
(2022) 10 DEL CK 0129
In the Delhi High Court
Case No : MAC.APP. No. 448 Of 2015

Surya Sharma & Ors

APPELLANT

Vs

Anil Kumar Sharma & Ors (Shriram General Insurance Co Ltd)

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Income Tax Act, 1961 — Section 192(1), 201(1A)

Citation : (2022) 10 DEL CK 0129

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Manish Maini, Pooja Goel

Final Decision : Disposed Of

Judgement

Gaurang Kanth, J

1. The present appeal emanates from the award dated 30.01.2015 ("Impugned Award") passed by the learned Presiding Officer, Motor Accidents Claims Tribunal: Karkardooma Courts: East District: Delhi ("Claims Tribunal") in Motor Accident Claim No. 52/2013 titled as Smt. Surya Sharma and Ors. v. Sh. Anil Kumar Sharma and Ors.

2. The unfortunate accident on 20.01.2013 resulted in death of Mr.Vijit Sharma. The deceased was 29 years of age at the time of death. He was survived by his widow, parents and one brother (Appellants). By way of the Impugned Award, the learned Claims Tribunal awarded a compensation of Rs. 66,18,976/- to Appellant No.1 (widow) & Appellant No. 2 (Mother) with interest @ 9% per annum from the date of filing of the claim petition till the realization. The learned Claims Tribunal was also pleased to grant recovery rights to Respondent No. 3 (Insurance Company) against Respondent No. 1 (Driver) and Respondent No. 2 (Owner) as per law. The learned Claims Tribunal awarded the compensation under the following heads:

S. No.

Head

Compensation awarded

Pecuniary Damages

1.

Loss of Dependency

Rs. 63,83,976/-

2.

Funeral charges

Rs. 25,000/-

3.

Loss of estate

Rs. 10,000/-

4.

Loss of Consortium

Rs. 1,00,000 /-

Non- Pecuniary Damages

5.

Loss of love and affection etc.

Rs.1,00,000 /-

Total Compensation awarded

Rs. 66,18,976/-

3. Aggrieved by the impugned Award of the learned Claims Tribunal, the Appellants herein preferred the present Appeal.

SUBMISSION ON BEHALF OF THE APPELLANT

4. Learned counsel for the Appellants initiated his arguments by submitting that the learned Claims Tribunal erred in awarding Rs. 66,18,975/- as compensation as against the claimed amount of Rs. 5,00,00,000/-.

5. It is the contention of Mr. Maini, learned Counsel for the Appellant that the deceased was just 29 years and had done his MBA from a very reputed university. Further, he submitted that the deceased Sh. Vijit Sharma was at the threshold of his career and with maximum output and potential, he would have

been promoted to next higher levels in near future. Learned counsel for the Appellants while relying on the judgment of G.M. Kerala State Road Transport Corporation v. Susama Thomas and Others reported as 1994 SCC (2) 176 vehemently argued that the income of the deceased would have doubled or tripled by the age of retirement. With the passage of time, the minimum wages got revised twice in a year and thus the deceased would have earned much more if he would have survived.

6. Learned counsel while relying on the evidence of PW-2/employer Sh. Mahesh Kumar, submitted that the deceased Mr. Vijit Sharma had already completed his 'probation period' and was a permanent employee in the Company with excellent performance.

7. With regard to the deduction of income tax, learned counsel for the Appellants submitted that the income tax deduction was on the higher side and it should have been deducted as reflected in Form- 16A. A careful examination of Form 16A, Exh. PW-2/3 clearly reveals that only Rs. 1745/- was the tax liability of the deceased during the assessment year 2013-2014.

8. Lastly, learned Counsel for the Appellants bolstered his submissions by relying on the judgment of the Hon'ble Apex Court in National Insurance Company Ltd. V Pranay Sethi reported as (2017) 16 SCC 680 and submitted that future prospects ought to be granted to the deceased and he is also entitled to future increase of 50% over his salary.

SUBMISSIONS OF THE RESPONDENT NO.3

9. Mr. Nandwani, learned counsel appearing on behalf of the Respondent No.3/ Insurance Company while relying on the judgment of the Hon'ble Supreme Court in Pranay Sethi (supra) submitted that the nature of employment of the deceased, Late Sh. Vijit Sharma, was under the head of 'fixed salary', as opposed to 'permanent employment' claimed by the Appellants/Claimants. Learned counsel further submitted that permanent employment refers to the condition of service where the employee cannot be terminated in ordinary course, i.e., employees of Central and State Government. Whereas in this case, the deceased was employed in a private company namely, M/s Fun Foods Private Limited. He was under a contractual obligation and his employment can be terminated by giving notice. Hence the deceased was an employee under 'fixed salary'.

