

* IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC App. No.300/2009

Date of Decision: October 04, 2010

NATIONAL INSURANCE CO. LTD Appellants
through Mr. L.K.Tyagi, Advocate

versus

SAROJ AND OTHERS Respondents
through Mr. S.N.Parashar, Advocate for
respondents No.1 to 6.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J. (ORAL)

This appeal has been preferred by the National Insurance Company Limited against the award of the Motor Accident Claims Tribunal dated March 24, 2009 awarding a total compensation of ₹ 19,53,832/- along with interest thereon @ 7.5% per annum to respondents No.1 to 6 being the dependents of Lance Naik Vijay Pal Singh who died in a road accident on August 26, 2000.

The deceased Vijay Pal Singh was getting a salary of ₹ 5,137/- per month at the time of his death. The Motor Accident Claims Tribunal for the purpose of calculating dependency of the claimants upon the deceased has assumed his salary as ₹ 25,000/- per month relying upon

the evidence of PW-3. The said PW-3 had deposed that the deceased was 10 years senior to him and in due course of time, he would have got promoted to the rank of *Subedar Major* and in that rank he would have drawn a salary of ₹ 18,000/- per month. He had further deposed that at the time of his retirement, his salary would have gone up to ₹ 25,000/- per month. In view of this evidence, the salary of the deceased was taken as ₹ 25,000/- per month and ₹ 5,137/- were added to it being the salary which he was drawing at the time of his death. The figure so arrived at was divided by two in order to calculate the average monthly income of the deceased which came to ₹ 15,069/-. From out of this average monthly income, 1/3rd was deducted towards the personal expenses of the deceased and the balance which came to ₹ 10,046/- was treated as the monthly dependency of the claimants upon him. The same was multiplied by 12 in order to calculate the annual dependency which came to ₹ 1,20,552/-. To this figure, the multiplier of 12 was applied in order to determine the total dependency which worked out to ₹ 19,28,832/-. Besides, a sum of ₹ 25,000/- was awarded towards funeral expenses and loss of love and affection. In this way, the total compensation of ₹ 19,53,832/- was calculated by the Tribunal.

It is submitted by learned counsel for the appellant that the Motor Accident Claims Tribunal has made the aforementioned calculation by ignoring the mandate of the Supreme Court in the case of *Sarla Verma and Others Versus Delhi Transport Corporation and Another*, reported in (2009) 6 Supreme Court Cases 121.

On the other hand, it is submitted by learned counsel for the claimants that they have through the evidence of PW-3 proved the

future prospects of the deceased and there is no justification in not taking the income of the deceased as ₹ 25,000/- per month. It is, however, not disputed by the learned counsel that in case of *Sarla Verma* (supra), the Supreme Court has said that, "*in view of the 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.*"

Having regard to the judgment of the Supreme Court in the case of *Sarla Verma* (supra), the compensation as awarded by the Claims Tribunal is liable to be modified. The Supreme Court has clearly said that the addition of 50% only can be made to the actual income of the deceased towards future prospects. In this view of the matter, I take the basis of the income of the deceased as ₹ 5,137/- per month with 50% addition to it towards future prospects. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased which, I feel, should have been 1/4th as he has left behind not one not two but six dependents.

It is agreed by both counsels that if compensation is calculated by taking ₹ 5,137/- as the basis of the income of the deceased and 50% is added to it towards future prospects and 1/4th is deducted towards the personal expenses of the deceased, the total compensation payable to the claimants comes to ₹ 11,09,568/-.

The learned counsel for the claimants submits that nothing has been paid towards loss of consortium. He also submits that the claimants have not been adequately compensated for loss of love and affection.

Having regard to the facts and circumstances of the case including the fact that the deceased has left behind six dependents who shall forever remain deprived of his love and affection, I award a further sum of ₹ 1,50,000/- towards loss of love and affection and loss of consortium. With this addition of ₹ 1,50,000/- the total compensation payable to the claimants comes to ₹ 12,59,568/-. They shall also be entitled to interest on the sum of ₹ 12,59,568/- @ 7.5% per annum from the date of filing the petition till realization.

It is stated by learned counsel for the appellant that a sum of ₹ 15,00,000/- along with interest is lying in deposit with the UCO Bank. The UCO Bank is directed to refund the excess amount, if any, to the appellant. The Registry is directed to refund the statutory amount of ₹ 25,000/- to the counsel for the appellant.

The compensation as awarded today shall be disbursed in terms of the award of the Tribunal.

The appeal is disposed of.

REKHA SHARMA, J.

OCTOBER 04, 2010
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