VIMAL KANWAR & ORS. A

v.

KISHORE DAN & ORS.

(Civil Appeal No. 5513 of 2012)

MAY 03, 2013. B

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Motor Vehicle Act, 1988:

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s.166 – Fatal accident – Compensation – Computation of – Deductions.– Held: Provident Fund, Pension, Insurance, receivable by heirs on account of victim's death will not come within the periphery of the Act to be termed as 'pecuniary advantage' liable for deduction.

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s.166 – Fatal accident – Compensation – Compassionate appointment –Deductions towards 'pecuniary advantage' – Held: Compassionate appointment cannot be termed as 'pecuniary advantage' and any amount received on such appointment is not liable for deduction for determining the compensation. E

s.166 – Fatal accident – Compensation – Deduction towards income-tax – If annual income comes within taxable range, income tax is required to be deducted for determining actual salary of deceased and presumption would be that employer has deducted the tax at source from employee's salary – In case of income of a non-salaried victim, claimant is required to prove that deceased had paid income tax and no further tax is required to be deducted from the income. F G

s.166 – Fatal accident – Compensation – Multiplier – Increase towards future income – Held: Deceased being a Government servant and 28 ½ years at the time of death, his

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A *pay would have doubled if he would have continued in service till the date of retirement – Therefore, 100% increase in future income of deceased should have been allowed by Tribunal and High Court – Keeping in view the age of the victim at the time of his death, multiplier of 17 would be applied.*

B *s.166 – Fatal accident – Amounts towards loss of consortium, loss of estate, loss of love and affection for daughter, loss of love and affection for widow and mother and funeral expenses awarded.*

C **In a claim petition filed by the wife, daughter and mother of the victim of a fatal motor accident, who was an Assistant Engineer in a State Government department and was 28 ½ years of age at the time of the death, the Tribunal held that the reckless and negligent driving of** D **the drier of the offending vehicle caused the accident resulting in death of the victim. Though the salary of the victim was Rs.8920/-, the Tribunal reduced it to Rs.8000/-. It further deducted a sum of Rs.1000/- per month towards PF, pension and insurance, assessed the actual** E **salary at Rs.7000/- and added Rs.4500/- towards future income. It applied multiplier of 15 holding that the wife of deceased would get job on compassionate ground and determined the compensation at Rs.14,93,700/-. The High Court though held that multiplier of 15 was not correct,** F **but declined to interfere with the amount of compensation.**

Allowing the appeal, the Court

HELD: 1.1. Provident Fund, Pension and Insurance G **receivable by the claimants on the death of a motor accident victim, will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. [para 19] [234-H; 235-A]**

H *Helen C. Rebello (Mrs) and Others* vs. *Maharashtra State*

Road Transport Corporation & Anr. **1998 (1) Suppl. SCR 684 = (1999) 1 SCC 90 – relied on** A

1.2. "Compassionate appointment" has no correlation with the amount receivable under a statute occasioned on account of accidental death and cannot be termed as "pecuniary advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable to be deducted for determination of compensation under the Act. [para 20] [237-B-D] B

1.3. It is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. In case the income of deceased was only from "salary", the presumption would be that the employer u/s 192 (1) of the Income-tax Act, 1961, had deducted the tax at source from the employee's salary. In case an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, when income of deceased was from sources other than salary, and the annual income fell within taxable range, and any objection as to deduction of tax is raised by a party then the claimant is required to prove that the victim had already paid income tax and no further tax was to be deducted from the income. [para 21] [237-F-G; 238-C-E] C D E F

1.4. In the instant case, none of the respondents brought to the notice of the court that the income-tax payable by the deceased was not deducted at source by the employer- State Government. In absence of such evidence, it is presumed that the salary paid to the deceased as per Last Pay Certificate was paid in accordance with law i.e. by deducting the income-tax on the estimated income of the deceased. [para 22-23] [238-F-H; 239-A] G H

