
(2011) 03 DEL CK 0499
In the Delhi High Court
Case No : MAC. App. 750 of 2010

Jasminder Kaur and Others	Vs	APPELLANT
National Insurance Company Ltd. and Others		RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0499

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Kundan Kumar Lal, for the Appellant; Neerja Sachdeva, for the Respondent

Judgement

Reva Khetrapal, J.—By way of this appeal, the Appellants seek enhancement of the amount of compensation awarded to them by the Motor Accident Claims Tribunal by its award dated 19.07.2010.

2. The facts relevant for the disposal of the appeal are that on 16.08.2007 at about 2.00 p.m., Shri Avtar Singh (hereinafter referred to as "the deceased") was going on his motorcycle. When he reached near Basant Range Colony, NH-8, Main Road, opposite APS colony, Delhi Cantt, New Delhi, a tanker bearing No. DL-1GB-7580 hit his motorcycle resulting in his death. The said tanker (hereinafter referred to as "the offending vehicle") was driven by the Respondent No. 3, owned by the Respondent No. 2 and insured with the Respondent No. 1.

3. A claim petition claiming compensation in the sum of Rs. 40 lakhs along with interest at the rate of 12% per annum having been filed by the widow and the children of the deceased (the Appellants No. 1 to 3 herein) and the mother of the deceased (the Petitioner No. 4 in the claim petition, who died during the pendency of the claim petition), the Motor Accident Claims Tribunal passed an award in the sum of Rs. 17,84,040/- with interest at the rate of 7.5% per annum from the date of the filing of the petition, i.e., 13.09.2007 till the date of realization, and directed the Respondent No. 1 herein to deposit the award

amount within 30 days therefrom.

4. The sole contention of Mr. Kundan Kumar Lal, the learned Counsel for the Appellants in the present appeal is that the Motor Accident Claims Tribunal while computing the total amount of compensation payable to the Appellants grossly erred in not considering the future prospects of increase in the income of the deceased. The learned Counsel contended that the deceased was a person of great potential with exceptional marketing skills, and as such, with the passage of time the income of the deceased would have definitely increased. The past increase in the income of the deceased, the counsel contended, was apparent from his Income Tax returns for the assessment years 2003-04 (Ex. PW-1/6), 2004-05 (Ex. PW-1/5), 2005-06 (Ex. PW-1/4) and 2006-07 (Ex. PW-1/3), which had been placed on record.

5. The learned Counsel for the Appellants, in particular, impugned paragraph 16 of the award, which reads as under:

16. So far as the income of the deceased is concerned, the income tax returns for the period 2002-2003 (Ex. PW1/6), 2003-2004 (Ex. PW1/5), 2004-2005 (Ex. PW1/4) and 2005-2006 (Ex. PW1/3), show that he was having income from salary as well as from business. He used to pay the income tax. As per Ex. PW1/3 the total income of the deceased from all sources was Rs. 1,78,366/-. He had paid Rs. 8,208/- as income tax. Therefore, in view of Sarla Verma's case (supra) the annual income of the deceased can be taken as Rs. 1,70,158 /-. The monthly income of the deceased thus comes to Rs. 14,179.83/-. There were four dependents. Therefore, in view of Sarla Verma's case (supra) 1/4 of the monthly income shall have to be deducted towards the personal and living expenses of the deceased. The monthly loss of dependency thus comes to Rs. 10,634.87/-.

6. Reference was made by the learned Counsel on behalf of the Appellants to the testimony of PW-1 Jasminder Kaur, the wife of the deceased, who, in her affidavit by way of evidence, stated that at the time of the accident, i.e., on 16.08.2007, her deceased husband was working in M/s. Amarjyoti (India) Pvt. Ltd. at B-29, Som Dutt Chambers-II, Bika Ji Cama Place, New Delhi as Cargo Assistant. He was also doing the business of life insurance agent for LIC of India and HDFC Insurance Company Limited from his residential address and was earning Rs. 1,78,366/- per annum from both the aforesaid sources, i.e., Rs. 93,600/- per annum as salary from the Private Limited Company in which he was working and Rs. 84,286/- per annum from his work as LIC agent. The salary certificates of the deceased were Ex. PW-1/1 and Ex. PW-1/2, while the attested copies of the Income Tax returns were Ex. PW-1/3 to Ex. PW-1/6. She further stated that the deceased was getting annual increments and that after his death they had no other source of income from any means and resultantly the future and education of her sons was jeopardized. Though this witness was cross-examined by the counsel for the Insurance Company, in her cross-examination her testimony remained unshaken. She stated that her husband was in the employment of M/s. Amarjyoti (India) Pvt. Ltd. as Cargo Assistant since 1990 even prior to her

marriage and that he had been working as an agent for LIC and HDFC Life Insurance since 2001-02, from where the nature of his income was on commission basis.

