

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 29.4.2010
Date of Order: 18th May, 2010

MAC. APPEAL No. 276/2004 & CM App. 5049/06 & 5095/06

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18.5.2010

Oriental Insurance Company Ltd.

... Appellant

Through: Mr. Madhurendra Kumar, Advocate for
Mr. Joy Basu, Advocate

Versus

Nirmal Choudhary & Ors.

... Respondents

Through: Mr. O.P.Mannie, Advocate for R – 1 to 4

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this appeal, the insurance company has assailed the award of compensation of Rs.26,65,000/- passed by the Tribunal on the ground that Tribunal had not taken into account the income tax payable by the deceased, which was actually being paid by the deceased as per income tax returns and has also wrongly deducted only 1/4th of the amount towards personal expenses. The Tribunal had wrongly added 50% of the monthly income towards future prospects while as per law only 30% should have been added by the Tribunal since the age of deceased at the time of accident was 44 years. The Tribunal applied multiplier of 15 while the Tribunal should have

applied a multiplier of 14 in view of judgment of Supreme Court in Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. 2009 ACJ 1298.

2. It is not disputed that deceased in this case was a clerk in Syndicate Bank. There is no dispute about his salary. The bank record was produced to prove his salary as Rs.14,196.93 per month. The income tax return for the assessment year 1999-2000 was also filed. The Tribunal did not take into account the tax liability of the deceased as shown in the income tax returns while calculating the income of the deceased and considered monthly income of the deceased as Rs.14,000/-. The Tribunal considered that the income of deceased would have increased to Rs.28,000/- in due course of time and took the mean of the two incomes, thus it and gave 50% of the income as future prospects. It is not disputed that the deceased was survived by his wife one daughter and parents. There is no evidence that parents of the deceased were dependent upon on him and were not having any independent income.

3. It is settled law that where a person is employed and is having salary which falls within the taxable limit then the real income of the person has to be considered after deducting the tax payable by him. The income tax return would show that even on gross salary of the deceased for the year 1999-2000. The tax liability of the deceased was Rs.13,144/-. In this case, the Tribunal had taken income of the deceased as Rs.14,000/- p.m.. The annual income of the deceased thus would be Rs.1,68,000/- as on the date of accident. Out of this a tax liability of around Rs.15,000/- has to be deducted. Thus, actual income of the deceased would be Rs.1,53,000/- per annum.

4. Since the deceased was having only two dependents and parents, I consider that $1/3^{\text{rd}}$ would have been the appropriate deduction in this case towards personal expenses. Thus, the annual income has to be taken at Rs.1,02,000/-. The Tribunal had taken multiplier of 15. The multiplier as per the Second Schedule of Motor Vehicle Act is 15 where the age of deceased is between 41 and 45. I, therefore consider that Tribunal rightly took multiplier of 15. As far as future prospects are concerned, the *Sarla Verma's* case had made following observations:

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 increase, it is necessary to standardize the addition to avoid different yardstick 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.

5. In view of law laid down by Supreme Court I consider that in this case addition towards future should only be 30% since the age of deceased was between 40 and 50. Thus, the just and fair compensation payable to the deceased would be Rs.[1,02,000 + Rs.30,600 X 15 = Rs.19,89,000/-].

6. The Tribunal has awarded Rs.15,000/- towards conventional ceremonies. I find no ground to interfere with this. I consider that the appellant is also entitled for loss of consortium and loss of estate. In view of *Sarla Verma'* case judgment a sum of Rs.10,000/- each on both counts is awarded to the claimants. Thus, the total compensation would come to Rs.19,89,000/- + Rs.15,000/- + Rs.20,000/- = Rs.20,24,000/-. The Tribunal has awarded interest @ 9%. I find no reason to differ with the Tribunal on this count.

7. The award of the Tribunal is thus modified to the above extent and the claimants would be entitled to the above-mentioned compensation with 9% interest. The apportionment of the compensation to different claimants would be in the same ratio as allowed by the Tribunal. 50% of the amount deposited was released in favour of the claimants. Remaining compensation as per this order, along with interest thereon up to the date of deposit be released in favour of claimants and balance amount, if any, be returned to appellant.

May 18, 2010
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SHIV NARAYAN DHINGRA, J.