

REPORTED

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

+ FAO 152/2003

LALITESH CHAUHAN AND ORS. Appellants
Through: Mr. S.N. Parashar, Advocate

versus

HARVINDER SINGH AND ORS. Respondents
Through: Mr. J.P.N. Shahi, Advocate for
the Insurance Company

% Date of Decision : September 28, 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. The appellants are the dependants as well as legal representatives of one Sushil Kumar, a motor accident victim, who

have preferred the present appeal being aggrieved and dissatisfied with the judgment and award of the Motor Accidents Claims Tribunal dated 22.11.2002.

2. Concisely, the facts relevant for the decision of the appeal are as under.

3. On 27.04.2000, the deceased Sushil Kumar, a Junior Engineer with Power Grid Corporation of India Ltd., was riding pillion on the scooter being driven by one Ram Pal. When the said scooter reached West Avenue Road, Punjabi Bagh, it was hit from behind by a bus No.DL-1PA-3773, being driven by its driver in a rash and negligent manner. Due to the impact, Sushil Kumar fell down on the road and was crushed under the wheels of the bus. He succumbed to the injuries sustained by him at the spot and though taken to Maharaja Agrasain Hospital, was declared brought dead.

4. A Claim Petition was filed by his legal representatives, claiming compensation of ₹ 40 lakhs on account of his untimely demise in the aforesaid road accident, which culminated in the passing of the impugned award, whereby a sum of ₹ 17,26,000/- was

awarded, including the interim compensation, with simple interest at the rate of 9% per annum from the date of the filing of the petition, that is, 10.07.2000 till realisation.

5. Mr. S.N. Parashar, the learned counsel for the appellants has assailed the award passed by the learned Tribunal on following grounds:

- (i) The learned Tribunal while assessing the income of the deceased did not take into account the prospects of advancement in the career of the deceased.
- (ii) The learned Tribunal, keeping in view the fact that the deceased was survived by six dependent family members, ought to have deducted not more than one-fourth ($1/4^{\text{th}}$) of the salary of the deceased towards his personal expenses, leaving the balance three-fourths ($3/4^{\text{ths}}$) for the computation of loss of dependency of the legal representatives of the deceased.
- (iii) For the purpose of augmenting the multiplicand constituting the average annual loss of dependency of the

appellants, the learned Tribunal should have applied the multiplier of 14, instead of the multiplier of 11.

- (iv) A very meagre amount had been awarded by the learned Tribunal towards non-pecuniary damages and no amount whatsoever had been awarded under the head of loss of love and affection to the appellants and also towards funeral expenses.

6. Mr. J.P.N. Shahi, the learned counsel for the respondent No.3—Insurance Company, on the other hand, contended that the learned Tribunal had erred in taking into account the revision in the pay-scale of the deceased, which had occurred after his death. He further contended that the learned Tribunal, while assessing the income of the deceased for the purpose of assessment of the loss of dependency of his legal representatives, should have deducted the sum of ₹ 2,100/- therefrom, which, as reflected in Ex.PW2/X, was received by the deceased as transite incentive/ex-gratia. It was also contended by him that keeping in view the fact that the deceased was 41 years of age on the date of his death, the future prospects of increase in his income

could not have been taken into account by the Tribunal and, in any case, keeping in view the law laid down by the Supreme Court in the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, the addition should not be more than 30% of his actual earnings.

7. The first question which arises for consideration in the present appeal is as to the meaning and connotation of the term ‘income’ for the purpose of determination of ‘just compensation’ as envisaged under Section 168 of the Motor Vehicles Act, 1988.

8. The aforesaid principle of ‘just compensation’, which was enunciated by the Hon’ble Supreme Court in the case of *Helen C. Rebello (Mrs.) and Others vs. Maharashtra State Road Transport Corporation and Anr.*, (1999) 1 SCC 90, has since been dwelt upon in a number of subsequent judgments. But much before that, in the case of *Concord of India Insurance Co. v. Nirmaladevi and Ors.* 1980 ACJ 55, it had been held by the Supreme Court that the determination of quantum must be “liberal” and “not niggardly” since law values life and limb in a free country “in generous scales”.

