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SMT. SAVITA

v.

BINDAR SINGH & ORS.
(Civil Appeal No. 4001 of 2014)

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MARCH 25, 2014

**[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]**

MOTOR VEHICLES ACT, 1988:

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s.166 -- Fatal motor accident - Compensation --Tribunal and High Court ignoring to award compensation towards future prospects -- Awarding meager amounts under heads --"loss of consortium" and "funeral expenses"- Held: At the time of fixing such compensation, court should not succumb to niceties or technicalities to grant just compensation -- It is the duty of court to equate, as far as possible, the misery on account of accident with compensation so that the injured or dependants should not face vagaries of life on account of discontinuance of income earned by victim -- Therefore, it will be the bounden duty of Tribunal to award just, equitable, fair and reasonable compensation considering the price index prevailing at the moment and judging the situation prevailing -- Compensation under the head "future prospects of deceased" to be calculated by adding 30% to monthly income and by deducting 1/3 towards personal expenses -- Compensation under the heads "loss of consortium" and "funeral expenses" enhanced -- Interest to be paid @ 8% instead of 6% awarded by Tribunal from the date of application till payment -- Interest.

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In a motor accident claim arising out of the death of a 26 year old victim, the Tribunal taking the notional annual income at Rs. 36,000/-, applying the multiplier of 17 and deducting one third as personal expenses of

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deceased, allowed the compensation of Rs. 4,06,000/- besides Rs. 5000/- for cremation, Rs. 5000/- for loss of estate and Rs. 10,000/- as loss of consortiums with 6% interest. The High Court diminished the appeal of claimant.

Partly allowing the appeal, the Court

HELD: 1.1 In view of the decisions of this Court in *Santosh Devi* as well as *Rajesh v. Rajbir Singh*, it is the duty of the court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation considering the price index prevailing at the moment and judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation. [para 6] [817-E-H; 818-A]

Santosh Devi v. National Insurance Company Ltd. & Ors. 2012 (3) SCR 1178 = (2012) 6 SCC 421; and *Rajesh vs. Rajbir Singh* (2013) 9 SCC 54 - relied on.

1.2 In the instant case, the Tribunal and the High Court have failed to consider the fact-situation, and without taking any pragmatic view and further without considering the price-index prevailing at the moment,

A they assessed the compensation ignoring the principle laid down by this Court in the recent decisions. The award suffers from proper assessment of compensation awarded by the Tribunal, and granted by the High Court on the conventional heads, i.e., 'loss of consortium' to the spouse, 'future prospects of the deceased' and further the sum awarded under the head 'funeral expenses', as the same cannot be said to be a just compensation. There should have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor. [para 7] [818-B-E]

Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (5) SCR 1098 = (2009) 6 SCC 121- referred to

D 1.3 Accordingly, as has been pointed out by this Court in *Rajesh v. Rajbir Singh*, this Court awards the compensation under the head 'loss of consortium' to the spouse, loss of love, care and guidance to children and funeral expenses as 1,00,000/- and 25,000/- respectively. [para 7] [818-E-F]

E 1.4 Further, since the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts he used to earn, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of 900/- being the future prospects; the said amount should be added to the notional income of the victim i.e. Rs. 3000/-. Deducting one third of 3,900/- and applying the multiplier at 17, the amount of compensation to be paid would be 5,30,400/-. Thus, the claimant/

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G appellant is entitled to a total sum of 6,55,400/- plus interest @ 8 per cent per annum from the date of filing of the claim petition till the date of payment as compensation. [para 8 and 10] [819-A-D; 820-C-D]

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Case Law Reference:

2009 (5) SCR 1098 referred to para 3.4

2012 (3) SCR 1178 relied on para 4

(2013) 9 SCC 54 relied on para 4

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4001 of 2014.

From the Judgment and Order dated 16.04.2013 of the High Court of Uttarakhand at Nainital in AFO No. 96 of 2013.

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Neha Kedia (for Rohit Kumar Singh) for the Appellant.

A.K. Kaul, A.K. Raina (for Binay Kumar Das) for the Respondents.

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The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against the order dated April 16, 2013 passed by the High Court of Uttarakhand affirming the award dated December 3, 2012 passed by the Motor Accidents Claims Tribunal, Haridwar in Motor Accident Claim Petition No.75/2011. The Tribunal directed the respondent – Oriental Insurance Co. Ltd. – to pay a sum of 4,28,000/- to the claimant. Being aggrieved by the quantum of compensation, this appeal has been filed by the appellant-claimant.

