval Base, Kochi. Ext.A6 salary certificate issued by the Commanding Officer would show that, at the time of accident the total salary drawn by the deceased was Rs.16,027/-. Out of the said sum, Rs.3,043/- was towards overtime allowance. It is common knowledge that overtime allowance may vary from month to month depending upon the overtime duty performed by an employee. The appellants have not produced any documents to show that the deceased was earning overtime allowance on regular basis. In the absence of any reliable materials, the Tribunal deducted the overtime allowance of Rs.3,043/- and reckoned the monthly income of the deceased as Rs.12,984/-. Therefore, we find absolutely no merit in the contention raised by the appellants that, the Tribunal erred in deducting the overtime allowance mentioned in Ext.A6 salary certificate, while reckoning the monthly income of the deceased. The procedure adopted by the Tribunal in this regard is perfectly legal and no interference of this Court is warranted.

7. In *Rajesh v. Rajbir Singh* (2013 (9) SCC 54 : 2013 (3) KLT 89) the Apex Court held that, in the case of self-employed persons or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. The actual income should be income after paying the tax, if any. Where the deceased victim was in the age group of 40 to 50 years, the addition should be 30% and for those in the age group of 50 to 60 years, the addition should be 15%, so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. In the instant case, the deceased was aged 39 years at the time of accident and was working as Shipwright at the Naval Base, Kochi and Ext.A6 is the salary certificate issued by the Commanding Officer. Since the deceased was aged below 40 years, following the dictum laid down by the Apex Court in *Rajesh's* case (*supra*) the Tribunal made 50% addition to his actual income while computing future prospects. Therefore, the Tribunal rightly fixed the monthly income of the deceased as Rs.19,476/- (12,984 + 6,492).

8. The appellants claimed a sum of Rs.26,00,000/- towards loss of dependency and the Tribunal awarded Rs.26,29,260/- under this head. In *Sarla Verma v. Delhi Transport Corporation* (2009 (6) SCC 121 : 2010 (2) KLT 802) the Apex Court, on the question of deduction towards the personal and living expenses of the deceased held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the number of dependent family members is 4 to 6; and one-fifth where the number of dependent family members exceeds six. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

9. In the instant case, the family of the deceased consists of his wife, two minor children and his mother. Therefore, the Tribunal rightly deducted 1/4th of the monthly income of the deceased towards his personal and living expenses and reckoned the remaining 3/4th, i.e., Rs.14,607/- (19,476 4,869) as the multiplicand for calculating dependency compensation. Adopting a multiplier of 15 applicable to the age group 36 to 40 years, as per the judgment of the Apex Court in *Sarla*

Verma's case (supra), the Tribunal awarded Rs.26,29,260/- ($14,607 \times 12 \times 15$) to the appellants towards loss of dependency. The compensation awarded by the Tribunal under the this head represents just and reasonable compensation, which requires no enhancement in this appeal.

10. In addition to Rs.26,00,000/- claimed towards loss of dependency, the appellants claimed a sum of Rs.13,00,000/- under the head future prospects. However, the Tribunal awarded no amount under this head. As we have already noticed, for computing dependency compensation, the Tribunal fixed the monthly income of the deceased as Rs.19,476/-, by adding 50% to his actual income towards future prospects ($12,984 + 6,492 = 19,476$). Out of Rs.26,29,260/- awarded by the Tribunal for loss of dependency, an amount of Rs.8,76,420/- is towards future prospects, by addition of 50% to the actual income of the deceased ($6,492 \times 12 \times \frac{3}{4} \times 15 = 8,76,420$). Therefore, while awarding dependency compensation, the Tribunal has duly taken into consideration the future prospectus of the deceased by applying the law laid down by the Apex Court in Rajesh's case (supra). Once the criteria as laid down in the said judgment have been duly taken into consideration by the Tribunal while awarding dependency compensation, the appellants are not entitled to any separate compensation under the head future prospects.