9. Referring to the connotation of the word ‘just’, the Supreme Court in the case of ***Helen C. Rebello (supra)*** held: (SCC, page 107)

*“In this context, the use of the word “just”, which was neither in the English 1846 Act nor in the Indian 1855 Act, now brought in under the 1939 Act, gains importance. This shows that the word “just” was deliberately brought in 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decisions, were restrictive in nature in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. Thus, we find that all the decisions of the High Courts which based their interpretation on the principles of these two Acts, viz., the English 1846 Act and the Indian 1855 Act to hold that deductions were valid cannot be upheld. As we have observed above, the decision even with reference to the decision of this Court in ***Gobald Motor Service*** where the question was neither raised nor adjudicated and that case also, being under the 1855 Act, cannot be pressed into service. Thus, these*

Courts by giving a restrictive interpretation in computation of compensation based on the limitation of the language of the Fatal Accidents Act, fell into an error, as it did not take into account the change of language in the 1939 Act and did not consider the widening of the discretion of the Tribunal Under Section 110-B. The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having force of law. In Law Lexicon, 5th Edn., by T.P. Mukherjee 'just' is described :

"The term "just" is derived from the Latin word justus. It has various meanings and its meaning is often governed by the context. 'Just' may apply in nearly all of its senses, either to ethics or law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. It connotes reasonableness and something conforming to rectitude and justice, something equitable, fair (vide p. 1100 of Vol. 50, Corpus Juris Secundum). At p. 438 of Words and Phrases, edited by West Publishing Co., Vol. 23 the true meaning of the word 'just' is in these terms :

*"The word "just" is derived from the Latin justus, which is from the Latin jus, which means a right and more technically a legal right-a-law. Thus 'jus dicere' was to pronounce the judgment; to give the legal decision. The word "just" is defined by the Century Standard Dictionary as right in law or ethics and in Standard Dictionary as conforming to the requirements of right or of positive law, in Anderson's Law Dictionary as probable, reasonable, Kinney's Law Dictionary defines "just" as fair, adequate, reasonable, probable; and just cause as a just cause, a lawful ground. Vide **Bregman v. Kress**, NYS at p. 1073."*

10. In *T.N. State Transport Corporation Ltd. vs. S. Rajapriya & Ors.* (2005) 6 SCC 236, the Supreme Court held as under:

"8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or

might have lost his employment or income together.

9. *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.*

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the Court must try to assess as best as it can the loss suffered."*

11. The matter is rendered even more complex by the fact that the word 'income' has a different connotation and meaning for the purpose of different statutes. Dealing with the connotation of the term 'income' in the context of the Motor Vehicles Act, 1988, the Supreme Court in the case of "***National Insurance Company Ltd. vs. Indira Srivastava and Others***, (2008) 2 SCC 763 observed that:

"9. The term 'income' has different connotations for different purposes. A Court of

law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated in monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme take recourse to payment of contributory provident fund, gratuity and other perks to attract the people who are efficient and hard-working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased.....”

It was also observed in the said case:

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included

for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

12. The Hon’ble Supreme Court in the aforesaid case further held that superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family. The basis for considering the entire pay packet should be what the dependants have lost in view of the death of the deceased. Analysing the term ‘just compensation’, the Court held:

“25. The expression 'just' must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.”