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3. Briefly the facts of this case are as follows:

3.1 One Sandeep Chauhan died in an accident on November 26, 2010 due to rash and negligent driving by the driver of a truck bearing registration No.HR-56-6047 between Ram Nagar and Dhandhera. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation against the respondents.

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A 3.2 In the claim petition, the appellant/claimant asked for compensation of 20,20,000/- along with interest at the rate of 12% per annum from the respondents/opposite parties. The parties filed their pleadings before the Tribunal and the following issues were framed:-

- B “1. Whether on dated 26.11.2010 the motor cycle of the deceased Sandeep Chauhan Chasis no. MD2DSPAZZTPE51258, Engine no. IBVBTF91396 Model Discover, Time: at about 10 PM at Malvia Chowk, then a driver of Truck bearing registration No. HR-56-6047 brought from the front side with high speed and careless and hit the motor cycle going on the side, due to which Sandeep Chauhan received many injuries and due to that injuries and the motor cycle was damaged and the injured Sandeep Chauhan was died to while taking him to the hospital? (sic)
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2. Whether the motor used while accident was having insurance, D.L., Fitness Registration etc. and was permitted to use?(sic)
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3. Whether the petition of the claimants is contaminated from the required facts?
4. Whether the claimants are entitled to compensation. If so, to what amount and from whom?”

F 3.3 The Tribunal held that on November 26, 2010, Driver Binder Singh while driving Truck No. HR-56-6047 with speed and carelessness in the centre of the road, hit the motorcycle of Sandeep Chauhan, as a result of which Sandeep Chauhan was seriously injured and subsequently succumbed to his injuries. The issues were also discussed by the Tribunal which further held that accidental vehicle was permitted to be driven with legal and effective documents and driving licenses.

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H 3.4 On the issue of compensation the Tribunal after taking

into account all the facts and materials placed before it, came to the conclusion that since the claimant could not prove that the deceased was getting 7,000/- per month as salary the Tribunal following the principle enunciated in an order of the Uttarakhand High Court, held that notional annual income of the deceased was 36,000/-. The Tribunal also followed the principle laid down in *Smt. Sarla Verma vs. Delhi Transport Corporation*¹ and held that one third share from the notional income of the deceased should be deducted as his personal expenses to calculate compensation on the basis of the notional annual income of the deceased. The Tribunal further held that the deceased's father, mother and wife were dependents on the deceased and they should be treated as dependents of the deceased. The multiplier of 17 was fixed by the Tribunal considering the age of the deceased who was 26 years of age at the time of the accident. After taking into account all these aspects, Tribunal came to the conclusion and assessed the compensation amount at 4,08,000/- and further granted 5,000/- for cremation, 5,000/- for loss of estate and 10,000/- for loss of consortium and thereby the compensation amount was determined at 4,28,000/- and also directed that interest to be paid at the rate of 6% per annum on the total compensation amount from the date of filing of the petition till the date of decision.

3.5 Being aggrieved, an appeal was filed before the High Court. The High Court dismissed the said appeal on the ground that there was no illegality in the award passed by the Tribunal. Hence this appeal has been filed.

4. We have heard the learned counsel for the parties. It has been pointed out by the learned counsel for the appellant that the said award is wrong on the ground that a salary certificate has been produced before the Tribunal and the Tribunal has not accepted the same without any reason. She further submitted that the compensation which has been granted by the Tribunal

1. (2009) 6 SCC 121.

A and affirmed by the High Court does not include the future prospects which should have been added to the claim and further the deduction with regard to the personal expenses could not have been made more than one tenth of the total salary received by the victim. In support of such contention, she relied upon *Santosh Devi v. National Insurance Company Ltd. & Ors.*² and further submitted that compensation under the head 'loss of consortium' has not been properly assessed by the said Tribunal which has been assessed by this Court in *Rajesh vs. Rajbir Singh*³ and the compensation under the said head should have been awarded for a sum of 1,00,000/-. She further submitted that the compensation under the head 'funeral expenses' should have been granted as 25,000/- and in support of her such contention, she relied upon the aforementioned decisions. On the contrary, it has been stated on behalf of the respondents that in *Sarla Verma* (supra), the principles laid down by this Court have been followed by the Tribunal and therefore there is no reason to interfere with the award passed by the Tribunal and the appeal dismissed by the High Court.

