

(2012) 02 DEL CK 0371

In the Delhi High Court

Case No : MAC. App. 1156 of 2011

ICICI Lombard General Insurance Co Ltd.

APPELLANT

Vs

Chander Kala and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) ACJ 1203

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Umesh Chandra Rai and Mr. S. Chandra, for the Respondent

Judgement

G.P. Mittal, J.—The Appeal is for reduction of compensation of Rs. 28,60,900/- awarded for the death of Kapil Kumar who was a bachelor and aged about 24 years at the time of the accident which took place on 10.05.2010. The Motor Accident Claims Tribunal (the Claims Tribunal) by the impugned judgment dated 14.09.2011 took the deceased's salary as Rs. 2,84,188/- , deducted Rs. 10,000/- towards TA and conveyance allowance and Rs. 699/- towards income tax; added 50% towards the future prospects; applied the multiplier of "14" as per the age of Chander Kala, the deceased's mother to compute the loss of dependency as Rs. 27,90,900/- .

2. The contentions raised on behalf of the Appellant Insurance Company are as under:-

(i) In the salary package shown in the appointment letter Ex. PW-2/2, a salary of Rs. 1,52,619/- was towards basket of allowances which should not have been taken into consideration as these allowances were incidental to the employment and to be spent by the deceased for the purpose of employment.

(ii) The deceased was in the job just for a couple of months. He was not yet a permanent employee and thus future prospects should not have been granted. In any case, since the deceased's mother was aged 42 years, the benefit of future

prospects should have been restricted to 30% of the deceased's income.

3. During inquiry before the Claims Tribunal, the First Respondent Chander Kala filed her Affidavit Ex. PW-1/A and entered the witness box as PW-1. She testified that her son was a Software Engineer. At the time of his death, the deceased was working as a Senior Technical Support Associate on an annual salary of Rs. 2,84,188/- . Unfortunately, instead of verifying the genuineness of the pay package Ex. PW-2/2 and the salary slip Ex. PW-2/4, a suggestion was given to the First Respondent that the deceased was not earning Rs. 2,54, 386/- per annum which of course was denied by the First Respondent.

4. PW-2 Ganesh Venkatraman, Pay Roll Analyst, Dell International Services India Pvt. Ltd., (the deceased's employer) proved appointment letter Ex. PW-2/1, the salary (pay package) Ex. PW-2/2, the terms and conditions of service Ex. PW-2/3 and the pay slip for the month of April and May Ex. PW-2/4 and PW-2/5 respectively. The witness deposed that any employee who serves with the company for at least two years is entitled to an increment of 12% of the basic salary. The promotion avenues depended on the performance of each employee. In cross-examination, the witness denied that the deceased was not a permanent employee.

5. It is well settled that to compute the loss of dependency, the deceased's entire pay package which is for the benefit of the family has to be taken into consideration. (National Insurance Co. Ltd. v. Indira Srivastava, I (2008) ACC 162 (SC); and National Insurance Company Ltd. Vs. Smt. Saroj and Others,

6. A perusal of the document Ex. PW-2/2 shows that the deceased's gross salary was Rs. 2,84,188/- and the basket of allowances included all components such as HRA, Medical Reimbursement, LTA and Conveyance. While computing the loss of dependency, the Claims Tribunal deducted Rs. 10,000/- from the pay package towards the conveyance charges which could be taken as an allowance which is to be spent for performance of the duties. In the circumstances, the finding of the Claims Tribunal to take the salary of Rs. 2,74,188/- to compute the loss of dependency, cannot be faulted.

7. As far as future prospects are concerned, it is important to note that the deceased was a young Software Engineer of 24 years at the threshold of his career. He got an employment with a multinational company as is depicted from the letter of appointment Ex. PW-2/1. Obviously, every employee is initially appointed on probation. It came in the evidence of PW-2 that every employee got an increment of 12% of basic salary after two years of employment with the company. The witness added that further promotion depended on individual performance. In the circumstances, the Claims Tribunal's findings to grant future prospects cannot be said to be wrong.