13. It is in the aforesaid backdrop that it is proposed to examine what would constitute just and equitable compensation in the present case. The first and foremost step in the aforesaid process, being the

determination of the 'income' of the deceased, the process of computation of the income is of utmost importance. The learned Tribunal in the instant case, in the context of the income of the deceased, elaborately discussed the testimony of PW2 E.H.S. Elangovan, Supervisor from Power Grid Corporation, who deposed that the gross salary of Sushil Kumar at the time of his death was ₹ 15,848.95, and to this effect he proved the pay-slip of the deceased as Ex.P4 (wrongly mentioned as Ex.PW2/A in his statement and in the award of the Tribunal). The statement of PW2 Elangovan was recorded again on 09.10.2001, wherein he stated that subsequent to his earlier statement in March, 2001, the pay-scales in their Department had been revised with effect from 01.01.1997, and the relevant office Order/Circular on the point was proved by him as Ex.PW2/Y and PW2/Y-1. Significantly, during his earlier statement recorded in March, 2001, he had stated that the revision of pay-scale was pending consideration/approval by the Government of India.

14. As noted by the learned Tribunal, it stands proved from the Circular Ex.PW2/Y-1 that the pay-scale existing on the date of the

death of the deceased for Grade S-1, to which the deceased belonged, was ₹ 2900 – ₹ 5140/-, which was revised to ₹ 7300 – ₹ 12660/-. The learned Tribunal, therefore, concluded, and I think rightly so, that for the purpose of computing the amount of compensation to be paid to the appellants in the present case, it was the amount which was payable to the deceased at the time of his death as per revised scales which were operative retrospectively with effect from 01.01.1997, which was relevant.

15. PW2 Elangovan further proved on record a pay certificate Ex.PW2/X issued by the Manager, Finance, in which the monthly income payable to the deceased on the date of the accident in April, 2000, on the basis of the pay-scale implemented from 01.01.1997, pursuant to circular Ex.PW2/Y-1, had been worked out as ₹ 22,296.06 (Rupees Twenty Two Thousand Two Hundred Ninety Six and Six Paise Only) per month. It is this amount of ₹ 22,296.06 shown in the certificate Ex.PW2/X which, in my opinion, is to be taken into account as the gross income of the deceased at the time of his death. This certificate is to the following effect:

“This is to certify that the pay details of late Sh. Sushil Kumar, Emp. No.17019, Jr. Engineer, NRLDC for the month of April 2000 are given below:

<i>Sl. No.</i>	<i>Details</i>	<i>Amounts</i>	<i>Remarks</i>
1.	<i>Basic</i>	<i>Rs.10899.00</i>	
2.	<i>DA</i>	<i>Rs.2779.00</i>	
3.	<i>CCA</i>	<i>Rs.300.00</i>	
4.	<i>HRA</i>	<i>Rs.3269.00</i>	<i>Rent receipt required</i>
5.	<i>Conveyance</i>	<i>Rs.500.00</i>	<i>Claim required</i>
6.	<i>Cash Canteen Subsidy</i>	<i>Rs.550.00</i>	
7.	<i>Washing Allowance</i>	<i>Rs.100.00</i>	
8.	<i>Transite Incentive/Ex-gratia</i>	<i>Rs.2100.00</i>	<i>Average Basis</i>
9.	<i>News Paper Reimbursement</i>	<i>Rs.157.00</i>	
10.	<i>Total</i>	<i>Rs.20654.70</i>	
11.	<i>Employer Contribution to PF A/c</i>	<i>Rs.1641.36</i>	
12.	<i>Grand Total</i>	<i>Rs.22296.06</i>	

(Rupees twenty two thousand two hundred and ninty six only)”

16. It is clear from the aforesaid certificate that the deceased was receiving several perks such as City Compensatory Allowance, House Rent Allowance, Conveyance, Cash Canteen Subsidy, Washing Allowance, Transite Incentive/Ex Gratia and Newspaper

reimbursement. The question which arises is which of these allowances is to be taken into consideration for the purpose of working out the net monthly income of the deceased. As explained above, the well settled legal position is that for the purpose of assessment of the income of the deceased, apart from the basic pay and the dearness allowance, his income must be deemed to include the City Compensatory Allowance and the House Rent Allowance as well as the employer's contribution to the Provident Fund Account. However, the Conveyance Allowance, Cash Canteen Subsidy, Washing Allowance and Newspaper reimbursement cannot form a part of the monthly income. The transite incentive/ex gratia payment would also not form part of the monthly income of the deceased. I say so for the reason that though the transite incentive/ex gratia is reflected in the statement Ex.PW2/X to be a sum of ₹ 2,100/- "on average basis", the Circular Ex.PW2/AX-1 shows that incentive at the rate of 19.404% was sanctioned for the year in question, that is, for the year 2000-01 only. PW2 Elangovan in his deposition also stated that this amount was being paid to the employees as an incentive on

