

(2011) 02 DEL CK 0367

In the Delhi High Court

Case No : MAC. APP. 6 of 2011 and CM No. 95 of 2011

New India Assurance Co Ltd

APPELLANT

Vs

Sushila and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 3 AD 265 : (2011) 3 ILR Delhi 543

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; Bhupesh Narula and Yogesh Narula for the Respondents No. 1 to 6, for the Respondent

Judgement

Reva Khetrapal, J.—This appeal filed by the Appellant - Insurance Company seeks to assail the judgment dated 28th August, 2010 passed by the learned Motor Accident Claims Tribunal, Dwarka, New Delhi, in M.A.C. Pet. No. 164/2008 titled as "Sushila and Ors. v. Uttam Kumar and Ors.", whereby and whereunder an award in the sum of Rs. 26,56,000/- with interest @ 9 % per annum from the date of the filing of the petition till the date of its realization was passed against the Appellant and in favour of the Respondents No. 1 to 6.

2. In a nutshell, the facts leading to the filing of the present appeal are that on 30.12.2006, one Banwari Lal (hereinafter referred to as "the deceased") was hit by a truck No. RJ-06-GA-1820 from behind while he was going on motorcycle near the Petrol Pump, Nangli Dairy, Delhi. As a result of the accident, the deceased received fatal injuries. A claim petition was filed by the widow of the deceased, their four children and the father of the deceased, being Respondents No. 1 to 6 herein.

3. For the purpose of computation of the loss of dependency of the Respondents No. 1 to 6, the income of the deceased was assessed by the Tribunal on the basis of the salary certificate placed on record before it by the Respondent No. 1/wife of the deceased, where his annual income is shown as Rs. 1,82,708/-. The

Tribunal noted that after deduction of tax, i.e., Rs. 1,370/-, his net income came to Rs. 1,81,338/-per annum. The Tribunal made further increase of 30% towards future prospects as the deceased was a permanent employee of M/s Veenu Bhai Enterprises Private Ltd, in accordance with the law laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . From this figure, 1/4th was deducted towards personal expenses as there are six dependants, and thereafter the multiplier of "14" was applied in order to ascertain the total loss of dependency of the claimants which came to Rs. 24,75,270/-, rounded off to Rs. 24,76,000/-. The Tribunal relying upon the judgment of this Court in Kailash Kaur and Anr. v. New India Assurance Company, MAC .APP. No. 318/2008 decided on 24.3.2009 awarded Rs. 25,000/- to each of the claimants towards loss of love and affection, i.e., in all Rs. 1,50,000/- (i.e., Rs. 25,000/- x 6), and further awarded a sum of Rs. 10,000/- each under the heads of loss of consortium, funeral expenses and loss of estate. In all a sum of Rs. 26,56,000/ was awarded as total compensation along with interest at the rate of 9 % per annum.

4. Mr. Nandwani, the learned Counsel for the Appellant challenged the award on three counts:

(i) The further increase of 30% on account of future prospects was not justified as per Sarla Verma's case (supra),

(ii) The amount of compensation awarded towards "loss of love and affection", i.e., Rs. 1,50,000/- was on the higher side, and

(iii) The rate of interest awarded should have been 7.5 % per annum instead of 9% per annum.

5. Regarding the first count, it is evident from the record that the deceased was a matriculate and aged 41 years at the time of the accident. He was working as a Supervisor with M/s Veenu Bhai Enterprises Private Ltd, his appointment letter and salary records are Ex.PW2/A to Ex.PW2/F. It is on record that he was initially appointed on a salary of Rs. 12,000/- per month, which, in due course of time, was increased to Rs. 15,000/- per month. As regards the TDS, which used to be deducted on his salary, Form No. 16 had been issued from the Company for the Assessment Year 2006-07, which was proved on record as Ex.PW1/3. The Manager (Administration), namely, Mr. Madan Mohan of the above said company was summoned as witness, who appeared as PW2 and deposed as under:

Deceased Banwari Lal was working with our company as Supervisor. Copy of his appointment letter is Ex.PW.2/A. His joining report is Ex.PW.2/B and his application for employment is Ex.PW.2/C. As per the pay drawn by Banwari Lal for April, 2005, a certificate dated 06.05.2005 was issued, which is Ex.PW.2/D. The last pay drawn by Banwari Lal is Ex.PW.2/E. His salary slip is Ex.PW.2/F as mentioned in the register of payment of wages. TDS used to be deducted on the salary paid to Banwari Lal and we had been issuing Form-16 on regular basis to Banwari Lal. Copy of Form-16 issued by our company to Banwari is already

Ex.PW.1/3. Shri Banwari Lal was initially appointed at a salary of Rs. 12,000/- per month. He used to get yearly increment according to the performance ranging from Rs. 1500/- to Rs. 2000/-. Retirement age of an employee of our company is 60 years. On the basis of the increments and experience in the service, salary of Banwari Lal would have been doubled had he reached the age of superannuation.

