

REPORTED

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

+ FAO 702/2002 and CM No.12941/2006

DEVKI NANDAN MALHOTRA AND ORS. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

RAJENDRA SINGH AND ORS. Respondents
Through: None

+ FAO 704/2002

KAPIL KARTIK AND ANR. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

RAJENDRA SINGH AND ORS. Respondents
Through: None

% Date of Decision : October 03, 2011

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

: REVA KHETRAPAL, J.

1. By this common order, it is proposed to decide both the aforesaid appeals which have arisen from the same motor accident and the claims in respect of which have been decided by the Motor Accidents Claims Tribunal by its common judgment and award dated 07.09.2002.

2. Concisely, the facts of the case are that on the night of 13.01.1997, at around 9:50 p.m., one Harish Chander Malhotra and his wife Smt. Kanta Malhotra were going on a two-wheeler scooter bearing No.DL-58B-2579 from Jitar Nagar to Noida, when they met with a motor vehicular accident, caused by the rash and negligent driving of the truck bearing No.AP-094-6898, in which both Harish Chander Malhotra and his wife received fatal injuries and were declared dead when taken to the hospital. Separate Claim Petitions were filed by the legal representatives of both the deceased, one being Suit No.703/97 (New No.597/01), filed by the legal representatives of deceased Harish Chander Malhotra, namely, Devki Nandan Malhotra (father), Janak Rani Malhotra (mother), Kapil Kartik (son) and Ritu

Moona (daughter). The other bearing Suit No.704/1997 (New No.598/01), was filed by the legal representatives of the deceased Smt. Kanta Malhotra (wife of the aforesaid Shri Harish Chander Malhotra), namely, her children Kapil Kartik Malhotra and Ritu Moona under Sections 166 and 163-A of the Motor Vehicles Act, 1988. In view of the fact that the claimants pressed for interim compensation under Section 140 of the Motor Vehicles Act and a sum of ₹ 50,000/- each was awarded in both the petitions, the learned Claims Tribunal treated both the petitions as instituted under Section 166 of the Act.

3. After conducting an inquiry and recording evidence, on the basis of the testimony of PW4 Rajender Kumar Malhotra, the brother of the deceased, the Claims Tribunal arrived at the finding that Harish Chander Malhotra and his wife Kanta Malhotra died in the accident which occurred solely due to the rash and negligent driving of the offending truck by the respondent No.1, and accordingly the respondent No.1-driver, the respondent No.2-owner and the respondent No.3-Insurance Company were held liable to pay

compensation to the aforesaid legal representatives of both the deceased persons. The Tribunal then assessed the total compensation payable to the legal representatives of Harish Chander Malhotra to be in the sum of ₹ 13,56,000/-, and as regards the death of Smt. Kanta Malhotra, the compensation payable to her legal representatives was assessed to be in the sum of ₹ 8,05,380/-. Interest at the rate of 9% per annum from the date of the filing of the petition, i.e., 21.03.1997 till the realisation of the award amount was also awarded in both the claim petitions. Aggrieved by the quantum of compensation awarded by the learned Tribunal, the present appeals have been preferred by the legal representatives of both the deceased persons seeking enhancement of the same. It is proposed to deal with the appeals one by one.

FAO 702/2002 and CM No.12941/2006 titled as “Devki Nandan Malhotra and Ors. vs. Rajendra Singh and Ors.”

4. The sole contention of Mr. Navneet Goyal, the learned counsel for the appellants, being the legal representatives of the deceased – Harish Chander Malhotra, is that the learned Tribunal did not assess

the award amount in accordance with the well settled principles of law enunciated by the Supreme Court from time to time. Relying upon the judgment of the Supreme Court rendered in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, Mr. Goyal contended that the learned Tribunal erred in not taking into account the prospects of increase in the income of the deceased, which should have been assessed to be not less than 30% of his actual income on the date of the accident. He further contended that the deceased, having left behind him four dependent family members including his parents and two children, the deduction made by the learned Tribunal for his personal expenses and maintenance should have been one-fourth (1/4th) of his average annual income instead of one-half (1/2).

