(2012) 02 DEL CK 0412

In the Delhi High Court

Case No : MAC. APP. No. 904 of 2011 and CM. APP. 18798 of 2011 (stay) with MAC. APP. 906 of 2011

ICICI Lombard General Insurance Co. Ltd. — APPELLANT

Vs

Chanderwati and Others
 Chanderwati and Others Vs Suresh Kumar and Others — RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2013) 1 ACC 37 : (2013) ACJ 2394

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

Bench : Single Bench

Advocate : Suman Bagga in MAC. app. No. 904/2011 and CM. app. 18798/2011 stay and Mr. Manish Maini in MAC. app. 906 of 2011, for the Appellant; Manish Maini, Advocate in MAC. APP. No. 904/2011 and CM. APP. 18798/2011 (stay) and Ms. Suman Bagga, Advocate for Respondent No. 3 Insurance Company in MAC. APP. 906 of 2011, for the Respondent

Judgement

G.P. Mittal, J.—These are two Cross-Appeals. MAC APP No. 904/2011 has been filed by ICICI Lombard General Insurance Co. Ltd.

(hereinafter referred to as the ""Insurance Company"") seeking reduction of compensation of Rs. 20,49,880 awarded for the death of Mempal who

was aged about 50 years at the time of the accident which occurred on 11.9.2010. By the impugned judgment, the Tribunal took the deceased''s

income as Rs. 19,470, deducted 1/3rd towards the personal and living expenses and applied the multiplier of 13 (according to the deceased''s

age) to compute the loss of dependency as Rs. 20,24,880.

2. In the Cross-Appeal MAC APP No. 906/2011, preferred by the Appellants Chanderwati and others (hereinafter referred to as the claimants)

who are the legal representatives of the deceased Mempal, enhancement of compensation is sought on the ground that the deceased was going to

be promoted as a clerk in the near future. He was entitled to increments @ 3% every year apart from an increase in the salary by DA, twice every

year. It is averred that although the Claims Tribunal in para 4 of the impugned judgment admitted that the number of dependents were four apart

from one married daughter, yet the Claims Tribunal deducted 1/3rd of the deceased income towards personal and living expenses instead of 1/4th.

3. It is contended that the claimants were entitled to be given the benefit of future prospects on the basis of the judgment of the Supreme Court in

Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, . It is urged that the compensation awarded towards love and

affection and loss to the estate is on the lower side.

4. Both the Appeals are bound to succeed. There is no dispute about the proposition of law which is well-settled that the actual salary of the

deceased is the gross salary including allowances (except allowance personal to the deceased to be used for performing the duties) which are for

the benefit of the entire family less Income Tax. Therefore, the liability towards payment of Income Tax was required to be deducted from the

deceased''s income.

5. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it was held that as a thumb rule, no addition should be made

towards future prospects where the age of the deceased is more than 50 years. Sarla Verma (supra), was explained by the Supreme Court in K.R.

Madhusudhan (supra). In para 9 observed as under:

9. In the Sarla Verma (supra), judgment the Court has held that there should be no addition to income for future prospects where the age of the

deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of

litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the

opinion that the rule of thumb evolved in Sarla Verma (supra), is to be applied to those cases where there was no concrete evidence on record of

definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in

the interpretation of different Courts, and to overcome the same.

6. Thus, in appropriate cases, an increase towards future prospects can be made where the deceased was more than 50 years. In K.R.

Madhusudhan (supra), the deceased was entitled to get a rise in the income in the near future and the benefit of 25% was given. In this case, the

deceased was between 50 and 51 years. The testimony of PW 3 Radhey Shyam, LDC from the Education Department of the MCD (the

deceased''s employer) proved that the deceased was going to be promoted in near future to the post of LDC. In that eventuality, he was to get a

salary of Rs. 22,500 per month. In the peculiar facts and circumstances of the case and the fact that the deceased was less than 51 years of age,

he was entitled to be given the benefit of 30% towards future prospects.

7. Similarly, the deceased was survived by his widow, one married daughter, one unmarried son, an unmarried daughter and father aged 78 years.

In Sarla Verma (supra), it was held that father would not be considered as an dependent unless there is evidence to the contrary. Thus, considering

the father''s age, he will be taken as a dependent. It was proved on record that the deceased''s daughter Ruchika was unmarried and

Chanderwati''s (PW 1) testimony that her son Arvind was unemployed was not challenged in cross-examination. The Tribunal also considered the

number of dependents to be four but erred in deducting 1/3rd towards the personal and living expenses. It should have been 1/4th in view of Sarla

Verma (supra).

8. I have already held above that deduction of Income Tax was required to be made to compute the loss of dependency. In Sarla Verma (supra),

it was held that while granting future prospects, addition of 50% of actual salary to the actual salary income of the deceased towards future

prospects was required to be made in a case where the deceased had a permanent job. The actual salary was taken as gross salary minus income

tax. The question for determination is whether the Income Tax should be deducted first or after making an addition of the future prospects as it

may affect the quantum of compensation. I would like to extract Para 24 of the report in Sarla Verma (supra) 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 Vs. Dy. Director General Geological Survey of India and Another, , 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)

9. 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. Thus, 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 Shyamwati (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. Paras 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. 5,000 each

under the heads of loss of consortium, loss of estate and funeral expenses, the total compensation is determined as Rs. 19,70,250.

10. In view of the discussion above, the overall compensation is reassessed as under:

11. The overall compensation is increased from Rs. 20,49,880 to Rs. 26,52,712.

12. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the filing of the petition till the date of payment The

Appellant Insurance Company is directed to deposit the increased amount within 30 days in terms of the Tribunal''s order.

13. The compensation awarded by the Claims Tribunal shall be apportioned and released and held in Fixed Deposit amongst the Claimants in

terms of the impugned judgment of the Claims Tribunal i.e. the widow entitled to 40% share of the compensation and Ruchika is entitled to 25%

share and Rachna, Arvind and Shish Ram (father) are entitled to equal share of the remaining amount.

14. Out of the enhanced compensation, Rs. 1 lakh each along with proportionate interest shall be released to the father (the Respondent No. 5)

and the son (the Respondent No. 4) of the deceased. An amount of Rs. 2 lakh along with proportionate interest shall be payable and held in fixed

deposit for a period of three years in favour of Ruchika (the Respondent No. 3). Claimant Ruchika shall be entitled to apply to the Registrar

General of this Court for premature withdrawal of the amount in case she is to be married before the completion of the period of three years. Rest

of the enhanced amount shall be payable to the wife of the deceased (the Respondent No. 1) and shall be held in Fixed Deposit for a period of

two years and four years in equal proportion. The deposits above shall be held in UCO Bank, Delhi High Court Branch.

15. Both the Appeals are disposed of in above terms. The statutory amount, if any, deposited by the Appellant Insurance Company shall be

returned.