10. It is the contention of Mr. Nandwani that the deceased, Sh. Vijit Sharma was employed for 6 months and before his untimely demise, his salary has been calculated for the complete year.

11. He further submitted that the tax deduction shall be taken for the whole year, which has been done by the learned Claims Tribunal. He further submitted that the learned Claims Tribunal has deducted the income tax liability on the lower side, contrary to what the Appellants/Claimants have submitted.

12. Lastly the counsel for Respondent No.3 submitted that as per the judgment

of the Apex Court in *Pranay Sethi (supra)* person employed on 'fixed salary' is entitled to future prospects to the tune of 40% as he was under the age of 40 years as opposed to 50% as claimed by the Appellants/Claimants.

LEGAL ANALYSIS

13. This Court heard the arguments advanced by the learned counsel for the parties and perused the records.

14. The Hon'ble Supreme Court in the matter of *Sarla Verma & Ors. v. DTC & Anr.*, reported as (2009) 6 SCC 121 has established the golden principles for considering the award of compensation in cases of death. The relevant portion of the judgment is reproduced hereunder:

"18. The criteria which are to be taken into consideration for assessing compensation in the case of death are: (i) the age of the deceased at the time of his death; (ii) the number of dependents left behind by the deceased; and (iii) the income of the deceased at the time of his death.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

(i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardized, there will be uniformity and consistency in these decisions. There will be lesser need for detailed evidence. It will be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

"Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a Table of multipliers with reference to the age has been identified by this Court. The

multiplier should be chosen from the said Table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family. Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added."

(emphasis supplied)

15. Before considering the adjudication of any other issue, it is quintessential to adjudicate on the issue of income of the deceased. Admittedly, the age of the deceased at the time of the accident was 29 years and he was working as an Assistant Brand Manager in the company, M/s Fun & Foods Pvt. Ltd., since 19.07.2012. Further, PW2/Sh. Mahesh Kumar, Legal Executive has brought the salary slips from the office of the Employer of the deceased for the period from July 2012 to January 2013 as Exh. PW2/2, Form 16A of deceased as Exh. PW2/3 and Appointment Letter as Exh. PW2/4. In his evidence dated 24.07.2014, PW2 deposed that the deceased was a permanent employee of the company and the last gross pay drawn by the deceased was Rs. 50,241/- p.m. Relevant part of the evidence of PW2 is reproduced hereunder:

"I am a summoned witness. I have been authorized by Sr. Manager HR to appear and depose about the records of Late Sh. Vijit Sharma. The authority letter is Ex. PW2/1. I have also brought the attested copy of salary slip of Late Sh. Vijit Sharma for the month from July, 2012 till January, 2013 are Ex. PW2/2 (Colly) 6 sheets. The last drawn gross pay is Rs. 50,241/- p.m. as per Ex. PW2/2. The form 16 A of Late Sh. Vijit Sharma is Ex. PW2/3 (Colly) 5 sheets. The Appointment Letter is Ex. PW2/4 (Colly) 4 sheets.

Late Vijit Sharma was our permanent employee and he was very good employee. His performance was excellent. Our company used to give salary increment annually and sometimes before one year also as per the performance of the employee.

Initially we appoint the employees in our company on probation for a period of Six months and as per the appointment letter, if the employee is not terminated by way of Written Notice, by the Company, after the period of six months, the employee is treated as permanent. In this case also Vijit Sharma's probation period was over and he was permanent employee. Unfortunately, he died in a

road accident, which is a great loss to our company and till now we are not able to get the substitute.”

16. Applying the principles laid down by the Apex Court in the matter of *Shyamwati Sharma v. Karam Singh*, reported as (2010) 12 SCC 378 and *Manasvi Jain v. DTC Ltd.*, reported as (2014) 13 SCC 22, wherein it was categorically held that except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take-home salary.

17. With regard to the issue of deduction of Income Tax, it is the contention of the Appellants that the deduction is towards the higher side and further it was also argued that Form 16A of the deceased should have been considered which has been proved on record as Exh. PW2/3. Per Contra, Respondent No.3 contended that the learned Claims Tribunal has deducted the income tax liability on the lower side.

