
(2012) 02 DEL CK 0281
In the Delhi High Court
Case No : MAC. App. 981 of 2011

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Amita Tripathi and Others		RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 02 DEL CK 0281

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

Bench : Single Bench

Advocate : A.K. Soni, for the Appellant; Anurag Tiwari, Advocate of R-1 and Mr. B.S. Randhawa, Advocates for R-2 and R-3, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—This Appeal is for reduction of compensation of Rs. 26,78,800/- awarded for the death of Sunil Tripathi, who was aged about 34 years at the time of the accident, which occurred on 02.06.2005.

2. The Motor Accident Claims Tribunal (the Claims Tribunal), by the impugned judgment dated 28.07.2011 took the deceased's income as Rs. 11,795/-, added 50% towards the future prospects, deducted one-fourth towards the personal and living expenses and applied the multiplier of "16" as per the deceased's age.

3. The contention raised by the Appellant Insurance Company is that during inquiry before the Claims Tribunal, it was admitted by the First Respondent Amita Tripathi through her Affidavit that she re-married on 21.04.2008. Thus, she could not have been considered as a dependent. It is urged that the deceased's father was admittedly having an income of Rs. 13,000/- per month by way of pension; otherwise also, as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , father is not considered as a dependant and thus, one-third of the deceased's income was required to be deducted towards the personal and living expenses.

4. The factum of re-marriage of the First Respondent Amita Tripathi on

21.04.2008 is not disputed. Thus, it is proved that she re-married after two years and ten months of the unfortunate death of Sunil Tripathi, the deceased. Thus, irrespective of the fact the widow is to be considered as a dependant or not, as per Sarla Verma (Supra) when the number of dependants is 2 to 3, one-third of the deceased's income is liable to be deducted towards the personal and living expenses.

5. It is well settled that the prospects of re-marriage are not considered as a ground to deny, refuse or even reduce the award of compensation even if the widow is young. However, where a widow remarries, she is not entitled to the grant of compensation after her remarriage. In *Vijay and Others Vs. Lakhmi Chand Jain and Others*, , a contention made on prospect of re-marriage as a ground for reduction of compensation was rejected, but it was held that if by additional evidence, it was proved that the widow had remarried, the same could have affected the award of compensation. In *Oriental Fire and General Insurance Co. Ltd. v. Shrimati Chandrawati*, AIR 1983 All 174, Allahabad High Court held that a widow is not entitled to compensation after she remarries. In *Tarkeshwar Yadav Vs. Santosh Yadav*, , this Court held that "It would be appropriate if the loss of dependency is confined to the period from the date of the accident till the date of remarriage of the widow". Since, the widow had remarried, she would not be considered as a dependent after the date of her remarriage. Thus, the First Respondent would be entitled to compensation only till the date of her re-marriage.

6. 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 Rs. actual salary" should be read as Rs. 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).

7. 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% to wards 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).

8. The loss of dependency is thus re-computed as Rs. 21,98,176/- (11,795/- x 12 - tax (4154/-) +50% - 1/3 x 16).

9. The compensation of Rs. 1,00,000/- awarded by the Claims Tribunal towards the loss of love and affection was on the higher side. 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. 1,00,000/-.

10. The overall compensation is re-assessed as under:-

1.

Loss of Dependency

Rs. 21,98,176/-

2.

Loss of Love and Affection

Rs. 25,000/-

3.

Loss of consortium

Rs. 10,000/-

3.

Loss to Estate

Rs. 10,000/-

4.

Funeral Expenses

Rs. 10,000/-

Total

Rs. 22,53,176/-

11. The overall compensation is reduced from Rs. 26,78,800/- to Rs. 22,53,176/-

12. The excess amount along with interest earned, if any, during the pendency of the Appeal on the sum of Rs. 4,25,624/- shall be refunded to the Appellant Insurance Company.

13. The statutory amount of Rs. 25,000/- shall also be refunded to the Appellant Insurance Company.

14. The compensation awarded shall be disbursed to the Respondents No.1,2, 5 and 6 (i.e. the Claimants) in proportion in terms of the Tribunal's award.

15. The Appeal is allowed in above terms.

16. Pending applications also stand disposed of.