

UNREPORTED

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

+ **FAO 637/2003**

ANITA KEJRIWAL & ORS. Appellants
Through: Mr. L.K. Tyagi, Advocate

versus

SHYAM LAL SHARMA & ORS. Respondents
Through: Mr. Joy Basu, Advocate for the
respondent No.3

% Date of Decision : September 21, 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 in this appeal, who are the legal representatives of one Deoki Nandan Kejriwal, seek enhancement of the compensation awarded to them by the Motor Accidents Claims

Tribunal by its judgment and award dated 31.05.2003 on account of the accidental death of the said Shri Deoki Nandan Kejriwal in a road accident.

2. The aforesaid road accident in which Shri Deoki Nandan Kejriwal (hereinafter referred to as “the deceased”), along with his driver, met with an untimely death took place on 20th April, 1996 on the road from Delhi to Agra, when the car of the deceased was hit by the offending truck near Village Ajhai, District Mathura, Uttar Pradesh. A First Information Report in respect of the accident was registered with Police Station Vrindavan under Sections 279/338/304-A IPC against the driver of the offending truck. On a Claim Petition filed by the legal representatives of the deceased, being Suit No.941/96, the learned Motor Accidents Claims Tribunal held that the accident was the outcome of the rash and negligent driving of the driver of the offending truck. The learned Tribunal then proceeded to assess the income of the deceased on the basis of his income-tax return Ex.PW3/2, and after deducting income-tax therefrom at ₹ 1,000/- per month, assessed that the deceased at the time of his

demise was earning ₹ 9,000/- per month. Significantly, the Tribunal noted that this position about the income of the deceased had been ultimately conceded by the counsel for the petitioners, and held that it would be reasonable to assume that the deceased was spending one-third ($1/3^{\text{rd}}$) of his aforesaid income upon himself, and thus the annual loss of dependency of his legal representatives was computed by the Tribunal to be in the sum of ₹ 72,000/- ($₹ 9,000/- \times 2/3 \times 12$). Taking note of the fact that the date of birth of the deceased was 27.12.1950 and at the time of his demise, he was 45 years of age, the Tribunal applied the multiplier of 13 to the aforesaid multiplicand, and accordingly assessed the total loss of dependency of the claimants to be in the sum of ₹ 9,36,000/-. To this amount, the Tribunal added ₹ 5,000/- towards funeral expenses and ₹ 10,000/- towards the loss of love and affection of the deceased. An award was accordingly passed by the learned Tribunal in the sum of ₹ 9,51,000/- (inclusive of interim compensation) alongwith interest thereon at the rate of 9% per annum from the date of the filing of the petition till the date of realisation. Aggrieved therefrom, the legal representatives of the

deceased have preferred the present appeal on the ground that the award has not been passed in accordance with the settled principles of law with regard to the computation of the loss of dependency of the legal representatives of the deceased victim.

3. It deserves to be mentioned at the outset that although a number of grounds are set out in the Memorandum of Appeal, Mr. L.K. Tyagi, the learned counsel for the appellants, did not dispute the income of the deceased to be in the sum of ₹ 10,000/- per month in view of the fact that the position with regard to his income had been conceded before the Motor Accidents Claims Tribunal. He also fairly conceded that there was no material on record to justify any addition to the income of the deceased on account of his future prospects, except the statement of the widow of the deceased and, on the other hand, the income-tax returns proved on record showed a downward trend in the income of the deceased. However, Mr. Tyagi assailed the award and challenged the same on the following grounds:-

- (i) The learned Tribunal did not take into account the fact that the income-tax return of the deceased for the

Assessment Year 1997-98 Exhibit PW3/2 itself showed that the deceased was drawing a sum of ₹ 5,000/- per month towards house rent allowance. The non-addition of the said sum of ₹ 60,000/- per annum to the annual income of the deceased had caused grave prejudice to the appellants/claimants.

- (ii) The learned Tribunal deducted one-third ($1/3^{\text{rd}}$) of the income of the deceased towards his personal expenses, and altogether lost sight of the fact that with five dependent family members, being the widow of the deceased, his son, daughter and parents, a deduction of not more than one-fourth ($1/4^{\text{th}}$) ought to have been made from the income of the deceased.
- (iii) The learned Tribunal ought to have applied the multiplier of 14 instead of the multiplier of 13 to the annual loss of dependency of the legal representatives of the deceased.

- (iv) The amount of non-pecuniary damages awarded by the learned Tribunal towards the funeral expenses of the deceased deserve to be enhanced in view of the fact that the body of the deceased was transported from Vrindavan to Delhi and it was categorically deposed by the appellant no.1, who appeared in the witness box as PW3, that a sum of ₹ 50,000/- was spent in the transportation of the body of the deceased to Delhi.
- (v) The amount awarded by the learned Tribunal towards loss of love and affection was also required to be enhanced, and non-pecuniary damages under the heads of loss of consortium and loss of estate of the deceased to be added to the pecuniary damages.