11. Towards funeral expense, the Tribunal awarded a sum of Rs.25,000/-. In Rajesh's case (supra) a Three-Judge Bench of the Apex Court held as follows; The head 'funeral expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, it will be just, fair and equitable, under the head of 'funeral expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-. Therefore, Rs.25,000/- awarded by the Tribunal under the head funeral expenses represents just and reasonable compensation.

12. Towards loss of consortium, the Tribunal awarded a sum of Rs.1,00,000/-. In Rajesh's case (supra) a Three-Judge Bench of the Apex Court held as follows; In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, it would only be just and reasonable that the Courts award at least Rs.1,00,000/- for loss of consortium.

13. In Rajesh's case (supra) the Apex Court was dealing with a case where the deceased was aged only 33 years and his widow was still younger. Even in that case, the Apex Court awarded only Rs.1,00,000/- under the head loss of consortium though it was observed in that decision that at least Rs.1,00,000/- has to be awarded under the head loss of consortium. In Valsamma and another v. Binu Jose and others (2014 (1) KLT 10), a Division Bench of this Court, after referring to the judgment of the Apex Court in Rajesh's case (supra), held as follows; The age of the widow and age of the deceased are relevant factors while considering the question of compensation to be awarded for loss of consortium. That may be the reason why even in a case where the deceased was only 33 years, the Apex Court has fixed the quantum of compensation payable under the head 'loss of consortium' as Rs.1,00,000/-. In the instant case, at the time of accident, the deceased was aged 39 years and his wife was aged 31 years. Therefore, Rs.1,00,000/- awarded by the Tribunal under the head loss of consortium represents just and reasonable compensation.

14. Towards loss of love and affection, the Tribunal awarded a sum of Rs.2,00,000/-. The accident has occurred on 25.2.2010 and at the time of accident the children of the deceased namely, the 2nd and 3rd appellants, were aged 4 and 3 years respectively, and his mother, the 4th appellant, was aged 58 years. In Rajesh's case (supra) the Three-Judge Bench of the Apex Court was dealing with a case where the deceased aged 33 years was survived by his wife and three minor children. The Apex Court noted that, the sum of Rs.2,500/- to Rs.10,000/- awarded as compensation under the conventional heads of loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses was fixed several decades ago and having regard to inflation factor, the same needs to be increased. The Apex Court therefore, revisited the practice of awarding compensation under the above conventional heads, by awarding Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. Towards loss of care and guidance for three minor children, the Apex Court awarded a further sum of Rs.1,00,000/-. In Valsamma's case (supra), a Division Bench of this Court, after referring to the judgment of the Apex Court in Rajesh's case (supra) held that, the age of the widow and age of the deceased are relevant factors while considering the question of compensation to be awarded for loss of consortium. The above reasoning of the Division Bench is equally applicable while awarding compensation towards loss of love and affection. Therefore, the age of the deceased and that of the dependants are relevant factors to be considered while awarding compensation for love and affection.

15. However, in Jiju Kuruvila v. Kunjamma Mohan (2013 (9) SCC 166 : 2013 (3) KLT 261) a Two-Judge Bench of the Apex Court awarded Rs.1,00,000/- each to two minor children of the deceased aged 14 and 11 years respectively, towards compensation for love and affection. That was a case in which the accident took place on 16.4.1990. At the time of accident, the deceased was aged 45 years and was working as Manager in Freeman Management Corporation, New York, USA, for more than 9 years and was receiving a monthly salary of 2500 US Dollars equivalent to Rs.43,100/- and could have continued in service upto the age of 65 years as per service conditions, i.e., for another 20 years. He was provided with quarter by the employer and was residing along with his wife. Ext.A6 certificate dated 23.4.1990 issued by the employer of deceased showed that his annual

salary was 30,000 US Dollars. The deceased was in their employment for 9 years and had an excellent standing. His employment was of a permanent nature and he would have continued in service upto the age of 65 years. Ext.A6 certificate was also attested by the Notary Public and counter signed by the Consulate General of India, New York, as per Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. On the basis of the annual income reflected in Ext.A6 and the exchange rate of Rs.17.30 per US Dollar as applicable in April, 1990 (Ext.A7), the annual income of the deceased at the time of death, if converted in Indian currency, was reckoned as Rs.5,19,000/-. The family of the deceased consisted of 5 persons, i.e., the deceased himself, wife, two minor children and his mother. After deducting 1/4th towards personal and living expenses of the deceased and applying the multiplier of 14 applicable to the age group of the deceased, the compensation for loss of dependency was re-fixed as Rs.54,49,500/-. Besides the aforesaid amount, the two minor children were awarded Rs.1,00,000/- each towards loss of love and affection and the wife was awarded a sum of Rs.1,00,000/- towards loss of consortium.