A **1.5. Admittedly, the deceased was only 28 years 7 ½ months old at the time of death. In normal course, he would have served the State Government minimum for about 30 years. Even if the Court does not take into consideration the future prospect of promotion which the** B **deceased was otherwise entitled and the actual pay revisions taken effect from 1.1.1996 and 1.1. 2006, it cannot be denied that the pay of the deceased would have doubled if he would have continued in service of the State till the date of retirement. Therefore, this was a** C **fit case in which 100% increase in the future income of the deceased should have been allowed by the Tribunal and the High Court, which they failed to do. [para 29] [242-F-H; 243-A]**

General Manager, Kerala State Road Transport D *Corporation, Trivandrum v. Susamma Thomas* **(1994) 2 SCC 176;** *New India Assurance Co.Ltd. v. Gopali & ors.* **2012 (6) SCR 834 = AIR 2012 SC 3381;** *K.R. Madhusudhan v. Administrative Officer* **2011 (2) SCR 1061 = 2011 (4) SCC 689;** *Santosh Devi v. National Insurance Company Ltd.* E **2012 (3) SCR 1178 = (2012) 6 SCC 421 – relied on.**

1.6. Having regard to the facts and evidence on record, the monthly income of the deceased i.e. Rs.8920/- is rounded off at Rs.9,000 x 2 = Rs.18,000/- per month. F **From this his personal living expenses, which should be 1/3rd, there being three dependents, has to be deducted. As the deceased was 28 ½ years old at the time of death, the multiplier of 17 is applied. Thus, the normal compensation would be Rs.24,48,000/- to which the Court adds the usual award for loss of consortium and loss of** G **the estate by providing a conventional sum of Rs. 1,00,000/-; loss of love and affection for the daughter Rs.2,00,000/-, loss of love and affection for the widow and the mother at Rs.1,00,000/- each i.e. Rs.2,00,000/- and funeral expenses of Rs.25,000/-. Thus, in all a sum of** H **Rs.29,73,000/- would be a fair, just and reasonable award**

in the circumstances of the case. The rate of interest of 12% is allowed from the date of the petition filed before the Tribunal till payment is made. The award passed by the Tribunal and the judgment of the High Court stand modified accordingly. The amount shall be disbursed as directed in the judgment. [para 30-32 and 34] [243-B-E; 244-B]

Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. **2009 (5) SCR 1098 = (2009) 6 SCC 121 – relied on.**

Case Law Reference:

2009 (5) SCR 1098	**relied on**	**para 9**
1998 (1) Suppl. SCR 684	**relied on**	**para 19**
(1994) 2 SCC 176	**relied on**	**para 24**
2012 (6) SCR 834	**relied on**	**para 25**
2011 (2) SCR 1061	**relied on**	**para 24**
2011 (4) SCC 689	**relied on**	**para 26**
2012 (3) SCR 1178	**relied on**	**para 27**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5513 of 2012.

From the Judgment & Order dated 29.07.2011 of the High Court of Rajasthan, Jaipur Bench in S.B. Civil Misc. Appeal No. 1831 of 2003.

S.L. Gupta, R.N. Poddar. S.K. Ray for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. The present appeal is filed against the judgment of the Rajasthan High Court, Jaipur Bench in S.B. Civil Misc. Appeal No. 1831 and 2071 of 2003. By the impugned judgment dated 29th

A July, 2011, the Rajasthan High Court upheld the compensation awarded by the Motor Accident Claims Tribunal, Jaipur (hereinafter referred to as the 'Tribunal') and observed as follows:

B *"13. In the situation, in the light of the above detail and analysis it appears that the learned tribunal's basis of calculating amount of compensation might be erroneous but in totality determined, assessed and awarded total amount of compensation Rs.14,93,700/- is proper and justified, and there is no adequate basis for increasing*
C *or reducing it. Therefore, judgment dated 21.06.2003 by Motor Accident Claims Tribunal, Jaipur is affirmed and appeals by the appellants and Insurance Company are dismissed."*

D 2. The factual matrix of the case is that on 14th September, 1996 one Mr. Sajjan Singh Shekhawat was sitting on his scooter which was parked on the side of the road and was waiting for one Junior Engineer, N. Hari Babu and another whom he had called for discussion. At that time, the non-
E applicant No.1, driver of the Jeep No.RJ-10C-0833 came driving from the Railway Station side with high speed, recklessly and negligently and hit the scooter. Sajjan Singh along with his scooter came under the Jeep and was dragged with the vehicle. Due to this accident fatal injuries was caused
F to him and on reaching the Hospital he expired. The scooter was also damaged completely.

