

REPORTED

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

+ MAC APP. No. 489/2009

SMT. MANJU DEVI & ANR. Appellants
Through: Mr. S.N. Parashar, Advocate.

versus

SRI GAUTAM & ANR. Respondents
Through: Mr. Pankaj Seth, Advocate, for the
respondent no.3.

% RESERVED ON : November 8, 2010
DATE OF DECISION: November 18, 2010

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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?

J U D G M E N T
18.11.2010

: REVA KHETRAPAL, J.

By way of this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellants seek enhancement of the compensation amount awarded to them by the Motor Accident Claims Tribunal by Award dated 4th July, 2009.

2. The facts leading to the filing of the present appeal are that on 18th October, 2006, at about 10.05 p.m., Sh. Naresh Kumar (hereinafter referred to as 'the deceased') was going to his house on his motor cycle bearing registration no. DL 6 SU 1466. When he reached in front of Blue Bells School, Lajpat Nagar-IV, a bus bearing no. DL 1PB 5025 collided into the motorcycle of the deceased with great force, resulting in the deceased sustaining fatal injuries.

3. On a claim petition filed by the appellants herein, the learned Tribunal held that the respondent no.1 was guilty of rash and negligent driving of the offending bus at the time of the accident and proceeded to compute the compensation payable to the appellants by the respondent no.3-Insurance Company, with whom the offending

bus was insured. According to the appellants (claimants before the Tribunal), the deceased was working as a Pedicurist at Madonna Beauty Parlour Pvt. Ltd. and was earning ₹ 7000/- per month as salary. The salary certificate of the deceased was proved on record by the appellants through PW-2 Rahul Kumar, a Director in the company Madonna Beauty Parlour Pvt. Ltd. as Ex.PW2/2. The said witness also proved on record the pay slip of the deceased as Ex.PW2/3.

4. In cross-examination, the testimony of this witness remained unshaken and as a matter of fact he stated that the deceased was a permanent employee in the Company.

5. Disbelieving the testimony of the PW-2, Sh. Rahul Kumar, and the documentary evidence on record with regard to the salary drawn by the deceased, the learned Tribunal dealt with the aspect of compensation as follows: -

“COMPENSATION :

11. PW-1 has testified that deceased was her husband who had expired in a road vehicular accident. His deceased husband was 32 years of age at the time of his death in the accident. He was doing a job of pedicurist and was earning ₹ 7,500/- per month.

“12. Though the deceased was stated to be serving in some Beauty Saloon and even though the testimony of the Director of the said beauty saloon have been brought on record to show that the deceased was earning ₹ 7000/- per month but the said testimony with respect to the contention that the deceased was earning ₹ 7000/- per month is not worth acceptable (sic). Simply a certificate on a letter head has been proved by PW-2 which is not enough. The employment register, the registration number of the private limited concern where the deceased was working, the E.P.F. account number of the deceased etc. has not been either brought on record or proved. Therefore , the said certificate is not worth believable(sic). Therefore, the income of the deceased can very well be assessed on the basis of the chart available in the Minimum Wages Act. The date of accident was 18.10.2006 on which the minimum wages were ₹ 3760/- for a matriculate. It can very well be presumed that the deceased might have been spending one-fourth of ₹ 2820/- (3760-840) on his personal expenses in terms of the judgment of the Hon’ble Supreme Court of India in **Sarla Verma Vs. DTC decided on 15.4.2009 in C.A. No. 3483/08** as the number of the dependants were five, i.e., widow wife, two sons besides the parents of the deceased who died during the pendency of the petition. The photocopy of the postmortem report reflects that the deceased was 32 years of age as on the date of accident. The photocopy of the High School Certificate of the deceased reveals that the date of birth of the deceased was 3.7.1974. The date

of the accident was 18.10.2006. Clearly the deceased is proved to have been 32 years of age as on the date of accident. Applying the multiplier of 16 as mentioned in the II Schedule, the total loss of dependency comes out to ₹ (2820 x 12 x 16) 5,41,540/-. I also award ₹ 10,000/- towards loss of consortium, ₹ 5000/- towards funeral charges, ₹ 50,000/- towards loss of love and affection and ₹ 5,000/- for loss of estate. Hence, I award ₹ 6,11,440/- in favour of the petitioners and against the respondents.”

6. Aggrieved by the aforesaid Award of ₹ 6,11,440/-(rounded off to ₹ 6,12,000/-), the appellants have preferred the present appeal seeking enhancement of the award amount on the ground that the Tribunal has failed to consider: -

- (i) the testimony of PW-2, the employer of the deceased in his capacity of Director of M/s. Madonna Beauty Parlour Pvt. Ltd., and the salary certificates proved on record by the said witness as Ex.PW2/2 and Ex.PW2/3;
- (ii) the future prospects and the future rise in income of the deceased for the purpose of computing the loss of dependency of the appellants;

- (iii) the fact that the deceased was survived by his widow, two minor children and parents and it could not be accepted that the deceased would have spent one-fourth of his income on himself;
- (iv) the amount awarded towards the loss of estate, loss of consortium and funeral expenses, i.e. the non-pecuniary damages, was extremely meager; and
- (v) interest was payable @ 12% instead of 9% per annum.