16. In *Indian Bank v. ABS Marine Products (P) Ltd.* (2006 (5) SCC 72) one of the contentions raised was that, any direction issued by the Apex Court in exercise of power under Article 142 of the Constitution of India to do proper justice and the reasons, if any, given for exercising such power, cannot be considered as law laid down by that Court under Article 141. It was also pointed out that, other Courts do not have the power similar to that conferred on the Apex Court under Article 142 and any attempt to follow the exercise of such power will lead to incongruous and disastrous results. The Apex Court left open that question, observing as follows; Though there appears to be some merit in the first respondent's submission, we do not propose to examine that aspect. Though the said question was left open, the Apex Court observed as follows in Para.26 of the judgment;

26. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under

Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/ relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. ...

17. In *State of Punjab v. Rafiq Masih* (2014 (8) SCC 883) a Three-Judge Bench of the Apex Court affirmed the view taken in *ABS Marine Products'* case (supra) holding that, the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Apex Court held further that, the directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. Paras.11 to 13 of the judgment read thus;

11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clearly and make the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.

12. Article 142 of the Constitution is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the Statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions

issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of *Indian Bank v. ABS Marine Products (P) Ltd.* (2006 (5) SCC 72), *Ram Pravesh Singh v. State of Bihar* (2006 (8) SCC 381) and in *State of U.P. v. Neeraj Awasthi* (2006 (1) SCC 667), has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

18. In *Jiju Kuruvila's* case (supra) Apex Court has not laid down any absolute proposition of law that the minor children of the deceased are entitled for Rs.1,00,000/- each towards loss of love and affection. In the said judgment, the Two-Judge Bench has also made reference to the judgment of the Three-Judge Bench in *Rajesh's* case (supra). As discernible from the judgment in *Jiju Kuruvila's*

case (supra), the Apex Court awarded Rs.1,00,000/- each to two minor children towards loss of love and affection, invoking its powers under Article 142 of the Constitution of India, for doing complete justice in the matter pending before it. It is only the Apex Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass such orders to do complete justice to the parties. The said power is not vested with any other Court in the country. In view of the law laid down by the Apex Court in ABS Marine Products' case (supra) and in Rafiq Masih's case (supra), the said direction issued by the Apex Court under Article 142 of the Constitution, while moulding the relief, does not comprise the ratio decidendi and therefore loses its basic premise of making it a binding precedent.

19. In *Yerramma v. G. Krishnamurthy* (2014 (15) SCC 65) the Apex Court was dealing with a case in which the deceased aged 53 years was survived by his wife, three minor children and his mother. After referring to the judgment in Rajesh's case (supra), the Apex Court awarded only Rs.1,00,000/- towards loss of love and affection. In *Anjani Singh v. Salauddin* (2014 (15) SCC 582) the deceased aged 35 years was survived by his wife, three children and his parent. After referring to the judgment in Rajesh's case (supra), the Apex Court awarded a sum of Rs.1,00,000/- towards loss of love and affection. In *Kalpanaraj v. T.N. State Transport Corpn.* (2015 (2) SCC 764) the deceased aged 46 years was survived by his wife and two minor children. The High Court awarded Rs.20,000/- each towards loss of love and affection to the minor children. The Apex Court, after referring to the judgment in Rajesh's case (supra), awarded a sum of Rs.1,00,000/- towards loss of love and affection.