3. Appellant no. 1, the wife of the deceased was aged about 24 years; appellant no. 2, the daughter was aged about 2 years and appellant no. 3, the mother was aged about 55
G years at the time of death of the deceased. They jointly filed an application to the Tribunal alleging that negligent and rash driving by non-applicant no. 1 caused the death of Sajjan Singh and claimed compensation of Rs.80,40,160/-. It was brought to the notice of the Tribunal that non-applicant no. 1, the jeep
H driver was in the employment of the non-applicant no. 2 and

the non-applicant no. 3, the United India Insurance Co. Ltd. was the insurer of the vehicle.

4. The non-applicant No.3, Insurance Company on appearance filed written statement and alleged that the vehicle owner has violated the conditions of the Insurance Policy by not informing them about the accident. Further, according to the Insurance Company the vehicle owner should prove the fact that at the time of accident, the Jeep driver, non-applicant No.1 was holding a valid and effective driving licence.

5. Altogether five issues were framed by the Tribunal:

"1. Whether due to the vehicle in question Jeep No. RJ 10C 0833 being driven by driver, non-applicant No.1 on 14.09.1996, in front of Assistant Engineer Office, PWD, within the jurisdiction of Police Station Churu, negligently and recklessness and caused accident and injuries due to which Sajjan Singh Shekhawat S/o Bhanwar Singh expired.

2. Whether above said vehicle driver at the time accident was in employment of non-applicant No.2 and was working for his benefit and profit.

3. Whether the non-applicant No.3, Insurance Company in view of the preliminary objections and preliminary statement in their reply, are relieved of their liability and if not what is the effect thereon.

4. Whether the applicant are entitled to get the claim amount or any other justified amount, and if yes which applicant is entitled to how much compensation and from which non-applicant.

5. Relief.".

A 6. The first issue was answered by the Tribunal in an affirmative manner. It was held that the reckless and negligent driving of the driver of Jeep No.RJ 10C 0833 caused the accident which resulted in the death of Sajjan Singh Shekhawat. Issue Nos. 2 and 3 were also decided in favour of the B applicants.

7. Issue Nos. 4 and 5 were related to the entitlement of appellants towards the claims and the relief to be granted. The Tribunal determined the compensation to be granted in favour C of the appellants at Rs.14,93,700/- jointly.

8. The actual salary of the deceased was reduced by the Tribunal by deducting certain amounts towards Provident Fund, Pension and Insurance. Without any reason, the Tribunal also reduced the salary at Rs. 8,000/- per month though actual salary D of the deceased as per Last Pay Certificate (for short 'LPC') was Rs. 8,920/-. Out of such reduced salary of Rs. 8,000/-, the Tribunal further deducted a sum of Rs.1,000/- per month towards Provident Fund, Pension and Insurance and thereby considered the actual salary of deceased to be Rs.7,000/- E per month. An amount of Rs. 4500/- was added to it towards future income and, thereby the net income of deceased was assessed at 11,500/- per month (Rs.7,000/- + Rs.4,500/-).

9. Admittedly, Sajjan Singh died at the age of 28 years and 7 ½ months . He was in the services of the State Government F posted as an Assistant Engineer. In the normal course, he would have continued in the services of the State Government upto February, 2026, until attaining 58 years or upto February, 2028, until attaining 60 years. As per the decision of this Court in the case of *Sarla Verma & Ors. v. Delhi Transport* G *Corporation & Anr.* (2009) 6 SCC 121, Sajjan Singh having died at the age of 28 years 7 ½ months, the multiplier of 17 is applicable in calculating the compensation. But the Tribunal applied the lower multiplier of 15 on the ground that the wife would be getting family pension and would get job on the H

compassionate ground and the daughter, aged about 2 years would get married in future. A