6. The aforesaid testimony of PW2 remained unshaken in cross examination and, as a matter of fact, the witness in cross-examination emphatically stated that the deceased had been working in their Company on a permanent basis.

7. The contention of Mr. Nandwani, the learned Counsel for the Appellant, placing his reliance upon Salra Verma's case (supra), is that the future prospects of the deceased could not have been considered as he was in a private job and the same does not fall in the category of "permanent job". The relevant part of the judgment in the case of Sarla Verma (supra) upon which reliance was placed by Mr. Nandwani is reproduced hereunder:

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In Susamma Thomas, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses. The decision in Susamma Thomas was followed in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , where the deceased was getting a gross salary of Rs. 1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2200/- per month. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this Court assumed the income as Rs. 45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. 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.

8. Mr. Bhupesh Narula, the learned Counsel for the Respondents No. 1 to 6, on the other hand, placed reliance upon the recent decision of the Supreme Court in Shakti Devi Vs. New India Insurance Co. Ltd. and Another, In the said case, after referring to the judgment rendered by it in the case of Smt. Sarla Verma (supra), the Supreme Court observed as follows:

In Sarla Verma, this Court stated that where the deceased was self-employed, the Court shall usually take only the actual income at the time of death; a departure from there should be made only in rare and exceptional cases involving special circumstances. Does the present case involve special circumstances? In our view, it does. The evidence has come that the deceased was to get employment in the forest department after the retirement of his father. Obviously the evidence is based on the government policy. The deceased, thus, had a reasonable expectation of the government employment in near future. In the circumstances, the actual income at the time of deceased's death needs to be revised and taking into consideration the special circumstances of the case, in our view, the monthly income of the deceased deserves to be fixed at Rs. 2,000/-....

9. On the basis of the aforesaid, it was urged by Mr. Bhupesh Narula, the learned Counsel for the Respondents No. 1 to 6, that in each case the question which the Tribunal or the Court concerned must pose to itself while computing the income of the deceased for the purpose of assessing the loss of dependency of his legal representatives is:

Does the present case involve special circumstances?

10. Mr. Narula contended that the evidence on record in the instant case clearly showed that the deceased was an employee of a private limited company. PW2 Mr. Madan Mohan, the Manager (Administration) of the said company had categorically testified that on the basis of the increments and experience in the service, the salary of the deceased would have doubled had he reached the age

of superannuation, which in the case of their Company was 60 years. He also testified that every employee used to get yearly increments in their Company and that the deceased Banwari Lal had been working in their Company on a permanent basis. The aforesaid facts, Mr. Narula contended, must be regarded as special circumstances.

11. It is clear from the decision in the case of Sarla Verma (supra) that a distinction was made between the case of a self-employed person and that of a person with a permanent job. The Supreme Court in its subsequent decision rendered in the case of Shakti Devi (supra) clarified that where the deceased is self-employed but has a reasonable expectation of a permanent job, this must be considered to be a special circumstance. In the said case, the deceased was running a general store from his house and earning about Rs. 1,000/- per month from the business, but since he had a reasonable expectation of Government employment in the near future according to a Government Policy, it was held that the actual income of the deceased at the time of his death was required to be revised by taking into consideration the aforesaid special circumstance, and the monthly income of the deceased was thus fixed at Rs. 2,000/- per month. The present case, in my opinion, stands on a better footing. The deceased is not self-employed but had a permanent job in a private limited company where every employee was getting yearly increments. There is also evidence on record that at the time of his superannuation, the salary of the deceased would have most certainly doubled. In view of the aforesaid facts, in my view, the learned Tribunal cannot be faulted for adding 30% of the salary which the deceased was drawing at the time of his death to his last drawn salary towards "future prospects" for the purpose of calculation of "loss of dependency".

12. It also deserves to be highlighted that the Supreme Court while dealing with the aspect of future prospects in Sarla Verma's case (supra) has drawn no distinction between a private job, corporate job or Government job, though a distinction was made for obvious reasons between a temporary job and permanent employment. All that the Supreme Court emphasized in the aforesaid case was that while assessing the future prospects of the deceased, the permanency or otherwise of his job be taken into account and the future prospects of the deceased be adjudged accordingly. No hard and fast rule was laid down as is clear from the fact that the Court held that in special circumstances of the case a different approach may be warranted.

13. As regards the grievance of the Appellant that the amount of compensation awarded towards loss of love and affection is on the higher side, I am not inclined to agree with the contention of Mr. Nandwani that the same should be scaled down, keeping in view the fact that the Respondents No. 1 to 6 lost their bread earner at a comparatively young age.

14. On the aspect of interest awarded by the learned Tribunal however I find some substance in the contention of Mr. Nandwani that interest should have been awarded by the learned Tribunal at the rate of 7.5% per annum instead of 9%

per annum, keeping in view the prevalent rate of interest on the date of the accident. The award is accordingly modified to the extent that the Appellant is held liable to pay interest @ 7.5% per annum from the date of the institution of the petition till the date of realisation. The rest of the award is upheld.

MAC. APP. 6/2011 and CM No.95/2011 stand disposed of accordingly.