4. Mr. Joy Basu, the learned counsel for the respondent No.3-M/s. Oriental Insurance Co. Ltd., though sought to support the award passed by the Claims Tribunal did not deny the fact, as indeed he could not have, that a deduction of not more than one-fourth (1/4th) of the income of the deceased towards his personal expenses would be

warranted in the instant case, and that the appropriate multiplier would be the multiplier of 14 as 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, instead of the multiplier of 13 which was adopted by the learned Tribunal.

5. As regards the addition of the house rent allowance to the income of the deceased, the Supreme Court in the case of *Raghuvir Singh Matolya & Ors. vs. Hari Singh Malviya & Ors.*, (2009)15 SCC 363, has made the following pertinent observations, (page 365)

“6. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in *National Insurance Co. Ltd. v. Indira Srivastava and Ors.*, (2008) 2 SCC 763, wherein it was held (SCC page 772, paras 19-21).

“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.

20. The term 'income' in **P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.)** has been defined as under:—

'(iii) 'The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.'

It has also been stated:

“'Income' signifies 'what comes in' (per Selborne, C., Jones v. Ogle 1861-73 All ER Reporter 918). 'It is as large a word as can be used' to denote a person's receipts (per Jessel, M.R., Huggins Ex P., Re 51 LJ Ch 935). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Brothers. AIR 1927 Mad. 427. Ref. Vulcun Insurance Co. Ltd. v. Corpn. of Madras, AIR 1930 Mad. 626(2).

21. *If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."*

To the same effect is the decision of this Court in Oriental Insurance Co. Ltd. v. Ram Prasad Varma and Ors., 2009 (1) SCALE 598.

7. *We, therefore, are of the opinion that 'Dearness Allowance' and 'House Rent Allowance' payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation."*

6. In view of the aforesaid law laid down by the Supreme Court in the case of ***Raghuvir Singh Matolya (supra)***, the house rent allowance drawn by the deceased as reflected in his income-tax return, that is, ₹ 5,000/- per month must be added to his actual salary less tax, that is, ₹ 9,000/- per month. Thus, the deceased must be assumed to be earning a sum of ₹ 9,000/- plus ₹ 5,000/-, that is, ₹ 14,000/- per month after the deduction of income-tax, that is to say, ₹ 1,68,000/- per annum.

7. As regards deduction towards the personal expenses of the deceased, I am inclined to agree with the contention of the learned counsel for the appellants that in view of the fact that the deceased had five dependent family members, a deduction of not more than one-fourth ($1/4^{\text{th}}$) would be warranted towards the personal expenses of the deceased from his annual income. This would also be in consonance with the law laid down by the Supreme Court in the case of *Sarla Verma (supra)*, wherein it has been held that where the number of dependent family members is between four to six, the deduction should be one-fourth ($1/4^{\text{th}}$) towards the personal expenses of the deceased. Thus calculated, the annual loss of dependency of the appellants comes to ₹ 1,26,000/- per annum.

8. The learned Tribunal has applied the multiplier of 13, but in view of the fact that the Supreme Court in the case of *Sarla Verma (supra)* has approved of and tabulated the multiplier of 14 for the age group of victims between 41 to 45 years of age, it is proposed to apply the said multiplier for the purpose of augmenting the multiplicand constituting the annual loss of dependency of the

appellants. In this manner, the total loss of dependency of the appellants comes to ₹ 1,26,000/- x 14 = ₹ 17,64,000/- (Rupees Seventeen Lac Sixty Four Thousand Only)

9. It is also proposed to enhance the amount awarded towards funeral expenses awarded by the learned Tribunal from ₹ 5,000/- to ₹ 20,000/- keeping in view the fact that the body of the deceased was transported from Vrindavan to Delhi. The grant of the sum of ₹ 10,000/- to the appellants towards the loss of love and affection of the deceased is also enhanced to ₹ 15,000/- and in addition a sum of ₹ 10,000/- is awarded to the appellant No.1 towards the loss of consortium of the deceased and a further sum of ₹ 10,000/- is awarded to the appellants for the loss of estate of the deceased, that is, in all a sum of ₹ 18,19,000/- with interest thereon at the rate of 9% as awarded by the learned Tribunal till the date of realisation.

10. In the result, the award amount is enhanced by the sum of ₹ 8,68,000/-. The amount of enhanced compensation shall enure to the benefit of the appellant No.1. The Insurance Company is directed to satisfy the award as modified herein above within 30 days from the

date of this order by depositing the aforesaid amount with the Registrar General of this Court

11. The appeal is allowed to the aforesaid extent.

12. There shall be no order as to costs. Records of the Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

September 21, 2011
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