10. Though the High Court noticed the aforesaid mistake it upheld the compensation. A notional deduction of income tax was made by the High Court from the salary of the deceased apart from the deduction of annual pension and came to the conclusion that the award passed by the Tribunal was just and proper as apparent from paragraph 11 of the judgment which reads as under: B

> *"**11.** If calculate according to the rate of tax in the year 1996, we find that in the assessment year 1996-97 on Rs.40,000/- no tax was payable. On further income of Rs.20,000/-, 20% was payable, on further income of Rs.60,000/-, 30% of income was taxed. 1/3rd of the salary or Rs.15,000/- which ever was less was standard deduction. Accordingly deducting Rs.15,000/- as standard deduction taking into account the savings and on applying rebate of Rs.12,000/- under Section 80C of the Income Tax Act, the amount which remains, on that Rs.5812/- is payable as tax. Thus, deducting taxable amount out of income is Rs.1,01,228/-. The appellant Vimal Kanwar has herself stated that after death of her husband she receives Rs.1460/- per month as pension. The pension received on death of husband should also be deducted. Thus, on deducting annual pension of Rs.17,520/- the income is Rs.1,83,708/- per annum. According to Sarla Verma judgment increasing 50% for future prospects the amount becomes Rs.1,25,562/- per annum, out of this deducting 1/3rd for personal expenses of the deceased and applying multiplier of 17 according to age of the deceased this amount is Rs.14,23,036/-. The tribunal on account of being deprived of income the deceased has granted Rs.14,78,700/- to the deceased."* C D E F G

11. The High Court noticed that the Tribunal wrongly applied the multiplier of 15 but refused to interfere with the H

award on the following grounds:

"**12.** *IT is correct, that despite the revise LPC being on record and showing salary to be Rs.8920/- the tribunal has accepted salary to be Rs.8000/- only out of this on account of GPF and State Insurance Rs.1000/- has been deducted and monthly income is assessed as Rs.7,000/-.*

Thereafter, taking into account increasing income in future etc. Rs.4500/- has been added and monthly income is assessed to be Rs.11500/- this assessment according to evidence on record and established law, does not appear to be proper. It is also worth mentioning that the tribunal for granting compensation to the appellants has taken unit method has basis but while doing so the amount that the deceased would have spent on his personal expenses which is deductable as per judgment of the Hon'ble Supreme Court in the Sarla Verma case and other cases has not been deducted, because of which the dependency is not properly assessed. Thereafter, the multiplier of 15 applied by the tribunal also does not seen to be in accordance to law. It is also worth mentioning that assessing amount in the said manner the tribunal had not deducted the payable income tax and the amount of pension received by Smt. Vimal Kanwar due to death of deceased. Similarly, while assessing dependency deduction for GPF and State Insurance, addition of Rs.4,500/- in monthly income and multiplier of 15 etc. is not in accordance with law. But it is worth mentioning that taking income of the deceased at the time of the accident is Rs.8,920/-, deducting payable income tax and amount of pension received by the wife of the deceased, the amount on account of loss of income to be given to the appellant comes to Rs.14,23,036/-. It appears that the tribunal on account of loss of income has granted Rs.14,78,700/- and for all the remaining heads a total of Rs.15,000/- only, which is definitely too less. All the three appellants should be

granted proper compensation under heads of cooperation from the deceased, loss of love and affection and service, protection, last rites, lost of estate and on doing this the situation that emerges is that, the total amount of Rs.14,93,700/- awarded by tribunal as compensation is justified and therefore, any interference in the amount of awarded compensation is not proper desirable or necessary."

12. Two appeals, one preferred by the appellants-claimants and another by the Insurance Company, were dismissed by the High Court by common impugned judgment dated 29th July, 2011.

13. From the facts and circumstances of the case, the grievance of the appellants can be summarized as follows:-

(i) No amount can be deducted towards Provident Fund, Pension and Insurance amount from the actual salary of the victim for calculating compensation.

(ii) In the absence of any evidence, the Court suo motu cannot deduct any amount towards income tax from the actual salary of the victim.

(iii) On the facts of the present case, the Tribunal and the High Court should have doubled the salary by allowing 100% increase towards the future prospects and

(iv) The Tribunal and the High Court failed to ensure payment of just and fair compensation.