20. In *Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar* (2015 (4) SCC 237) the deceased was aged 22 years and the claim petition was filed by her husband, husband's sisters, daughter and her father-in-law. The Tribunal as well as the High Court have not awarded any amount towards loss of consortium and towards loss of love and affection. The Apex Court, after referring to the judgments in Rajesh's case (supra) and Jiju Kuruvila's case (supra), awarded a sum of Rs.1,00,000/- towards loss of consortium and a further sum of Rs.1,00,000/- towards loss of love and affection. In *Shashikala v. Gangalakshamma* (2015 (9) SCC 150) the deceased aged 45 years was survived by his wife and three children and his

parents. After referring to the judgments Rajesh's case (supra) and Jiju Kuruvila's case (supra), the Apex Court, awarded only Rs.1,00,000/- towards loss of love and affection.

21. However, in Kala Devi v. Bhagwan Das Chauhan (2015 (2) SCC 771), after referring to the judgment in Jiju Kuruvila's case (supra), the Apex Court awarded Rs.1,00,000/- each to the minor children towards loss of love and affection. In that case, the deceased aged 25 years was survived by his wife and two minor children and his mother. Similarly, in Neeta v. Maharashtra State Road Transport Corporation (2015 (3) SCC 590), after referring to the judgment in Jiju Kuruvila's case (supra), the Apex Court awarded Rs.1,00,000/- each to the minor children towards loss of love and affection and a further sum of Rs.50,000/- each to the parents towards loss of love and affection. In that cases, the deceased in the Civil Appeal arising out of M.F.A.No.21286 of 2012, aged 33 years, was survived by his wife, minor child and his parents. Similarly, the deceased in the Civil Appeal arising out of M.F.A.No.21290 of 2012, aged 33 years, was survived by his wife, three minor child and his mother. As discernible from the judgments in Jiju Kuruvila's case, Kala Devi's case and Neeta's case referred to supra, the Apex Court awarded Rs.1,00,000/- each to minor children/Rs.50,000/- each to the parents of the deceased towards loss of love and affection, invoking its powers under Article 142 of the Constitution of India, for doing complete justice in the matter pending before it. In view of the law laid down by the Apex Court in ABS Marine Products' case (supra) and in Rafiq Masih's case (supra), the said directions issued under Article 142 of the Constitution, while moulding the relief, do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent.

22. In view of the law laid down by the Three-Judge Bench of the Apex Court in Rajesh's case (supra) the amount of compensation that could be awarded towards loss of love and affection can only be Rs.1,00,000/-. In Yerramma's case, Anjani Singh's case, Kalpanaraj's case, Jitendra Khimshankar Trivedi's case and Shashikala's case referred to supra, the uniform practice followed by the Apex Court was to award Rs.1,00,000/- towards compensation under the head loss of love and affection, and not Rs.1,00,000/- to each children or Rs.50,000/- to each

parents. In view of the judgments of the Apex Court referred to supra, the reasonable compensation that could be awarded by the Tribunal towards loss of love and affection is only Rs.1,00,000/-. Even then, the Tribunal awarded Rs.2,00,000/- towards loss of love and affection. However, in the absence of any appeal filed by the 3rd respondent insurer questioning the quantum of compensation awarded by the Tribunal under this head, no interference is warranted unless a reworking of the compensation by scaling down that awarded under this head is found necessary in this appeal in order to award the appellants enhanced compensation under any other heads.

23. Towards loss of estate the Tribunal awarded a sum of Rs.15,000/-. In Sarla Verma's case (supra) the Apex Court laid down the principles governing determination of quantum of compensation in the case of death in a motor accident. The Apex Court held that, the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by following the well settled steps, namely, ascertaining the multiplicand (annual contribution to the family), the multiplier and calculation of loss of dependency by multiplying the multiplicand by such multiplier. Thereafter, a conventional amount in the range of Rs.5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs.5,000/- to Rs.10,000/- should be added under the head of loss of consortium. The funeral expenses, cost of transportation of the body, if incurred, and cost of any medical treatment of the deceased before death, if incurred, should also added. The principle laid down in Sarla Verma's case (supra) was reiterated by the Apex Court in Radhakrishna v. Gokul (2013 (16) SCC 585).

