**(2011) 08 DEL CK 0219**

**In the Delhi High Court**

**Case No :** MAC Appeal No. 120 of 2010

Rajwati Dagar and Others — APPELLANT

Vs

National Insurance Company Ltd. and Another — RESPONDENT

**Date of Decision :** 29-08-2011

**Acts Referred:**

**Citation :** (2012) 2 TAC 63

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Kundan Kumar, for the Appellant; Manjusha Wadhwa and Angana Goswami, for the Respondent

## Judgement

Indermeet Kaur, J.—This appeal has challenged the Award dated 06.08.2009 where total compensation of Rs. 10,12,000 had been awarded to the claimants of the victim Bijender Singh. The claimants were widow, 4 minor children and the parents of the victim. The Petitioner is aggrieved by the amount awarded under the head of "loss of dependency" which is Rs. 8,07,000/-. The other heads i.e. non pecuniary head for "loss of love and affection ", "loss of consortium", "funeral expenses" and "loss of estate" are not assailed. Contention of the Petitioner is that he was a permanent employee earning a salary of Rs. 6,000/- per month and was working with the Industrial Security Force a registered organization having its office at Gurgaon; the certificate appended in the list of documents filed before the Tribunal evidenced that he was hardworking; he had been working in that organization for almost about two years prior to his death; his income tax return had also been filed for the financial year 2002-2003 showing his gross salary at Rs. 6,000/- per month i.e. actual income of Rs. 72,000/- per annum. The contention of the Appellant is that in view of the judgment of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , since the deceased was of 43 years of age at the time to his death he was entitled to 30% increase in the context of future prospect on the actual income which was he drawing at the time of his death; impugned Award has failed to consider this in the correct perspective.

2. This submission is negatived by the counsel for the Respondent who states that the impugned Award in No. manner calls for any interference. The ratio of the aforenoted judgment has been considered in its correct perspective.

3. The Apex Court in the case of Sarla Verma (supra) has held that keeping in view the imponderables and uncertainties of life as a thumb rule an addition of 50% of actual salary to the actual salary income of the deceased should be added towards future prospects where the deceased has a permanent job and is below 40 years, an addition of 30 % should be added if the age of the deceased is between 40 to 50 years. Learned Counsel for the Respondent has vehemently argued that the Apex Court had also noted that where the deceased is self-employed or on a fix salary the courts will usually take into account only the actual income at the time of death; a departure there from should be made only in rare case.

4. The record which has been filed before the Tribunal shows that the deceased was aged 43 years and was working for about last two years in the aforenoted organization. i.e. Industrial Security Force Organization which is an expert body in Security and Consultancy; office is registered at Kapashera, Gurgaon; the certificate appended in the list of documents shows that the deceased-victim was working as a field officer for the last almost two years; he had been certified to be a good and hard working personnel; there is No. reason to dispute the submission of the Appellant that in these circumstance, the job of the Petitioner was not of a permanent nature. Evidence led shows that his work would be of a permanent nature; there is also No. reason to pre-suppose that he would not earn any future increment; there was every likelihood of the Petitioner having an enhanced income in the future.

5. In the aforenoted background, the Tribunal in not considering the ratio of Sarla Verma(supra) and not granting future increments to the actual salary of the victim suffers from an infirmity; it is accordingly set aside.

6. The modified computation under the head of "loss of dependency" is accordingly read as under: Rs. 6000/- + Rs. 1800(30% of Rs. 6000/-) = Rs. 7,800/- - Rs. 1560/- (1/5th of Rs. 7,800/-) = Rs. 6240 x 12x 14 = Rs. 10,48,320/-

7. The sum of Rs. 10,48,320/- is accordingly the now modified figure in place of the figure of Rs. 8,07,000/- (rounded off) which had been awarded by the Tribunal under this head. The other heads i.e. "loss of love and affection", "loss of consortium", "funeral expenses", are not the subject matter of challenge before this Court.

8. Appeal is disposed of in the above terms.

 