Reliance was also placed on decisions of this Court which will be discussed later in this judgment.

14. The respondents have appeared but no counter affidavit has been filed by them. Learned counsel for the respondents merely justified the award passed by the Tribunal and affirmed by the High Court.

A 15. The issues involved in this case are:

(i) Whether Provident Fund, Pension and Insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" B liable for deduction.

(ii) Whether the salary receivable by claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.

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(iii) Whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act and

(iv) Whether the compensation awarded to the appellants D is just and proper.

16. For determination of the aforesaid issues, it is necessary to notice the relevant facts as mentioned hereunder.

E 17. Smt. Vimal Kanwar, PW-3 (appellant no.1 herein), who is the wife of the deceased has stated in her examination in chief that her husband obtained BE Degree from Jodhpur University in First Class and he was directly appointed to the post of Assistant Engineer in the year 1994. At the time of F accident he was 28 years old and was getting salary of Rs.9,000/- per month. If he had been alive he would have got promoted upto the rank of Chief Engineer.

18. Ram Avtar Parikh, PW-2 is an employee of Public Works Department, where the deceased was working. He G stated that Sajjan Singh was working on the post of Assistant Engineer and at that time his monthly salary was Rs.8,920/-. In support of his statement he produced the Last Pay Certificate and the Service Book (Exh. 1.) of the deceased.

H 19. The first issue is "whether Provident Fund, Pension and

Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction." A

The aforesaid issue fell for consideration before this Court in *Helen C. Rebello (Mrs) and Others vs. Maharashtra State Road Transport Corporation & Anr.* reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court: B C D

> **"35.** Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to E F G H

A the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any
B cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount
C come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of
D any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without
E making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the
F compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

20. The second issue is "whether the salary receivable by
G the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."

"Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect
H is framed by the employer. In case, the employee dies in

harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

21. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act"

In the case of *Sarla Verma & Anr.* (Supra), this Court held "generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."

This Court further observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under Section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct

A income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for
B non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961.

Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income-tax Act, 1961 has deducted the
C tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.

D However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already
E paid income tax and no further tax has to be deducted from the income.

22. In the present case, none of the respondents brought to the notice of the Court that the income-tax payable by the deceased Sajjan Singh was not deducted at source by the
F employer- State Government. No such statement was made by Ram Avtar Parikh, PW-2 an employee of Public Works Department of the State Government who placed on record the Last Pay Certificate and the Service Book of the deceased. The Tribunal or the High Court on perusal of the Last Pay
G Certificate, have not noticed that the income-tax on the estimated income of the employee was not deducted from the salary of the employee during the said month or Financial Year. In absence of such evidence, it is presumed that the salary paid to the deceased Sajjan Singh as per Last Pay Certificate was
H paid in accordance with law i.e. by deducting the income-tax

on the estimated income of the deceased Sajjan Singh for that month or the Financial Year. The appellants have specifically stated that Assessment Year applicable in the instant case is 1997-98 and not 1996-97 as held by the High Court. They have also taken specific plea that for the Assessment Year 1997-98 the rate of tax on income more than 40,000/- and upto Rs.60,000/- was 15% and not 20% as held by the High Court. The aforesaid fact has not been disputed by the respondents.

23. In view of the finding as recorded above and the provisions of the Income-tax Act, 1961, as discussed, we hold that the High Court was wrong in deducting 20% from the salary of the deceased towards income-tax, for calculating the compensation. As per law, the presumption will be that employer-State Government at the time of payment of salary deducted income-tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the Last Pay Certificate at Rs.8,920/- should be accepted which if rounded off comes to Rs.9,000/- for calculating the compensation payable to the dependent(s).

24. The fourth issue is "whether the compensation awarded to the appellants is just and proper."

For determination of this issue, it is required to determine the percentage of increase in income to be made towards prospects of advancement in future career and revision of pay. In *'General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas* (1994) 2 SCC 176 this Court noticed the age and income of the deceased for determination of future prospects of advancement in life and career. The Court held as follows:

> "**19.** In the present case the deceased was 39 years of age. His income was Rs 1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the

A multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult
B exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably
C liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs 1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there
D is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs 2000 as the gross income."