24. In Sarla Verma's case (supra) the Apex Court awarded only a conventional amount of Rs.5,000/- under the head loss of estate. In Rajesh's case (supra) a

Three-Judge Bench of the Apex Court explained and modified the principle laid down in Sarla Verma's case (supra), by revisiting the practice of awarding Rs.2,500/- to Rs.10,000/- as compensation under the conventional heads of loss of consortium, loss of love, care and guidance and funeral expenses, and awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. Towards loss of care and guidance the Apex Court awarded a further sum of Rs.1,00,000/-.

25. In *Shyamwati Sharma v. Karam Singh* (2010 (12) SCC 378) the Apex Court applied the principles laid down in Sarla Verma's case (supra) for re-calculating the compensation payable to the widow, three minor children and the mother of a deceased Sub-Inspector of Police aged 36 years, who died in a motor accident. In the said case as well, the Apex Court awarded only a conventional amount of Rs.5,000/- under the head loss of estate. In *Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar* (2015 (4) SCC 237) the deceased was aged 22 years and the claim petition was filed by her husband, husband's sisters, daughter and her father-in-law. The Tribunal awarded Rs.5,000/- under the head loss of estate. The High Court enhanced the said compensation to Rs.10,000/-. While partly allowing the appeal, the Apex Court maintained Rs.10,000/- awarded by the High Court under the head loss of estate.

26. However, in *Yerramma v. G. Krishnamurthy* (2014 (15) SCC 65) the Apex Court awarded Rs.1,00,000/- towards loss of estate. In that case, the deceased aged 53 years was survived by his wife, three minor children and his mother. Similarly, in *Kalpanaraj v. T.N. State Transport Corporation* (2015 (2) SCC 764) the Apex Court awarded Rs.1,00,000/- towards loss of estate. In that case, the deceased aged 46 years was survived by his wife, two children. In *Kala Devi v. Bhagwan Das Chauhan* (2015 (2) SCC 771) the Apex Court awarded Rs.1,00,000/- towards loss of estate. In that case, the deceased aged 25 years was survived by his wife, two minor children and his mother. In *Neeta v. Maharashtra State Road Transport Corporation* (2015 (3) SCC 590) the Apex Court awarded Rs.1,00,000/- towards loss of estate. In that case, the deceased in the Civil Appeal arising out of M.F.A.No.21286 of 2012, aged 33 years, was survived by his wife, minor child and his parents. Similarly, the deceased in the

Civil Appeal arising out of M.F.A.No.21290 of 2012, aged 33 years, was survived by his wife, three minor child and his mother.

27. In the judgments referred to above, the Apex Court has not laid down any absolute proposition of law that the legal heirs of the deceased are entitled for Rs.1,00,000/- towards loss of estate. As discernible from the said judgments, the Apex Court awarded Rs.1,00,000/- to the claimants in those cases towards loss of estate, invoking its powers under Article 142 of the Constitution of India, for doing complete justice in the matter pending before it. In view of the law laid down by the Apex Court in ABS Marine Products' case (supra) and in Rafiq Masih's case (supra), the said directions issued by the Apex Court under Article 142 of the Constitution, while moulding the relief, do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. Therefore, the conventional amount of Rs.15,000/- awarded by the Tribunal in the instant case, under the head loss of estate, represents just and reasonable compensation, which requires no enhancement in this appeal.

28. Towards loss of expectation of life, the appellants claimed a compensation of Rs.25,000/-. However, the Tribunal awarded no amount under this head. The law was settled in the case of *Rose v. Ford* (1937 AC 826) that a claim for loss of expectation of life is maintainable on behalf of the estate of the deceased and with regard to awards for such loss, they were described as basically conventional in *Cain v. Wilcock* (1968 All.ER 817). This is so because loss of expectation of life is an aspect that cannot be quantified in monetary terms with any known mathematical formula. In India, the head of damages 'loss of expectation of life' has been long recognised. The judgment of a Three-Judge Bench of the Apex Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* (AIR 1962 SC 1) is a case in point. In that case, an award of Rs.5,000/- inter alia for loss of expectation of life was maintained by the Apex Court. The Apex Court held further that, in awarding damages both under loss of expectation of life and loss of dependency there was no duplication of the same claim.

