

(2012) 09 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Cross Objection No. 25-CII of 2012 in/and F.A.O. No. 6783 of 2011 (O and M)

Oriental Insurance Company Ltd.

APPELLANT

Vs

Sunita Rani and Others

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Citation : (2012) 168 PLR 783

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Ashwani Arora, for the Cross objectors, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal by the insurance company contains a challenge to the quantum of compensation assessed. The deceased was an income tax assessee and the documents filed before the Court showed that he was earning Rs. 1,87,0197- per year. The Tribunal adopted a deduction of 1/3rd and applied a multiplier of 13 and after providing for conventional heads of claim, awarded Rs. 16,45,671/-. There is cross-objection for enhancement at the instance of the claimants pointing out that there were 5 dependents and, therefore, in terms of the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 1 the deduction must have been 1/4th and the choice of multiplier was also erroneous. The multiplier must have been taken as 15 and not 13 as taken by the Court below. The learned counsel appearing on behalf of the claimants would also urge that there was a future prospect of increase of income and that has not been properly considered. A reasonable certitude has obtained through the judgment of the Supreme Court in Sarla Verma's case (supra) which has been taken to be the norm for adopting the formula for determination of compensation for death. This has been subject to certain modifications over a period of time that has come through a recent

judgment in Santosh Devi Vs. National Insurance Company Ltd. and Others, 1 providing for a prospect of increase even for a salaried person not in government service. There is yet another judgment in Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, which allows for a prospect of increase even for a person beyond the age of 50 that has not been provided in Sarla Verma's case. The Supreme Court in Santosh Devi's case was actually considering a case of death of a person in 1990s who had 10 dependants where his income was taken at Rs. 1,500/- per month. While disposing of the appeal in 2011, the Supreme Court found that the assessment of compensation on the basis of such a low income at Rs. 1,500/- per month with 1/3rd deduction would be grossly unjust and provided a 30% increase and took the income at Rs. 1,950/-, applied a 1/10th deduction. In a case where the person was said to be in business, it is not at all times possible to provide for an increase unless appropriate evidence is brought. It is just as well likely that a business runs into a loss. A certain amount of approximation is inevitable and a priori decision is not possible that on a declared income at the time of death, there should always be a provision for enhancement in the manner of calculation of compensation payable. The choice of multiplier is itself a method to obtain a capital that would return, in a stable economy, a particular amount that he would have been earning. I do not, therefore, want to make fresh forays of innovations by providing a prospect of increase for a businessman. I will, therefore, take the income as found in the income tax return and provide for 1/4th deduction for personal expenses instead of 1/3rd and adopt a multiplier of 15 instead of 13 and assess the loss of dependency at Rs. 18,70,000/-. The other heads of claim compensation assessed at Rs. 10,000/- for loss of consortium and Rs. 5,000/- for funeral expenses are retained. I will make a further addition of another Rs. 10,000/- towards loss to estate and take the whole compensation payable as Rs. 18,95,000/-.

2. The amount in addition to what has been awarded already by the Tribunal will attract interest @ 6% per annum from the date of petition till the date of payment. The extent of entitlement and the liability as assessed by the Tribunal are retained. The appeal by the insurance company is dismissed, the cross-appeal is allowed to the above extent.