

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

+ **MAC.APP.No.543/2004**

% Date of decision: 8.7.2011

MOHIT CHOPRA & ORS. ...Appellants
Through : Mr. Vinay Kumar Chopra and
Mr. Mohit Chopra, Advs.

versus

MOHD. ISRAIL & ORS. ...Respondents
Through : Mr. M.K. Tiwari, Adv. for R-3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

J.R. Midha, J.

1. The appellant has challenged the common award of the Claims Tribunal whereby the Claims Tribunal has awarded Rs.9,44,000/- in respect of the death of Dr. (Mrs.) Kamal Mohini Chopra, Rs.55,000/- in respect of the injuries suffered by her husband, Mr. Vinay Chopra and Rs.34,000/- in respect of the injuries suffered by her son, Mr. Mohit Chopra.

2. The appellants have filed one common appeal in respect of the common award passed in three claim petitions. However, the learned counsel for the appellants does not press for enhancement of compensation in two injury cases. In that view

of the matter, this appeal is treated to be in respect of the death case only.

3. The accident dated 2nd December, 1998 resulted in death of Dr. (Mrs.) Kamal Mohini Chopra and injuries to her husband, Mr. Vinay Chopra and her son, Mr. Mohit Chopra. The deceased was aged 54 years at the time of the accident and was survived by her husband and two sons who filed the claim petition before the Claims Tribunal.

4. The deceased was a medical surgeon. The deceased was holding a degree in Master of Surgery in Obstetrics and Gynaecology which was proved as Ex.PW2/1. The deceased was having a private clinic at Darya Ganj and was also attached with Shyam Lal Nursing Home, Darya Ganj and Sona Nursing Home, Darya Ganj. The deceased was an Income-Tax assessee. As per the acknowledgement of the Income-Tax return for the year 1997-1998 proved as Ex.PW2/2, her income during that year was Rs.1,53,177.48 out of which her income from the medical profession was Rs.1,36,626/- and the remaining income of Rs.16,551.48 was towards the interest and dividends on the investment and savings. As such, the income of the deceased from profession for the assessment year 1997-1998 was Rs.1,36,626/-. The Income-Tax returns of the deceased for the year 1998-1999 and 1999-2000 proved as Ex.PW2/3 and Ex.PW2/4, were filed after her death but they related to her income before her death. However, the Claims Tribunal

discarded the Income-Tax returns for the years 1998-1999 and 1999-2000 on the ground that the same were filed after her death. The Claims Tribunal took the income of the deceased at Rs.1,37,000/- on the basis of her Income-Tax return for the assessment year 1997-1998. The Claims Tribunal added Rs.31,500/- towards her future prospects and took the income of the deceased at Rs.1,68,500/- per annum for the purposes of computation of compensation, deducted 1/3rd towards her personal expenses and deducted Rs.11,500/- towards Income-Tax. The annual loss of dependency was taken at Rs.1,01,000/-. The Claims Tribunal added Rs.3,000/- per month towards the value of her services towards her family and applied the multiplier of 9 to compute the loss of dependency of the appellants to be Rs.9,09,000/-. Rs.15,000/- has been awarded towards the loss of estate and consortium and Rs.20,000/- has been awarded towards funeral expenses. The total compensation awarded is Rs.9,44,000/-.

5. The learned Senior Counsel for the appellant seeks enhancement of the award amount on the following grounds:-

- (i) The multiplier be enhanced from 9 to 11.
- (ii) The income of the deceased be taken as Rs.2,52,639/- as per the last Income-Tax return of the deceased for the year 1999 – 2000.

(iii) The future prospects be enhanced from Rs.31,500/- to 50% of the income of the deceased.

(iv) The compensation be awarded for loss of love and affection.

6. The Claims Tribunal has applied the multiplier of 9. However, the appropriate multiplier at the age of 54 as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation, AIR 2009 SC 3104** is 11. Following the aforesaid judgment, the multiplier is enhanced from 9 to 11.

7. The professional income of the deceased as per the Income Tax Returns was Rs.1,36,626/- for the year 1997-98, Rs.1,91,803.50 for the year 1998-99 and Rs.1,68,426.92 for the year 1999-2000. The last Income-Tax Return for the year 1999-2000 contains income of the deceased for a period of eight months, i.e. with effect from 1st April, 1998 up to her death on 2nd December, 1998 and was filed after her death. The said return contains the particulars of the TDS deducted from the amount paid by Shyam Lal Nursing Home to the deceased. The Claims Tribunal discarded the last Income-Tax return on the ground that it was filed after her death. However, the Claims Tribunal ignored the relevant fact that the said return was filed within the prescribed period for filing the return after the end of the financial year and also contained particulars of the payments made by Shyam Lal Nursing Home after deducting

TDS. In the case of Dalvinder Kaur vs. United India Insurance, FAO No.524/2003 dated 25th March, 2010, this Court has held that the filing of Income-Tax Return after the death of the deceased was no ground for disregarding the same. In that view of the matter, the income of the deceased at the time of her death is taken to be Rs.1,68,426/-. The said income pertains to the period of eight months and, therefore, the annual income of the deceased is taken to be Rs.2,52,639/- (Rs.1,68,426/- X 12/8). The Income-Tax of Rs.39,528/- is deducted from the said amount and the net annual income of the deceased is taken to be Rs.2,13,111/- (Rs.2,52,639/- – Rs.39,528/-).