29. In *U.P.State Road Transport Corporation v. Trilok Chandra* (1996 (4) SCC 362) a Three-Judge Bench of the Apex Court held that, in a fatal accident the

dependants of the deceased are entitled to compensation for the loss suffered by them on account of the death. The most commonly practiced method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To this may be added a conventional amount by way of loss of expectation of life. Earlier, this conventional amount was pegged down to Rs.3,000/- but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs.10,000/-.

30. In *R.K.Malik v. Kiran Pal* (2009 (14) SCC 1) the Apex Court held that, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for 'loss of expectation of life', which head of compensation need not be restricted to a case where the injured person himself initiates action, but is equally admissible if his dependant brings about the action.

31. In *R.K.Malik's case* (supra) the accident had occurred on 18.11.1997, when a School bus after overrunning the road and breaking the railing, got drowned in Yamuna river at Wazirabad Yamuna Bridge, killing 29 children. The Apex Court held that, while quantifying and arriving at a figure for 'loss of expectation of life', the Court has to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head, i.e., pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

32. However, in *Kalpanaraj v. T.N. State Transport Corporation* (2015 (2) SCC 764) the Apex Court awarded Rs.1,00,000/- towards loss of expectation of life. In that case, the deceased aged 35 years was survived by his wife and two minor

children. In the said judgment, the Apex Court has not laid down any absolute proposition of law that the legal heirs of the deceased are entitled for Rs.1,00,000/- towards loss of expectation of the life. As discernible from the said judgment, the Apex Court awarded Rs.1,00,000/- to the claimants in that case towards loss of estate, invoking its powers under Article 142 of the Constitution of India, for doing complete justice in the matter pending before it. In view of the law laid down by the Apex Court in ABS Marine Products' case (supra) and in Rafiq Masih's case (supra), the said directions issued by the Apex Court under Article 142 of the Constitution, while moulding the relief, does not comprise the ratio decidendi and therefore loses its basic premise of making it a binding precedent.

33. In *Raj Kumar v. Ajay Kumar* (2011 (1) SCC 343) the Apex Court held that, when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. That was a case in which the appellant sustained serious injuries in a motor accident, resulting permanent disability.

34. Though a claim for loss of expectation of life is maintainable on behalf of the estate of the deceased, the award of sums under this head should be for conventional sums. The uniform practice followed by the Apex Court in *Gobald Motor Service Ltd.'s case* (supra), *Trilok Chandra's case* (supra), etc. was to award only a conventional amount of Rs.5,000/- to 10,000/- under this head. However, once dependency compensation is awarded by applying the multiplier applicable to the age group of the deceased, duly taking into consideration the future prospectus of the deceased, by applying the dictum laid down by the Apex Court in *Rajesh's case* (supra), and a conventional amount is also awarded under the head loss of estate, the need to award separate compensation under the head loss of expectation of life will disappear and in appropriate cases the Tribunal need award only a token or nominal amount under this head. In that view of the matter, the Tribunal cannot be found fault with in not awarding any amount under the head

loss of expectation of life.

35. Towards pain and suffering the appellants claimed a compensation of Rs.30,000/- and the Tribunal awarded Rs.10,000/- under this head. In *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka* (2009 (6) SCC 1) the Apex Court emphasised that, a person injured in an accident leaves his family in greater distress vis- -vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.

36. Death in an accident is generally the result of violent impact on the body resulting in serious injuries causing severe pain. The magnitude of the ordeal may vary from case to case depending upon the nature of injuries sustained. In cases of instantaneous deaths also pain and suffering is invariably present, as in the case of survival for hours or days. In cases of instantaneous death as well as cases where the deceased was unconscious between the time of accident and the time of his death, some notional amount is payable under the head pain and suffering. A slightly higher amount can be awarded under this head, if the death is not instantaneous. Therefore, a conventional amount in the range of Rs.5,000/- to Rs.15,000/- could be awarded under the head pain and suffering in such cases. In the instant case, the deceased succumbed to injuries on the date of accident itself. In such circumstances, Rs.10,000/- awarded by the Tribunal under the head pain and suffering represents just and reasonable compensation, which requires no enhancement in this appeal.

