Before Nawab Singh, J.

RANJIT KAUR AND OTHERS—*Appellants*

versus

PIARA SINGH AND OTHERS—Respondents

FAO 1367 of 2012

July 29, 2013

Motor Vehicles Act, 1988 - S. 166 - Appeal for enhancement of compensation - A labourer died in road accident on account of rash and negligent driving of driver of car - Widow and minor sons filed claim application - Tribunal did not consider future prospects and awarded loss of consortium on lower side - Appeal for enhancement - Appeal allowed as in case of self-employed or persons with fixed wages below 40 years, there must be an addition of 50% to the actual income of the deceased.

Held, that in Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403, a Full Bench of Hon'ble Supreme Court held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased. Similar view was taken by a Hon'ble Division Bench of this Court in Poonam etc. vs. Rajbir Rawat, etc. 2013(1) RCR(Civil) 988, a judgment authored by Hon'ble Mr.Justice A.K.Sikri, the then Chief Justice of this Court.

(Para 7)

Further held, that following the aforesaid decisions and in considered opinion of this Court even if the deceased was a labourer/self-employed, aged about 30 years, there must be an addition of 50% in his income on account of future prospects. Hence, his income is assessed at Rs.6000/- per month. Deducting 1/3rd for his personal and living expenses, the dependency has to be assessed as 6000-1/3rd = 4000×12×17 = 8,16,000/-.

(Para 8)

Further held, that So far as the amount of Rs.20,000/- awarded on account of loss of consortium is concerned, in Rajesh and others (supra) the full Bench of the Hon'ble Supreme Court commented upon the meaning

of consortium and awarded Rs.1 lac to the wife on account of death of her husband who was 33 years of age.

(Para 9)

Dheeraj Narula, Advocate, *for the appellants.*

R.K.Bashamboo, Advocate for respondent No.3 – Insurance Company.

NAWAB SINGH J. (ORAL)

(1) This claimants' appeal is directed against the Award dated September 08, 2011 passed by Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal').

(2) On April 01, 2008, Angrej Singh, aged 30 years, a labourer, died in a road accident on account of rash and negligent driving of car No.PB-04K-0033 by Piara Singh – respondent No.1 on Grand Trunk road, near village Odhan.

(3) FIR No.39 dated April 01, 2008 (Exhibit P-1) was registered in Police Station Odhan. Post mortem examination (report Exhibit P-6) was conducted on the body of Angrej Singh.

(4) Ranjit Kaur, widow, aged 28 years and Sukhman Singh and Amrit Pal, sons, aged 8 years and 5 years, respectively, of Angrej Singh (deceased) filed claim application under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal pleading that the deceased used to cultivate the land after taking the same on lease/Batai and was earning Rs.7,000/- per month.

(5) Since, there was no documentary evidence to prove the income of the deceased, the Tribunal assessed his monthly income at Rs.4000/- considering him as a labourer. 1/3rd was deducted towards his self and living expenses and annual dependency was assessed at Rs.32,004/-. Considering the age of the deceased (30 years), multiplier of 17 was applied and total dependency was assessed at Rs.5,44,068/-. Apart from that, Rs.10,000/- and Rs.20,000/- were awarded towards 'funeral expenses and transportation' and 'loss of consortium. In all, compensation of Rs.5,74,100/- (rounded off) along with interest at the rate of 7.5% per annum from the date of filing of the claim application till its realisation was awarded to the claimants.

(6) Learned counsel for the appellants has raised two-fold argument; (i) that the Tribunal did not consider the future prospects while determining the income of the deceased and (ii) the amount awarded towards 'loss of consortium' is on lower side.

(7) In ***Rajesh and others*** versus ***Rajbir Singh and others (1),*** a Full Bench of Hon'ble Supreme Court held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased. Similar view was taken by a Hon'ble Division Bench of this Court in ***Poonam etc.*** versus ***Rajbir Rawat, etc. (2),*** a judgment authored by Hon'ble Mr.Justice A.K.Sikri, the then Chief Justice of this Court.

(8) Following the aforesaid decisions and in considered opinion of this Court even if the deceased was a labourer/self-employed, aged about 30 years, there must be an addition of 50% in his income on account of future prospects. Hence, his income is assessed at Rs.6000/- per month. Deducting 1/3rd for his personal and living expenses, the dependency has to be assessed as 6000-1/3rd = 4000x12x17 = 8,16,000/-.

(9) So far as the amount of Rs.20,000/- awarded on account of loss of consortium is concerned, in **Rajesh and others (supra)** the full Bench of the Hon'ble Supreme Court commented upon the meaning of consortium and awarded Rs.1 lac to the wife on account of death of her husband who was 33 years of age. For ready reference, paragraph No.20 of the judgment is reproduced as under:-

> "The ratio of a decision of this Court on a legal issue is a predecent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be, periodically revisited, as observed in Santosh Devi, 2012 ACJ 1428 (SC). We may, therefore, revisit the practice of awarding compensation under conventional heads:
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> (i) loss of consortium to the spouse;
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> (ii) loss of love, care and guidance to children; and
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> (iii) funeral expenses.

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(1) 2013 ACJ 1403

(2) 2013(1) RCR (Civil) 988

It may be noted that the sum of Rs.2500/- to Rs.10000/- under those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case, 2009 ACJ 1298 (SC), it was held that compensation for loss of consortium should be in the range of Rs.5000 to Rs.10000/-. 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. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., which the spouse is entitled to get, has to be compensated appropriately. The concept of nonpecuniary 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, we are of the view that it would be only be just and reasonable that the courts award at least Rs.1,00,000/- towards loss of consortium."

(10) Since the deceased was 30 years old and keeping in view the concept of consortium referred to above, the amount for loss of consortium is enhanced to Rs.1,00,000/-.

(11) Accordingly, the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of Rs.9,26,000(816000+100000+10000), that is, Rs.3,51,900/- over and above the amount awarded by the Tribunal. The interest on the enhanced amount of Rs.3,51,900/- shall be paid from the date of filing claim application till the amount was deposited by the Insurance Company under the impugned Award at the same rate of interest as was awarded by the Tribunal.