8. The Claims Tribunal has added Rs.31,500/- towards her future prospects. Learned counsel for the appellants submits that the future prospects of the deceased be taken as 1/2 instead of Rs.31,500/-. The learned counsel for respondent No.3 opposes the addition of future prospects on the ground that the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) has held that no future prospects are to be awarded if the age of deceased is above 50 years. It is submitted that the deceased was aged 54 years and, therefore, no increase towards future prospects is warranted.

9. The learned counsel for the appellants has referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **K.R. Madhusudhan vs. The Administrative Officer, 1(2011) ACC 700 (SC)** in which the Hon'ble Supreme Court

awarded future prospects in respect of the deceased aged more than 50 years on the ground that the judgment of **Sarla Verma vs. DTC** (supra) permits the future prospects to be awarded in respect of deceased aged more than 50 years in rare and exceptional cases involving special circumstances. It is submitted that the deceased in the present case was a leading doctor at the peak of her career and this case falls within the exceptional circumstances. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of **K.R. Madhusudhan vs. The Administrative Officer** (supra) is as under:-

"8. The law regarding addition in income for future prospects has been clearly laid down in Sarla Varma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. VI (2009) SLT 663 = 162 (2009) DLT 278 (SC) = III (2009) ACC 708 (sc) = (2009) 6 SCC 121 and the relevant portion reads as follows:

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 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. [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 calculation 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. In the Sarla Verma (supra) judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the opinion that the rule of thumb evolved in Sarla Verma (supra) is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the 'exceptional circumstances' and not within the purview of rule of thumb laid down by the Sarla Verma (supra) judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects."

10. Learned counsel for the appellant also refers to and relies upon the judgments of this Court in the cases of Shobha Gulhar vs. Ram Pal bearing MAC.APP.No.293/2008 dated 19th November, 2009, Umakant vs. DTC bearing FAO No.15/2001 dated 23rd April, 2010 and Abha Gupta vs. Duli Chand bearing MAC.APP.No.298-300/2005 dated 25th February, 2011, in which

this Court has awarded future prospects taking into consideration the exceptional circumstances.

11. In the present case, the deceased was a highly qualified surgeon at the peak of her professional carrier and her income was gradually increasing. This case, therefore, falls within the ‘exceptional circumstances’ and is squarely covered by the judgment of the Hon’ble Supreme Court in the case of **K.R. Madhusudan** (supra). Following the judgments of the Hon’ble Supreme Court as well as this Court, 30% of the income of the deceased is added towards the future prospects.

12. The Claims Tribunal has not awarded any amount for loss of love and affection. A sum of Rs.10,000/- is awarded towards the loss of love and affection.

13. The appellant is entitled to total compensation of Rs.23,40,658 as per the break-up given hereunder:-

(i)	Annual Income of the deceased	:	Rs.2,13,111/-
	(Add) : 30% towards future prospects	:	Rs.63,933.30
	Total	:	<u>Rs.2,77,044.30</u>
	(Add) : Value of her services towards her family (Rs.3,000/- per month)	:	Rs.36,000/-
	Total	:	<u>Rs.3,13,044.30</u>
	(Less) : 1/3 rd towards her personal Expenses	:	Rs.1,04,348.10
	Total	:	<u>Rs.2,08,696.20</u>
	Applying Multiplier of 11 (Rs.2,08,696.20 x 11)	:	Rs.22,95,658.20

(Add) : Loss of estate and consortium	:	Rs.15,000/-
Funeral expenses	:	Rs.20,000/-
Loss of love and affection	:	Rs.10,000/-

Grand Total	:	<u>Rs.23,40,658/-</u>
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14. The appeal is allowed and the awarded amount is enhanced from Rs.9,44,000/- to Rs.23,40,658/-. The Claims Tribunal has awarded interest @ 9% per annum which is not disturbed on the original award amount of Rs.9,44,000/-. However, on the enhanced award amount, the rate of interest shall be 7.5% per annum from the date of filing of the claim petition till realization. The appellants shall have 1/3rd share each in the enhanced award amount.

15. The enhanced award amount along with up to date interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank, Delhi High Court Branch A/c Mohit Chopra through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

16. Upon the aforesaid amount being deposited, UCO Bank is directed to release 50% of share (50% of 1/3rd share) of each of the appellant's to them. However, the remaining amount be kept in fixed deposit for a period of three years. The appellants shall be entitled to monthly interest on the fixed deposit amount.

17. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellants.

18. The Bank shall issue Fixed Deposit Pass Book instead of the FDR to the appellants and the maturity amount of the FDR be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

19. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipt without the permission of this Court.

20. The appellants shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

21. Copy of the order be given dasti to counsel for both the parties under signatures of the Court Master.

22. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

July 8, 2011
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