18. In connection with the issue, below reference to the decision in *Vimal Kanwar v. Kishore Dan*, reported as (2013) 7 SCC 476 needs to be taken:

“22. The third issue is “whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act”.

23. In *Sarla Verma [Sarla Verma v. DTC]*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] this Court held: (SCC p. 133, para 20)

“20. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation.”

This Court further observed that: (SCC p. 134, para 24)

“24. ... Where the annual income is in taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’.”

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should keep in mind that under Section 192(1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (“TDS”, for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has

deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income."

19. Thus, as per the above observations of the Hon'ble Supreme Court, the yearly income of the deceased should be assessed after deduction of the income tax based on his Income Tax Return or Form 16A for the relevant year. The reduction of income tax shall be according to the Income Tax Act and Rules. It is relevant to note here that the learned Claims Tribunal failed to appreciate Form 16A which is exhibited as Exh. PW2/3 and further erroneously deducted income tax of Rs. 30,000/- from annual salary of the deceased without any explanation for the same. In the present case, as per the letter of appointment dated 18.06.2012 (Exh. PW2/4) the deceased joined M/s Fun Foods Pvt Ltd with effect from 19.07.2012. As per the deceased's salary slips for the months from July, 2012 till January, 2013 (Exh. PW2/2) it is evident that the employer paid in total Rs.3,06,307/- to the deceased under the head 'salary' (inclusive of income tax). The Appellant proved on record Form 16A for the Assessment year 2013-2014 (Exh. PW2/3). As per the said document, the Tax payable for the Assessment year 2013-2014 was Rs.1745/-. Hence, the actual salary of the deceased for 187 days will be $3,06,307 - 1745 = 3,04,562/-$. Therefore, the deceased's monthly salary would be $3,04,562 / 187 \times 30 = \text{Rs.}48,860/-$.

20. With respect to the consideration of the future prospects, admittedly the deceased was 29 years of age at the time of the alleged incident. As rightly pointed out by learned counsel for Respondent No.3, permanent employment refers to those wherein the employee cannot be terminated in ordinary course, i.e., employees of Central and State Government. Whereas in this case, the deceased was employed in a private company namely, M/s Fun Foods Private Limited, hence he was under a contractual obligation, thereby making him an employee under 'fixed salary' which employment can be terminated by giving notice. Hence, the deceased can be treated as a person with 'fixed salary' as provided in para 59.4 of Pranay Sethi (Supra) judgment. Therefore, the future prospects of 40% can be awarded to the deceased who was a salaried employee and was below the age of 40 at the time of his accident. Hence, the Appellant's monthly income, inclusive of future prospects, is re-assessed at Rs.68,404/- (Rs. 48,860/- + 40% of Rs. 48,860/-).

21. The learned Claims Tribunal has held that the deceased had two dependents i.e., widow and mother and accordingly a deduction of 1/3rd towards the personal living expense of the deceased was made as per the Hon'ble Supreme Court dictum in Sarla Verma (supra). This Court is in complete agreement with

the learned Claims Tribunal and this issue needs no further interference.

22. The learned Claims Tribunal awarded a compensation of Rs.1,00,000/- towards loss of love and affection. Further, a sum of Rs.1,00,000/- has also been granted towards loss of consortium. The three Judge Bench of the Hon'ble Supreme Court in the matter of United India Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and Ors. (2021) 11 SCC 780, held in paras 28-35 that the Hon'ble Supreme Court in Magma General Insurance Co. Ltd v. Nanu Ram reported as (2018) 18 SCC 130, gave a comprehensive interpretation to consortium by including spousal consortium, parental consortium, as well as filial consortium. Further, the Hon'ble Apex Court also held that 'loss of love and affection' is comprehended in loss of consortium and there is no justification to award compensation towards loss of love and affection under a separate head. The relevant portion of the judgment is reproduced hereunder:

“(e) Three conventional heads

28. In *Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]*, the Constitution Bench held that in death cases, compensation would be awarded only under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court held that the conventional and traditional heads, cannot be determined on percentage basis, because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified, which has to be based on a reasonable foundation. It was observed that factors such as price index, fall in bank interest, escalation of rates, are aspects which have to be taken into consideration. The Court held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000, respectively. The Court was of the view that the amounts to be awarded under these conventional heads should be enhanced by 10% every three years, which will bring consistency in respect of these heads:

(a) Loss of estate — Rs 15,000 to be awarded.