8. It is true that the deceased's mother was aged 42 years. As mentioned earlier, the deceased was at the threshold of his career and would have marched ahead in future. The salary of good employees in multinational companies have

increased manifold in a couple of years. As per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for consideration of future prospects the age of the deceased is to be taken in consideration while applying multiplier, the age of the deceased or the claimant whichever is higher is to be considered. The Tribunal's conclusion to grant 50% of the deceased's income towards the future prospects is justified.

9. The salary slip issued for the month of April, 2010 shows that there was a deduction of Rs. 699/- only towards the income tax. Since the future prospects have been added, the income tax has to be deducted on the salary taken for the purpose of computing the loss of dependency. In the circumstances, tax has to be deducted on the salary of Rs. 2,74,188/- .

10. It has to be seen whether the Income Tax should be deducted first or after making addition of the future prospects as it may affect the quantum of compensation. I would like to extract Para 24 of the report in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for ready reference:

"24. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this Court increased the income by nearly 100%, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, the income was increased only by 50% and in Abati Bezbaruah v. Geological Survey of India, (2003) 2 SCC 148, the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

(Underlines are mine).

11. In Shyamwati Sharma and Others Vs. Karam Singh and Others, the Supreme Court relied upon on Sarla Verma (supra) regarding addition of income towards future prospects and held that the actual salary (less tax) should be increased by 50% towards future prospects. The Supreme Court was clear that Tax has to be deducted from the actual salary before making addition towards future prospects but while making actual computation, in para 7 the Supreme Court deducted the Tax after making an addition of 30% in the income towards future prospects.

Since the principles laid down in Sarla Verma were approved in para 6 of the report in Shayamwati (supra), I would hold that the deduction towards liability on Income Tax should be first made in the actual income and only then an addition is to be made towards future prospects. Para 6 and 7 of the report in Shyamwati (supra) are extracted as under:-

"6. This Court in Sarla Verma v. DTC has stated the principles relating to "addition to income" towards future prospects. This Court held that wherever the deceased was below 40 years of age and had a permanent job, the actual salary (less tax) should be increased by 50% towards future prospects, to arrive at the monthly income. It also held that where the number of dependents of a deceased are in the range of 4 to 6, the deduction towards personal and living expenses of the deceased should be 25%. It further held that in regard to persons aged 36 to 40 years, the appropriate multiplier should be 15. We will recalculate the compensation by applying the said principles.

(Underlines are mine).

7. As noticed above, the gross salary was Rs. 13,794/- per month or Rs. 1,65,528 per annum. By adding 50% towards future prospects (as the deceased was less than 40 years of age), the deemed gross income would have been Rs. 20,691/- per month or Rs. 2,48,292/- per annum. The percentage of deduction towards income tax and surcharge, taken as 30% by the High Court, does not require to be disturbed, having regard to the income. On such deduction, the net annual income of the deceased would have been Rs. 1,73,800/- . From the said sum, one-fourth (25%) had to be deducted towards the personal and living expenses of the deceased. Thus the contribution of the deceased to his family would have been Rs. 1,30,350/- per annum. By applying the multiplier of 15, the total loss of dependency will be Rs. 19,55,250/- . By adding a sum of Rs. 5000/- each under the heads of loss of consortium, loss of estate and funeral expenses, the total compensation is determined as Rs. 19,70,250/- ."

(Underlines are mine).

12. The loss of dependency comes to Rs. 27,80,074/- (2,74,188/- Rs. 9419/- (tax) + 50% x 1/2 x 14).

13. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, granted only Rs. 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to Rs. 25,000/- only instead of Rs. 50,000/- granted by the Tribunal.

14. The Respondents No. 1 and 2 are also entitled to a sum of Rs. 10,000/- towards funeral expenses and Rs. 10,000/- towards loss to estate as granted by the Claims Tribunal. The total compensation comes to Rs. 28,25,074/- .(Rs.

27,80,074/- + Rs. 45,000/-).

15. The overall compensation of Rs. 28,60,900/- awarded by the Claims Tribunal cannot be said to be exorbitant or excessive, rather the same is just and reasonable.

16. In this view of the matter, the impugned order does not call for any interference. The Appeal is accordingly dismissed. No costs. Pending application also stand disposed of.