5. I am inclined to agree with both the aforesaid contentions of the learned counsel for the appellants for the reason that it is not in dispute that the deceased was 48 years of age on the date of his accident and was an officer in the Karol Bagh branch of the Allahabad Bank. PW 2 Shri K.P. Tanwar, an official from the said

Bank, proved on record the salary details of the deceased as Ex.PW2/A. As per the said document, the date of birth of the deceased was 20.01.1949 and his date of retirement was 31.01.2009. A perusal of Exhibit PW2/A further shows that the total emoluments of the deceased for the month of December, 1996, that is, for the month prior to the accident, were ₹ 15,270.54 per month. These salary details further mention that had he survived the accident, basic salary of the deceased in the years 1998 to 2001 would have increased to ₹ 9,950/-, resulting in enhancement of his total emoluments to ₹ 19,000/- (approximately). It is also mentioned therein that had the deceased been able to continue in service, his next promotion to Scale-IV as Chief Manager/Regional Manager would have become due in the year 2001 and his total salary on promotion would have become ₹ 22,000/- per month (approximately); and in the year 2007, he would have been promoted to Scale-V as Assistant General Manager with a total salary of ₹ 25,000/- per month (approximately).

6. The learned Tribunal though rightly came to the conclusion that the salary of the deceased was bound to increase in future to

atleast ₹ 19,000/- as mentioned in Exhibit PW2/A, the manner of quantification of future prospects by the learned Tribunal, however, cannot be upheld in the light of the judgment of the Supreme Court in the case of **Sarla Verma (supra)**. The Supreme Court in the said case has laid down certain guidelines to be uniformly followed by all Courts and Tribunals in the assessment of the income of deceased persons and the award of compensation to their legal representatives and dependents. The aforesaid guidelines have been laid down with a view to ensure uniformity and so that different Courts and Tribunals do not adopt different yardsticks while computing the loss of dependency of the legal representatives of those who meet with fatal accidents. On the aspect of taking into account the increase in the earnings of a deceased person while computing the compensation payable to his legal representatives, the following apposite observations have been made by the Supreme Court: (SCC, page 134)

*“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."

7. With regard to the deduction to be made from the salary income of the deceased towards his personal expenses and maintenance, the Supreme Court in **Sarla Verma's** case (*supra*) has crystallized the law as under:-

*"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in **Trilok Chandra**, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependant family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependant family members exceed six."*

8. From the aforesaid, the necessary corollary is that the compensation awarded in the present case needs to be re-computed so as to bring it in line with the law enunciated by the Supreme Court and it is upon this exercise that I now embark. Taking the salary of the deceased to be ₹ 15,270.54 on the date of his demise as mentioned in the salary certificate Ex.PW2/A, and adding 30% to his said salary income on account of his future prospects, the average monthly income of the deceased comes to ₹ 19,851/- per month [₹ 15,270/- (rounded off) plus ₹ 4,581/- (30% increase)]. Keeping in view the fact that the deceased on the date of his demise had left behind him four legal representatives, a deduction of one-fourth towards the personal and living expenses of the deceased would be warranted and thus the average monthly loss of dependency of the appellants comes to ₹ 14,888/- per month, or say ₹ 1,78,656/- per annum. It is not in dispute that the deceased was 48 years of age on the date of the accident and thus he fell in the age group of persons between 46 to 50 years, for which age group in the case of *Sarla Verma (supra)* the multiplier of 13 has been approved of and

tabulated in paragraph 40 of the decision. Thus calculated, the total loss of dependency of the appellants comes to ₹ 23,22,528/-. The learned Tribunal has already awarded a sum of ₹ 4,000/- for the funeral expenses of the deceased and a sum of ₹ 25,000/- for loss of love and affection of the deceased, to which a sum of ₹ 10,000/- is added towards loss of estate of the deceased. Thus, the total amount of compensation payable to the appellants comes to ₹ 23,61,528/- which is rounded off to ₹ 23,62,000/- (Rupees twenty three lakh sixty two thousand only).

FAO 704/2002 titled as “Kapil Kartik and Anr. vs. Rajendra Singh and Ors.”

9. The legal representatives of the deceased Smt. Kanta Malhotra have filed the present appeal seeking enhancement of the quantum of compensation awarded to them for the death of their mother.

10. A perusal of the award shows that the learned Tribunal relied upon the testimony of PW1 Shri Brijesh Kumar, Office Attendant, Department of Social Work, University of Delhi, who proved on record the salary details of the deceased as Ex.PW1/B and also proved on record a statement (Ex.PW1/C) indicating the salary of the

