(2010) 06 DEL CK 0028

In the Delhi High Court

Case No : FAO. No. 104 of 1994

Suganthi and Another — APPELLANT

Vs

Khairati Lal Agan Pal and Others — RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Citation : (2010) 06 DEL CK 0028

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : V.P. Choudhary with Mr. Nitinjya Choudhary and Ms. Sushma, for the Appellant; Pankaj Seth, for the Respondent

Judgement

J.R. Midha

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs. 7,50,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 28th June, 1988 resulted in the death of K.M. Kasi. The deceased was survived by his widow, one minor son and parents.

3. The deceased was aged 28 years at the time of the accident and was working as Senior Executive with Maruti Udyog Limited earning Rs. 6,285/- per month as per salary certificate, Ex.PW3/1. The deceased was Chartered Accountant-cum-ICWA. The Deputy Manager (Personal) of Maruti Udyog Ltd. appeared in the witness box as PW-3 and deposed that the deceased joined Maruti Udhyog Ltd. on 3rd January, 1985 as Accounts Officer and he was promoted as Senior Executive -Level 12 on 1st April, 1987. PW-3 proved the salary certificate of the deceased as Ex.PW3/1. PW-3 further deposed that the deceased had a chance of promotion after 3-4 years and he was expected to become General Manager of the Company depending upon his performance. PW-3 further deposed that the deceased had got his first promotion after two years in 1987.

4. The Claims Tribunal took the income of the deceased as Rs. 6,285/- per month, deducted Rs. 2,285/- towards his personal expenses and applied the multiplier of 15 to compute the loss of dependency at Rs. 7,50,000/- .

5. The learned senior counsel for the appellant has urged following grounds at the time of hearing of this appeal:-

(i) The personal expenses of the deceased be reduced from 1/3rd to 1/4th.

(ii) The multiplier be enhanced from 15 to 18.

(iii) The future prospects be taken into consideration and the income of the deceased be taken as Rs. 18,855/- .

(iv) The compensation be awarded for loss of consortium, loss of love and affection, loss of estate and funeral expenses.

6. The deceased was aged 28 years at the time of the accident and was survived by four legal representatives, namely, his widow, one minor son and parents. According to the principles laid down by the Hon''ble Supreme Court in the case of Sarla Verma vs. Delhi Transport Corporation, 2009 (6) Scale 129, the appropriate multiplier at the age of 28 years is 18 and the appropriate deduction towards personal expenses of the deceased is 1/4th. Following the aforesaid judgment, the multiplier is enhanced from 15 to 18 and the personal expenses of the deceased are reduced from 1/3rd to 1/4th.

7. With respect to the future prospects, the learned senior counsel for the appellant refers to and relies upon the judgment of the Hon''ble Supreme Court in the case of R.K. Malik and Another Vs. Kiran Pal and Others, in which the Hon''ble Supreme Court has awarded future prospects in respect of a minor child. The relevant portion of the aforesaid judgment is reproduced as under:-

14. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of this Court in the case of Sarla Dixit v. Balwant Yadav; The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, ; Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, ; New India Assurance Co. Ltd. Vs. Charlie and Another, and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be

said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly. Co. v. Jenkins as follows:

In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child lifetime. But this will not necessarily bar the parents'' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed u/s 163A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable u/s 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [see Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, ; United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,].

17. Reverting back to the factual position of the present case, the date of accident is 18.11.1997. Prior to this, the Second Schedule of the Act was already introduced w. e. f. 14.11.1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child. It by necessary implication takes into account future prospects, inflation, price rise etc.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also

be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ; and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

8. The learned senior counsel for the appellant also refer to and relies upon the judgment of the Hon''ble Supreme Court in the case of Sarla Verma (Supra) in which the Apex Court has permitted the future prospects to be taken into consideration and has also permitted departure in exceptional cases. The learned counsel for the appellant refers paras 10 and 11 of the judgment of the Hon''ble Supreme Court in the case of Sarla Verma (Supra), which are 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 14 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. Re : Question (ii) - deduction for personal and living expenses.

9. The learned counsel for the respondent in reply refers to paras 22 to 24 of the judgment of Hon''ble Supreme Court in the case of Sarla Verma (Supra), which are reproduced hereunder:-

22. In this case as noticed above the salary of the deceased at the time of death was Rs. 4,004. By applying the principles enunciated by this Court to the evidence, the High Court concluded that the salary would have at least doubled (Rs. 8008/-) by the time of his retirement and consequently, determined the monthly income as an average of Rs. 4004/- and Rs. 8008/- that is Rs. 6006/- per month or Rs. 72072/- per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of future prospects.