the basis of energy made available for supply. He further stated that this transmission incentive had a ceiling of ₹ 25,200/- per annum (Ex. PW2/AX). He candidly deposed that this amount of incentive paid to the employees varied from year to year and even quarter to quarter subject to the ceiling referred to above. From the aforesaid, it may safely be deduced that the amount of ₹ 2,100/- towards transite/ex-gratia incentive, shown in Ex.PW2/X should not be treated to be the amount available every month to the deceased and his family members because the same was dependent on the production of energy by the Power Grid Corporation and its employees. The learned Tribunal, however, has not deducted this amount. Although it has accepted the submission of the counsel for the Insurance Company that this amount ought properly to be deducted from the income of the deceased, it nevertheless held:

“There is merit in this submission of Sh. Navdeep Singh but this amount shown in certificate Ex.PW2/X is not being deducted keeping in view the prospects of increase in future income of the deceased which concept has been acknowledged by Hon’ble Supreme Court of India in the cases reported as 1996 ACJ 581 Sarla Dixit and Another vs. Balwant

**Yadav and Others and 1994 ACJ 1 G.M.
Kerala State Transport Corporation vs.
Susamma Thomas.**

Allowance towards increase in future income beyond this amount would not be reasonable in the present case as death of Sushil Kumar was just in the year 2000 and it is difficult to predict what would be the future trend of economy in this country. Petitioners' counsel submitted that deceased would have got annual increments and would have been promoted from S-1 to S-4 level in the course of time. So far as future increments are concerned non deduction of this amount from the gross amount shown in Ex.PW2/X would be sufficient to compensate the petitioners. On the point of future promotion of Sushil Kumar from S-1 to S-4 level, evidence produced is too vague and un-reliable. Elangovan PW2 initially stated that promotion of the deceased from S-1 level to S-4 level was automatic after every three years. He, however, during cross examination on behalf of Oriental Insurance Co. corrected himself by saying that promotion from S-1 to S-4 was not automatic as testified by him during earlier part of statement. He then explained that he only meant to say that deceased would have been eligible from S-1 to S-4 level but at the same time he admitted that promotion to the next level was subject to his having been found fit by departmental promotion committee, and his having qualified departmental examination. Since promotions of the deceased in future were dependent on many factors and evidence on the point is too vague, no assumption on the point towards increase in his income on this count is possible, though for

the reasons aforesaid it is held that to compensate future normal increase in the monthly income of the deceased petitioners would be fairly compensated by non-deduction of the incentive amount shown in Ex.PW2/X.”

17. In view of the law laid down by the Supreme Court, however, in my opinion, it is not possible to compensate the legal representatives of the deceased by off-setting the future normal increase in the monthly income of the deceased with the transite incentive/ex gratia payment received by the deceased on account of energy made available to the Power Grid Corporation by its employees. Accordingly, the sum of ₹ 2,100/- per month being received by the deceased as incentive/ex gratia payment must be deducted while computing his income. The income of the deceased for the purpose of computation of loss of dependency of his legal representatives is thus worked out as under:

Gross Salary	: ₹ 22,296.06 x 12
	= ₹ 2,67,552.72 per annum

Deductions including Conveyance,

Cash Canteen Subsidy, Washing Allowance,

Transite Incentive/Ex Gratia and

Newspaper reimbursement : ₹ 40,884/- per annum

Net Salary : ₹ 2,26,668/- per annum

18. As regards the future prospects of the deceased, in the case of *Sarla Verma (supra)*, the Supreme Court laid down a ‘rule of thumb’ that addition in income due to future prospects in cases where the deceased is in a stable job with annual increments should be only 30% if the age of the deceased is between 40 to 50 years. In the present case, the deceased was 41 years of age on the date of his demise. Thus, an addition of 30% to the actual salary income of the deceased must be made.