deceased due to the implementation of the report of the Fifth Pay Commission. As per the salary certificate Ex.PW1/B, the annual salary of the deceased in the year 1996 was ₹ 77,904/-. The learned Tribunal observed that a perusal of document Ex.PW1/C would indicate that the employer of the deceased had certified that due to the implementation of the Fifth Pay Commission, the annual salary of the deceased for the period 1.1.1997 to 31.12.1997, but for her death, would have been ₹ 94,603/- inclusive of transport allowance of ₹ 500/- per month. Thus, after the implementation of the report of the Fifth Pay Commission, the annual salary of the deceased excluding transport allowance would have been ₹ 94,103/-. The Tribunal then observed that document Ex.PW6/C was a letter written by the Delhi University to the son of the deceased, indicating that at the time of her death, the basic salary of the deceased was ₹ 5,850/- per month and after annual increments it would have gone up to ₹ 7,950/- per month plus allowances and, therefore, keeping in view the fact that the deceased was to continue in service till 31.03.2006, it would not be out of place to take it that by the end of her career, her annual salary

would have at least doubled. Thus, the learned Tribunal took the average of the annual earning capacity of the deceased at the time of the death and doubled the same, which amounted to ₹ 1,41,160/-. Deducting one-half (1/2) therefrom for the personal expenses of the deceased and applying the multiplier of 11 to the resultant multiplicand, the learned Tribunal assessed that the appellants were entitled to compensation of ₹ 7,76,380/- on account of loss of dependency, ₹ 4,000/- on account of funeral expenses and ₹ 25,000/- on account of non-pecuniary damages suffered by them, in all, ₹ 8,05,380/- with interest thereon at the rate of 9% per annum.

11. A two-fold contention was raised by Mr. Goyal, the learned counsel for the appellants. The first limb of his argument was that a deduction of not more than one-third (1/3rd) should have been made from the average annual income of the deceased for the purpose of computing the loss of dependency of her legal representatives. Instead, the Tribunal had deducted one-half (1/2) of the income of the deceased towards her personal expenses and maintenance. The second limb of Mr. Goyal's argument is that the deceased was less

than 51 years of age, that is 50 years and 9 months, and as such, the learned Tribunal should have applied the multiplier of 13 to the multiplicand constituting the average annual loss of dependency of her legal representatives, instead of the multiplier of 11.

12. In view of the fact that the average annual income of the deceased has not been challenged, it is assumed that the average annual income of the deceased after taking into account her future prospects would have been in the sum of ₹ 1,41,160/- as assessed by the learned Tribunal. A deduction of one-half from the said income towards the personal expenses of the deceased, in my view, is on the higher side and a deduction of not more than one-third ($1/3^{\text{rd}}$) of the income of the deceased is warranted keeping in view the fact that the deceased was a married woman and her husband was an earning hand. Deducting one-third ($1/3^{\text{rd}}$) from the income of the deceased towards her personal expenses, the average annual income of the deceased comes to ₹ 94,107 /-. I am also inclined to agree with the submission of Mr. Goyal that the appropriate multiplier in the instant case would be the multiplier of 13. I say so for the reason that the

Supreme Court in the case of *Sarla Verma (supra)* has approved of the said multiplier for the age group of persons between 46 to 50 years while the multiplier of 11 has been approved for the age group of persons between 51 years to 55 years of age. Thus calculated, the loss of dependency of her legal representatives comes to ₹ 12,23,391/-. After adding the sum of ₹ 4,000/- towards funeral expenses and ₹ 25,000/- by way of non-pecuniary damages awarded by the learned Tribunal, the total amount of compensation payable to the appellants comes to ₹ 12,52,391/-, which may be rounded off to ₹ 12,52,500 /- (Rupees Twelve Lac Fifty Two Thousand and Five Hundred Only).

13. Resultantly, the compensation in the case of the death of Shri Harish Chander Malhotra is enhanced by a sum of ₹ 10,05,500/- [that is ₹ 23,62,000 minus ₹ 13,56,500/-], and the compensation in the case of Smt. Kanta Malhotra is enhanced by a sum of ₹ 4,47,120/- [that is ₹ 12,52,500 minus ₹ 8,05,380/-]. Interest on the enhanced amount of compensation in both the cases shall be paid at the uniform rate of 7.5% per annum from the date of the institution of the petition

till the date of realisation. The respondent No.3-Insurance Company shall deposit the enhanced amount of compensation in both the appeals and the compensation awarded by the learned Tribunal, if not already deposited alongwith the interest thereon, with the Registrar General of this Court, within 30 days of the date of the passing of this order, which shall be released to the appellants in the same proportion as awarded by the learned Tribunal.

14. Both the appeals are allowed to the aforesaid extent. CM No.12941/2006 also stands disposed of accordingly. Parties shall bear their own costs.

15. Records of the Claims Tribunal be sent back to the concerned Tribunal forthwith.

**REVA KHETRAPAL
(JUDGE)**

October 03, 2011
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