37. The Tribunal awarded Rs.500/- under the head damage to clothes and a further sum of Rs.5,000/- towards transportation to hospital. The amount awarded by the Tribunal under the above heads represents just and reasonable compensation, which also requires no enhancement in this appeal.

38. In *State of Haryana v. Jasbir Kaur* (2003 (7) SCC 484) the Apex Court held that the Tribunal under Section 168 of the Act is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

39. In *Jasbir Kaur's case* (supra), after referring to the judgment in *Helen C. Rebello v. Maharashtra State Road Transport Corporation* (1999 (1) SCC 90), the Apex Court held further that, the Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just' a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness, reasonableness, and non-arbitrary. If it is not so, it cannot be just.

40. Viewed in the light of the cardinal principle laid down as above by the Apex Court in *Helen C. Rebello's case* (supra) and reiterated in *Jasbir Kaur's case* (supra), we find absolutely no grounds to enhance the compensation awarded by the Tribunal under various heads.

41. The learned counsel for the appellant would then contend that the Tribunal went wrong in not permitting the 1st appellant to withdraw her share in the total compensation in full. In *Kerala State Road Transport Corporation v. Susamma*

Thomas (1994 (2) SCC 176) the Apex Court laid down certain guidelines to be followed in the matter of investment of the compensation awarded by the Tribunal, in order to safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptibility to exploitation. However, in A.V.Padma v. R.Venugopal (2012 (3) SCC 378) the Apex Court deprecated the mechanical approach of the Tribunals in ordering deposit of the compensation amount in long-term fixed deposit, without considering genuine requirements of the claimants and ignoring the object and spirit of the guidelines as laid down in Susamma Thomas' case (supra). In A.V.Padma's case (supra) the Apex Court clarified the guidelines laid down in Susamma Thomas' case (supra), by observing that sufficient discretion has been given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons. The Apex Court clarified further that, the above guidelines were issued by the Court only to safeguard the interests of the claimants, particularly the minors, illiterates and others whose amounts are sought to be withdrawn on some fictitious grounds. The guidelines were not to be understood to mean that the Tribunals were to take a rigid stand while considering an application seeking release of the money and that, the guidelines cast a responsibility on the Tribunals to pass appropriate orders after examining each case on its own merits.

42. In the instant case, the accident occurred in the year 2010 and at the time of accident the wife and children of the deceased (appellants 1 to 3) were aged 31, 4 and 3 years respectively. As per the award passed by the Tribunal, the total compensation of Rs.29,84,760/- is apportioned among the appellants in the proportion 15:40:40:5 and the 3rd respondent insurer is directed to produce one cheque for Rs.41,673/- towards court fee in favour of the Tribunal and four cheques for the balance amount in favour of appellants 1 to 4 in the proportion 15:40:40:5. On production of cheques, the 1st appellant is permitted to withdraw Rs.2,00,000/- retaining the remaining amount out of her share in fixed deposit for a period of three years, with liberty to withdraw quarterly interest. The Tribunal permitted the 4th appellant to withdraw her share in full. Since the 2nd and 3rd appellants are minors, the Tribunal ordered retention of their share in fixed deposit, and on attaining majority they are permitted to withdraw Rs.3,00,000/-

each, retaining the remaining amount out of their share in fixed deposit for a further period of three years, with liberty to withdraw quarterly interest.

43. As per the award passed by the Tribunal, the entitlement of the 1st appellant is limited to 15% of the total compensation awarded. The 1st appellant lost the support of her husband at the age of 31 years. She requires money for proper upbringing and education of the two minor children, besides the daily household expenses. On account of discontinuance of the income earned by the deceased, his family should not face the vagaries of life. In such circumstances, we deem it appropriate to permit the 1st appellant to withdraw her share in the total compensation in full and the award passed by the Tribunal is modified to that extent.

In all other respects this appeal fails and is dismissed.

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