19. I am fortified in coming to the conclusion that a revision of 30% should be made towards revision in pay-scale on the basis of a recent decision of the Supreme Court rendered in *Sunil Sharma and Ors. vs. Bachitar Singh and Ors., 2011 (4) SCALE 383*. In the said case also, the deceased was employed in the Haryana Women Development Corporation Ltd. and was aged 41 years. After computing the income of the deceased, the Supreme Court relying

upon its earlier decision in the case of *Sarla Verma (supra)* allowed an addition of 30% by way of future prospects. However, as held in the case of *Sarla Verma (supra)*, where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’. The annual income of the deceased, in the present case, clearly falls in the tax bracket and thus, computing tax on the same, as per the slab rate applicable for the Assessment Year 2000-2001, the actual income works out to ₹ 1,90,668/-, that is, ₹ 2,26,668/- (net salary) minus ₹ 36,000/- (tax on salary) = ₹ 1,90,668/- only (Rupees One Lac Ninety Thousand Six Hundred and Sixty Eight Only). Allowing an addition of 30% by way of future prospects, the annual income of the deceased comes out to ₹ 2,47,868/-, [that is, ₹ 1,90,668/- (actual salary) plus ₹ 57,200/- (on account of future revision in pay-scale)].

20. Adverting to the second contention of Mr. Parashar, the learned counsel for the appellants, regarding the deductions to be made towards the personal and living expenses of the deceased, in view of the fact that the deceased had left behind him six dependent family

members, viz., his widow, four minor children and father, a deduction of one-fourth ($1/4^{\text{th}}$) of the income of the deceased towards his personal expenses and maintenance would, in my view, be justified. This is also in consonance with the guidelines laid down by the Hon'ble Supreme Court in the case of *Sarla Verma (supra)*. Thus, deducting one-fourth ($1/4^{\text{th}}$) from the average monthly income of the deceased, the average annual loss of dependency of the appellants come to ₹ 1,85,901/- per annum.

21. As regards the appropriate multiplier to be adopted in the present case, although the multiplier of 11 has been considered by the learned Tribunal to be the appropriate multiplier for assessing the loss of dependency of the appellants, I am inclined to adopt the multiplier of 14, which is the tabulated multiplier, approved of by the Hon'ble Supreme Court in the case of *Sarla Verma (supra)* where the age of the deceased falls in the age group of 41 years to 45 years. Applying the multiplier of 14, the total loss of dependency of the appellants works out to ₹ 26,02,614/- per annum.

22. Apart from the aforesaid amount of pecuniary damages towards loss of dependency, the appellants must also be held entitled to a sum of ₹ 10,000/- each towards non-pecuniary damages under the heads of loss of estate, loss of consortium and loss of love and affection of the deceased as well as towards the funeral expenses and last rites of the deceased. The appellants are, thus, held entitled to a total compensation of ₹ 26,42,614/-, which may be rounded off to ₹ 26,43,000/- (Rupees twenty six lakhs forty three thousands Only).

23. Accordingly, the award amount stands enhanced by a sum of ₹ 9,17,000/- (Rupees Nine Lakh Seventeen Thousands Only) to be paid by the respondent No.3-Insurance Company alongwith interest thereon at the rate of 7.5% per annum from the date of the petition till realisation by depositing the same with the Registrar General of this Court within a period of 30 days from the date of the passing of this order. Fifty percent of the enhanced amount alongwith proportionate interest thereon shall enure to the benefit of the widow of the deceased-the appellant No.1 and the remaining award shall be

apportioned equally between the appellant Nos.2 to 6 alongwith proportionate interest thereon.

24. The appeal is allowed in the above terms.

25. There shall be no order as to costs.

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

**REVA KHETRAPAL
(JUDGE)**

September 28, 2011
km