(b) Loss of consortium.

29. Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

30. In *Magma General Insurance Co. Ltd. v. Nanu Ram* [*Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

31. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit.

32. Modern jurisdictions world over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under the loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

33. The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents. The amount to be awarded for loss consortium will be as per the amount fixed in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] .

34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , has recognised only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In *Magma General* [*Magma General Insurance Co. Ltd. v. Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."

23. In the present case, the deceased is survived by his widow and both the parents. The parents lost their son who was only of 29 years. As held by Hon'ble Supreme Court in Magma General Insurance (Supra), the right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. An accident leading to the death of a child causes great shock and agony to the parents of the deceased. The greatest agony for a parent is to lose their child during their lifetime. This Court is conscious of the fact that for parents no monetary compensation can be treated as a substitute for the loss of their son. However, this Court finds it unfair not to extend the benefit of filial consortium to the unfortunate parents of the deceased. Hence, it is hereby held that the parents of the deceased are entitled for the filial consortium.

24. Further, as held by the Three Judge Bench of the Hon'ble Supreme Court in the aforementioned judgment, the loss of love and affection is included in loss of consortium. Therefore, the learned Claims Tribunal was not justified in granting loss of love and affection to the Appellants. Accordingly, the judgment of the learned Claims Tribunal in respect of loss of love and affection and loss of consortium is modified.

25. The learned Claims Tribunal granted Rs. 25,000/- and Rs.10,000/- in terms of funeral and loss of estate respectively to the Appellants. In view of the judgment of Hon'ble Supreme Court in Pranay Sethi (supra), this Court deems it appropriate to grant Rs. 16,500/- each under the heads of 'Funeral expenses' and 'Loss of estate' respectively to the Appellants/Claimants. Hence, the Judgment of the learned Claims Tribunal is modified on both these counts.

26. Lastly, the Appellants argued that the learned Claims Tribunal ought to have awarded interest @12% on the awarded amount but instead it awarded 9% from the date of petition till realization. In this regard, this Hon'ble Court in the matter of New India Assurance Co. Ltd. V Dinesh Devi reported as 2017 SCC OnLine Del 8614, held as follows:

"4. The learned counsel for the appellant lastly submits that the Tribunal has awarded interest at the rate of 12% instead of the usual rate of 9%. In Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481: AIR 2012 SC 100 the Supreme Court had granted interest at the rate of 9% for an accident which happened in 1998. This Court has consistently granted interest at the rate of 9% in a number of cases. Accordingly, the awarded amount shall carry an interest rate of 9% instead of 12%. The impugned Award is modified accordingly."

27. In view of the above, I am not inclined to interfere with the rate of interest

as fixed by the learned Claims Tribunal and hence 9% interest rate is maintained.

28. In light of the above discussion, the Appellants/ claimants are awarded compensation as follows:

S.No.

Head

Compensation Awarded

1.

Income after deduction of tax

Rs. 48,860/- p.m

2.

Annual Income

Rs.48,860X12=Rs.5,86,320/-

3.

Deduction towards personal expenditure

1/3rd of 5,86,320= Rs.

1,95,440/-

4.

Salary after the deduction towards the personal expenditure

Rs.5,86,320/- Rs. 1,95,440/-

=Rs.3,96,880/-

5.

Future prospects

40%

6.

Multiplicand

40% of Rs.3,96,880/-

=Rs.1,56,352/-

Rs.3,96,880/-+ Rs.1,56,352/-

= Rs.5,47,232/-

7.

Multiplier (As per Sarla Verma)

17

8.

Loss of dependency

Rs.93,02,944/-

(Rs.5,47,232/-X17)

9.

Funeral expenses

16500/-

10.

Loss of estate

16,500/-

11.

Loss of consortium

(a) spousal

1,32,000 /-

29. Accordingly, the computation of compensation by the learned Claims Tribunal is enhanced from Rs.66,18,976/- to Rs. 94,67,944/-.

30. Respondent No.3 is directed to deposit the entire differential amount with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire differential amount, the enhanced amount is directed to be released to the Appellants /claimants in terms of the impugned Award dated 30.01.2015. Statutory amount, if deposited, be released to the appellants.

31. Appeal stands disposed off. No order as to costs.