5. This Court in *Santosh Devi* (supra), held as follows:

"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in *Sarla Verma's* case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

2. (2012) 6 SCC 421.

H 3. (2013) 9 SCC 54.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

6. After considering the decisions of this Court in *Santosh Devi* (supra) as well as *Rajesh v. Rajbir Singh* (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the

A application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation.

B 7. In the instant case, it appears that the Tribunal and the High Court have also failed to consider the fact-situation of this case, without taking any pragmatic view and further without considering the price-index prevailing at the moment, assessed the compensation ignoring the principle laid down by this Court in the recent decisions (see: *Rajesh v. Rajbir Singh* (supra) as also *Santosh Devi* (supra)) and without revisiting the present situation, came to the conclusion and awarded the total compensation for a sum of 4,28,000/-. In our opinion, such award suffers from proper assessment of compensation awarded by the Tribunal, and High Court on the conventional heads, i.e., 'loss of consortium' to the spouse, 'future prospects of the deceased' and further the sum awarded under the head 'funeral expenses', cannot be said to be a just compensation. In our opinion, there should have been an endeavour on the part of the Tribunal as well as the High Court to consider the inflation factor and further they should have considered the amounts fixed by the court several decades ago on such heads. Accordingly, as has been pointed out by this Court in *Rajesh v. Rajbir Singh* (supra), we hold that the compensation under the head 'loss of consortium' to the spouse, loss of love, care and guidance to children and funeral expenses amounts should have been awarded under such heads, that is, for 1,00,000/- and 25,000/- respectively and we award such compensation under the said heads. So far as the head of 'salary' is concerned, we do not express any opinion since we have found that the appellant could not prove the salary certificate and for such reason, we do not intend to interfere with the opinion expressed by the Tribunal on the established principle of notional income and accordingly, we do not want to disturb the said notional income while calculating the total compensation in favour of the appellant.

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8. We have failed to understand why the Tribunal as well as the High Court lost its sight to hold that the victim could have had future prospects with regard to the amounts the victim used to earn during his life-time? Therefore, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of 900/- being the future prospects; the said amount should be added to the notional income of the victim. Therefore, it appears that the total salary along with future prospects of the victim should have been calculated at 3,000/- plus 900/- amounting to 3,900/- per month. The total deduction on personal expenses, in our opinion, should have been one third of 3,900/- amounting to 1,300/-. Therefore, salary after deduction would come to 2,600/- and the multiplier should be applied at 17, as has been done correctly by the Tribunal after taking into account the age of the victim. In this process, the total amount of compensation to be paid would be 2,600 x 17 x 12 amounting to 5,30,400/-.

9. We modify and reassess the compensation in accordance with the Calculation Table set out hereunder:

CALCULATION TABLE

Salary (Since it is not proved sufficiently as per the order of the Tribunal)	Rs. 3,000/- per month
Future prospects (at the rate of 30% as prayed for) (as per para 8)	[30% of Rs.3,000= 900/-] Salary is (3,000+ 900) = Rs. 3,900/-
Deduction towards personal expenses (as per Schedule II)	1/3rd of Rs. 3,900 = Rs. 1,300/-
Total salary after adding future prospects and deducting personal expenses	Rs.3,900 – Rs.1,300 = Rs.2,600/-
Multiplier i.e. 17 (as per Schedule II and Section166)	Rs.2,600 x 17 x 12 = Rs.5,30,400/-

A	Total amount of compensation (as per para 8)	Rs. 5,30,400/-
	Compensation under the head of "loss of consortium" (as per para 7)	Rs. 1,00,000/-
B	Compensation under the head of 'funeral expense' (as per para 7)	Rs. 25,000/-
	Grand Total	Rs. 6,55,400/-

10. The order of the High Court and Tribunal is modified.

- C We direct that the claimant/appellant is entitled to a sum of 6,55,400/- plus interest @ 8 per cent per annum from the date of filing of the claim petition till the date of payment as compensation. Accordingly, we direct that the enhanced amount should be paid to the appellant after deducting the amount
- D already paid, within a period of four weeks from date. For the reasons stated hereinabove, the appeal is partly allowed.

R.P.

Appeal partly allowed.