23. Learned counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs. 4004/- per month at the time of death, as per the certificates issued by the employer (produced before High Court), on the basis of pay revisions and increases, his salary would have been Rs. 32,678/- in the year 2005 and there is no reason why the said amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not therefore be the average of Rs. 4004/- and Rs. 8008/- , but the average of Rs. 4004/- and Rs. 32,678/- .

24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.

10. The learned counsel for respondent No. 1 submits that in the case before Hon''ble Supreme Court, the deceased was earning Rs. 4,004/- per month in 1988 and it was the contention of the claimants that the deceased would have been earning Rs. 32,678 in the year 2005 and, therefore, the average of Rs. 4,004/- and Rs. 32,678/- be taken, which was rejected by the Hon''ble Supreme Court and the average of Rs. 4,004/- and Rs. 8,008/- was taken.

11. The learned Senior counsel for the appellant submits that the facts of the case of Sarla Verma and this case are distinguishable. The learned Senior Counsel submits that in the present case, the deceased got the promotion in the first two years and he was in the promotion range in the 3-4 years as compared to Sarla Verma where the deceased expired in 1988 and the claimants claimed the revision of the salary in 2005 as Rs. 32,678/- due to pay commission and promotion, which was rejected.

12. This Court is of the view that the facts of this case are clearly distinguishable from the facts in the case of Sarla Verma (supra) because the promotion of the deceased was not dependent upon any contingency of the pay Commission as in the aforesaid case. This case squarely falls in the category of rare and exceptional cases involving special circumstances in respect of which the Hon''ble Supreme Court has permitted the departure from the normal rule as laid down in the case of Sarla Verma (supra). The deceased was a qualified Chartered Accountant-cum-ICWA and got his first promotion as Senior Executive in Maruti Udyog Ltd. in two years in 1987. The deceased had a chance of another promotion after 3-4 years and was excepted to become General Manager as per the statement given by the Deputy Manager (Personnel) of Maruti Udyog Ltd. who appeared in the witness box before the Claims Tribunal as PW-3. The income of the deceased would have risen to Rs. 18,855/- in ordinary course. However, considering that the accident relates to the year 1988 and the appellants would be entitled to substantial amount by way of interest, this Court would like to restrict the future prospects to 50% of the income of the deceased according to the normal rule laid down by the Hon''ble Supreme Court in the case of Sarla Verma (supra). Taking the income of the deceased as Rs. 6,285/- and adding 50% towards future prospects, the income of the deceased for computation of compensation is taken to be Rs. 9,427.50 (Rs. 6,285 + 50% of Rs. 6,285).

13. The Claims Tribunal has not awarded any compensation for loss of consortium, loss of love and affection, loss of estate and funeral expenses. Rs. 10,000/- is awarded towards loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses.

14. Taking the income of the deceased as Rs. 9,427.50, deducting 1/4th towards personal expenses, applying the multiplier of 18, adding Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses, the total compensation is computed to be Rs. 15,67,255/- [(Rs. 9,427.50 x 3/4 x 12 x 18) + Rs. 10,000 + Rs. 10,000 + Rs. 10,000 + Rs. 10,000].

15. The appeal is allowed and the award amount is enhanced from Rs. 7,50,000/- to Rs. 15,67,255/- . The Claims Tribunal has awarded interest @12% per annum which is not disturbed on the original award amount of Rs. 7,50,000/- . However, on the enhanced award amount, the appellants shall be entitled to interest @7.5% per annum from the date of filing of the claim

petition, i.e., 19th December, 1988 up to the date of realization.

16. The enhanced award amount along with interest be deposited by respondent No.2 with UCO Bank, Delhi High Court Branch A/c Suganthi through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

17. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the same to appellant No.1 by transferring the same to her Savings Bank Account. The remaining amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of six months.

(ii) Fixed deposit in respect of 10% of the award amount in the name of appellant No. 2 for a period of one year.

(iii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of one and a half years.

(iv) Fixed deposit in respect of 10% of the award amount in the name of appellant No.2 for a period of two years.

(v) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of two and a half years.

(vi) Fixed deposit in respect of 10% of the award amount in the name of appellant No.2 for a period of three years.

(vii) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of three and a half years.

(viii) Fixed deposit in respect of 10% of the award amount in the name of appellant No. 2 for a period of four years.

(ix) Fixed deposit in respect of 10% of the award amount in the name of appellant No.1 for a period of four and a half years.

18. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.

19. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

20. No cheque book be issued to appellant No.1 without the permission of this Court.

21. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to appellant No.1 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

22. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

23. Half yearly statement of account be filed by the Bank in this Court.

24. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellants.

25. The appellants shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

26. Copy of the order be given dasti to counsel for both the parties under signatures of the Court Master.

27. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