7. Having heard the learned counsel for the parties and gone through the evidence on record, I am of the view that the learned Trial Court ought not to have discarded the salary certificate of the deceased. The deceased was a permanent employee in a private limited company [M/s. Madonna Beauty Parlour Pvt. Ltd.]. The employer himself stepped into the witness box to prove on record the salary certificate of the deceased as Ex.PW2/2, as per which the last drawn salary of the deceased was ₹ 7,000/- per month. The pay slip of the deceased is also on record as Ex.PW2/3 (wrongly described as

PW1/3 on the document itself) alongwith the authorization of the witness to depose in this court as Ex.PW2/1. According to the documents Ex.PW2/2 and Ex.PW2/3 the basic salary of the deceased was ₹ 4,200/- per month, HRA ₹ 1,750/- per month, conveyance ₹ 550/- per month and City Compensatory Allowance ₹ 500/-per month. Deducting the sum of ₹ 550/- towards the conveyance of the deceased, the salary of the deceased works out to ₹ 6,450/- per month, i.e. ₹ 77,400/- per annum.

8. As regards the future prospects of the deceased, the learned counsel for the appellant, relying upon the decisions of the Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas (1994) 2 SCC 176*; *Sarla Dixit vs. Balwant Yadav (1996) 3 SCC 179*; and *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Ors. (2009) 6 SCC 121* emphatically contended that the deceased had a permanent job and was below 40 years of age, hence 50% of the actual salary of the deceased must be added to the income of the deceased towards the future prospects as laid down in *Sarla Verma's case* (supra). In this

context, reference was made by the counsel to paragraphs 10 and 11 of the said decision which reads as under: -

“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 *Sarla Dixit v. Balwant Yadav* (1993)IILLJ664SC, 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 v. Dy. Director General, Geological Survey of India* [2003]1SCR1229, 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 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.”

9. Applying the aforesaid dicta and taking the annual income of the deceased to be ₹ 77,400/- and adding 50% thereto towards future ,./income, the income of the deceased for the purposes of computation of compensation works out to ₹ 77,400/- plus ₹ 38,700/- (50% of the annual income) i.e. ₹ 1,16,100/-. The deceased had a large family to support comprising of his widow, two minor children and his parents. Deducting 1/4th from the aforesaid income towards personal expenses of the deceased in accordance with the dicta laid down by the Supreme Court in the case of *Sarla Verma* (supra), the annual loss of dependency of the appellants works out to ₹ 87,085/- [Income minus ₹ 29,025/- (1/4th deduction) = ₹ 87,025/-]. To this applying the multiplier of 16, the total loss of dependency of the appellants works out to ₹ 13,93,200/-.

10. As regards the non-pecuniary damages, the appellants have been awarded a sum of ₹ 5,000/- under the head of loss of estate, ₹ 5,000/- towards the funeral expenses and ₹ 10,000/- towards loss of

consortium. Besides this, a sum of ₹ 50,000/- has also been awarded towards loss of love and affection. The award of non-pecuniary damages under the head of loss of estate, loss of consortium and funeral expenses are strictly in accordance with the dicta laid down by the Supreme Court in the case of *Sarla Verma* (supra) and hence the appellants are held entitled to receive the same.

11. Resultantly, the impugned award is modified to the extent that the appellants are held entitled to receive a sum of ₹ 13,93,200/- as compensation in addition to the non-pecuniary damages. Thus, in all, the appellants are held entitled to the compensation amounting to ₹ 14,13,000/- (rounded off) including the interim award, if any, along with interest @ 9% per annum from the date of filing of the petition i.e. 13th December, 2000 till the date of its realization. The respondent no.3, Insurance Company, is directed to deposit the award amount with the Registrar General of this Court within a period of 30 days from today. In case of any delay, it shall be liable to pay interest @ 12% per annum for the period of delay. On such deposit being made, out of the said amount the appellant no.1 shall have a share of

40% along with proportionate interest and rest of the appellants shall have a share of 15% each along with proportionate interest. 50% of the share of the appellant no.1 shall be kept in a Fixed Deposit Receipt in a nationalized bank for a period of seven years. The entire share of the appellants no.2 and 3 shall be kept in a Fixed Deposit Receipt in a nationalized bank till they attain the age of majority. No loan, advance or interest shall be allowed against the said Fixed Deposit Receipts.

12. The appeal stands disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

November 18, 2010
sk