7. My attention was next invited by the learned Counsel for the Appellants to the Income Tax returns of the deceased (Ex. PW-1/3 to Ex. PW-1/6) to show that there was a consistent increase in the income of the deceased from the year 2002 till the deceased died in the year 2007.

The earning from salary was Rs. 4988.33 / month as reflected from the income tax return of the assessment year 2003-04 for earnings in period 01.04.2002 to 31.03.2003.

The earning from salary was Rs. 5300 / month as reflected from the income tax return of the assessment year 2004-05 for earnings in period 01.04.2003 to 31.03.2004.

The earning from salary was Rs. 5300 / month as reflected from the income tax return of the assessment year 2005-06 for earnings in period 01.04.2004 to 31.03.2005.

The earning from salary at the time of death i.e. in 2007 was Rs. 7800 / month as reflected from the income tax return of the assessment year 2006-07 for earnings in period 01.04.2005 to 31.03.2006.

8. The aforesaid facts could not be rebutted by Ms. Neerja Sachdeva, the learned Counsel for the Insurance Company. The sole submission of Ms. Sachdeva was that the income of the deceased derived from the LIC and HDFC Life Insurance by way of commission must be deducted from the returned income of the deceased and ought not to be taken into account for the purpose of ascertaining the future income of the deceased.

9. I am unable to agree with the aforesaid contention and in this regard I draw support from the judgment of the Supreme Court rendered in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein, in paragraph 24 of the judgment, the following apposite dicta was laid down by the Hon''ble Supreme Court:

24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah 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.

10. In the instant case, it is not in dispute that the deceased had a permanent job from the year 1990 till the date of his death on 16.08.2007 in a Private Limited Company, viz., M/s. Amarjyoti (India) Pvt. Ltd. with a provision for annual increments and was also earning commission as an agent of the LIC and HDFC Life Insurance. The Income Tax returns of the deceased clearly depict the increase in the income of the deceased over the years. There is no dispute as to the fact that the deceased falls in the age group of persons between 40 to 50 years of age. The addition prescribed by the Supreme Court towards future prospects for this age group is 30% increase "as a rule of thumb". No plausible reason has been given by the counsel for the Respondent No. 1 as to why a departure should be made in the instant case from the dicta laid down by the Hon"ble Supreme Court. Accordingly, I proceed to compute the income of the deceased in consonance therewith as under.

11. As per Ex. PW-1/3, which is the Income Tax return for the assessment year 2006-07 filed by the deceased himself on 28.03.2007, the total income of the deceased from all sources was Rs. 1,78,366/- per annum and he had paid Rs. 8,373/- as Income Tax. Thus, the annual income of the deceased after deduction of tax was Rs. 1,69,993/-, which may be rounded off to Rs. 1,70,000/-, and his monthly income thus comes to Rs. 14,166.66, which may be rounded off to Rs. 14,167/-. Adding 30% to the said income towards the future prospects of the deceased, the monthly income of the deceased works out to Rs. 14,167/- + Rs. 4,250/- = Rs. 18,417/-. The deceased had four dependents, and, therefore, 1/4th of the monthly income of the deceased is to be deducted towards his personal and living expenses. Thus calculated, the monthly loss of dependency of the Appellants works out to Rs. 13,813/- per month, i.e., Rs. 1,65,756/- per annum. In consonance with the judgment rendered in *Sarla Verma's* case (supra), this multiplicand is to be augmented by adopting the multiplier of 13 for arriving at the total loss of dependency. Thus calculated, the total loss of dependency of the Appellants works out to Rs. 21,54,828/-.

12. After adding the non-pecuniary compensation awarded by the learned Tribunal to the aforesaid pecuniary damages, the Appellants are thus entitled to an enhanced amount of compensation of Rs. 22,79,828/-, inclusive of the amount of the interim award, with interest at the rate of 7.5% per annum from the date of the filing of the petition, i.e., 13.09.2007 till the date of realization.

The appeal is allowed in the aforesaid terms.