

**Kamla Devi and anr. Vs. State of Rajasthan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/773039](http://sooperkanoon.com/773039)

**Court :** Rajasthan

**Decided On :** Apr-15-1988

**Reported in :** II(1989)ACC180

**Judge :** Sobhagmal Jain, J.

**Appellant :** Kamla Devi and anr.

**Respondent :** State of Rajasthan and ors.

**Judgement :**

**Sobhagmal Jain, J.**

1. This appeal is directed against the award dated April 17, 1985 of the Motor Accidents claims Tribunal, Jodhpur, allowing a sum of Rs. 42,000/- as compensation to the appellants. The Tribunal has also specified the amounts to be paid to the appellants individually, out of the aforesaid compensation.

2. The accident took place on June 5, 1982, resulting in the death of Kan Singh who was a Chief Guard in the Ground Water Department. The accident was caused by truck No. RJO 5263 belonging to the Government of Rajasthan, which at the time of the accident, was being driven by Kalyan Singh, driver. A claim petition was filed by Smt. Kamla, widow of the deceased, and Balu Ram, his son. The claimants claimed a sum of Rs. 1,35,000/- as compensation. It was alleged that the accident was caused on account of rash and negligent driving of the truck

by Kalyan Singh.

3. The Tribunal, by the award dated April 17, 1985, held that the accident resulting in the death of Kan Singh was caused on account of the rash and negligent driving of Kalyan Singh. In the accident Kan Singh was run over by the truck and died at the spot. The Tribunal awarded a sum of Rs. 42,000/- as compensation to the appellants. Out of this, a sum of Rs. 27,000/- was directed to be paid to Smt. Kamla Devi and Rs. 15,000/- to Balu Ram. The Tribunal also allowed interest at the rate of 10 per cent per annum from December 1, 1982. The Tribunal has also given directions about the mode of payment of the amount of compensation to the claimants. Being aggrieved by the aforesaid award, the appellants have filed this appeal for enhancement under Section 110-D of the Motor Vehicles Act, 1939.

4. Mr. D.K. Parihar, learned Counsel for the appellants, has contended that the Tribunal has committed an error in disallowing compensation claimed by the appellants on account of loss of life, love and affection and consortium of the spouse/father.

5. The Tribunal has said that the legal representatives of the deceased are not entitled to any compensation on account of mental and physical agony and for loss of consortium or love and affection of the spouse. Obviously, the Tribunal was wrong in holding that compensation could not be allowed on account of loss of life, love, affection and consortium, in R.S.R.T.C. v. Kistoori Devi A.I.R. 1986 Raj. 192 a Full Bench of this Court has decided that the Tribunal is entitled to grant compensation on the head 'loss of life, love and affection of spouse/children/parents/' This Court in the aforesaid decision has further said that compensation for loss of consortium is also permissible. The Full Bench has said:

58.... We would now consider the question of admissibility of compensation in respect of the following heads for which the learned single Judge had made this reference:

(1) Loss of life and affection of spouse/children/parents.

In determining the just compensation, the Court is entitled to grant compensation on the above held. (2) Consortium: We have already cited number of cases where compensation has been allowed for loss of consortium but in case the amount of compensation is allowed to a spouse under the first head, then, the question of further allowing compensation under the head of loss of consortium will not arise.

6. True, the claimants under the head 'mental and physical agony or suffering' cannot claim any compensation for their own mental and physical agony or pain and suffering on account of the death of their spouse/or parents but they are, nevertheless, entitled to claim compensation on account of loss of life, love and affection of spouse/children/parents and loss of consortium- The appellants have claimed a sum of Rs. 40,000/- under this head. On the date of the accident, Kan Singh was 52 years of age. He was a Chief Guard in the Ground Water Department. Smt. Kamla Devi, at the time she lost her husband, was aged 50 years She lost the company and protection of her husband at the age, when she needed it most. One can very well imagine the condition and misery of a widow who loses her husband at this critical age of her life. Taking into consideration the facts and circumstances of the case, in my opinion, a sum of Rs. 15,000.00 shall be a just compensation to be paid awarded to the claimants on the head 'loss of life, love and affection of spouse/father and the loss of consortium.' The award made by the Tribunal needs to be modified to the extent that the amount of compensation shall be enhanced by Rs. 15,000/-, to be apportioned between Smt. Kamla Devi, widow and Balu Ram, son, thus: Smt. Kamla Devi Rs. 10,000/- and Balu Ram Rs. 5000/-. They will also be entitled to get interest of their respective amounts at the rate of 10 per cent per annum from the date of claim petition was filed before the Tribunal till realization of the amount.

7. Accordingly, the appeal is partly allowed, the award made by the Tribunal is modified as indicated above and the rest of the directions given by the Tribunal shall stand.

8. The parties shall bear their own costs of this appeal.