25. In *New India Assurance Co. Ltd. v. Gopali & Ors.* reported in AIR 2012 SC 3381 this Court noticed that the High
E Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, this Court, upheld the judgment of the High
F Court.

26. In *K.R. Madhusudhan v. Administrative Officer* (2011) 4 SCC this Court observed that there can be departure from the rule of thumb and held as under:-

G **"10.** The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a raise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the
H view that the present case comes within the "exceptional

circumstances" and not within the purview of the rule of thumb laid down by Sarla Verma1 judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects." A

27. Recently in *Santosh Devi v. National Insurance Company Ltd.* reported in (2012) 6 SCC 421 this Court found it difficult to find any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case and observed as follows: B

"**14.** We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case2 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 naïve 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. C D E

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 in extra efforts to generate additional income necessary for sustaining their families. F G

18. Therefore, we do not think that while making the observations in the last three lines of para 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 H

A 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% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for
B calculating the amount of compensation."

28. In the case of *New India Assurance Co. Ltd.* (Supra), this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal
C course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, upheld the judgment of the High Court with following observation:

D "**20.**We are also of the view that the High Court was justified in determining the amount of compensation by granting 100% increase in the income of the deceased. In the normal course, the deceased would have served for 22 years and during that period his salary would have
E certainly doubled because the employer was paying 20% of his salary as bonus per year."

29. Admittedly, the date of birth of deceased Sajjan Singh being 1st February, 1968; the submission that he would have continued in service upto 1st February, 2026, if 58 years is the
F age of retirement or 1st February, 2028, if 60 years is the age of retirement is accepted. He was only 28 years 7 ½ month old at the time of death. In normal course, he would have served the State Government minimum for about 30 years. Even if we do not take into consideration the future prospect of promotion
G which the deceased was otherwise entitled and the actual pay revisions taken effect from 1st January, 1996 and 1st January, 2006, it cannot be denied that the pay of the deceased would have doubled if he would continued in services of the State till the date of retirement. Hence, this was a fit case in which 100%
H increase in the future income of the deceased should have

been allowed by the Tribunal and the High Court, which they failed to do.

30. Having regard to the facts and evidence on record, we estimate the monthly income of the deceased Sajjan Singh at Rs.9,000 x 2 = Rs.18,000/- per month. From this his personal living expenses, which should be 1/3rd, there being three dependents has to be deducted. Thereby, the 'actual salary' will come to Rs.18,000 – Rs.6,000/- = Rs.12,000/- per month or Rs.12,000 x 12 =1,44,000/- per annum. As the deceased was 28 ½ years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be Rs.1,44,000/- x 17 =Rs.24,48,000/- to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs. 1,00,000/-; loss of love and affection for the daughter Rs.2,00,000/-, loss of love and affection for the widow and the mother at Rs.1,00,000/- each i.e. Rs.2,00,000/- and funeral expenses of Rs.25,000/-.

31. Thus, according to us, in all a sum of **Rs.29,73,000/-** would be a fair, just and reasonable award in the circumstances of this case.

32. The rate of interest of 12% is allowed from the date of the petition filed before the Tribunal till payment is made.

33. Respondent No.3 is directed to pay the total award with interest minus the amount (if already paid) within three months. The appellant No.2-daughter who was aged about 2 years at the time of accident of the deceased has already attained majority; money may be required for her education and marriage. In the circumstances, we direct respondent No.3 to deposit 25% of the due amount in the account of appellant no.1-the wife. Out of the rest 75% of the due amount, 35% of the amount be invested in a Nationalized Bank by fixed deposit for a period of one year in the name of the daughter-appellant No.2. Out of the rest 40% of the due amount, 20% each be

A invested in a Nationalized Bank by fixed deposit for a period of one year in the name of the appellant Nos. 1 and 3, the wife and the mother respectively.

34. The award passed by the Tribunal dated 21st June, 2003 and the judgment dated 29th July, 2011 of the Rajasthan B High Court stand modified to the extent above. The appeal is allowed with the aforesaid observation and direction. No separate order as to costs.

R.P. Appeal allowed.