

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

Reserved on: 12th December, 2011
Pronounced on: 19th December, 2011

+ **MAC APP. 110/2007**

MEENAKSHI MISHRA & ORS. Appellants
Through: Mr. M.L. Lahoty Advocate with
Mr. Paban K. Sharma, Advocate
Mr. Yogesh Kumar Jagia, Advocate.
Mr. Amit Sood, Advocate.

Versus

TARSEM SINGH & ORS. Respondents
Through: Ms. Rekha Sharma Proxy Counsel for
Mr. Anil Aggarwal Advocate for
Respondents No.1 and 2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellants who were the widow and two minor sons of the deceased Prafull Chandra Mishra seek enhancement of compensation in respect of award dated 22.11.2006 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby a compensation of ₹ 63,85,940/- was awarded.
2. The deceased Prafull Chandra Mishra was working as Director (Technical) with M/s. Frito Lay India, a Group of Companies of M/s. Pepsico. He was getting a salary of ₹ 18,34,391/-.

3. The contentions raised on behalf of the Appellants' are:-
- (i) The entire income of the deceased was not taken into consideration for calculation of the loss of dependency.
 - (ii) The multiplier of 10 selected by the Tribunal was against the multiplier given in the 2nd Schedule as also in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121*. The appropriate multiplier should have been 13.
 - (iii) The deceased's future prospects were not taken into consideration. The deceased was a young Executive who was highly qualified. Some of the deceased's colleagues are receiving a very high salary after a few years of the accident and the future prospects of more than 30% should have been considered in view of *K.R. Madhusudhan & Ors. v. Administrative Officer & Anr., (2011) 4 SCC 689* as an exception to *Sarla Verma (supra)*.

CONTENTION NO. (i)

4. The deceased's salary was extracted in Para 10 of the impugned judgment. Apart from basic salary of ₹ 9,56, 808/- the deceased Prafull Chandra Mishra was getting Bonus, House Rent, Vehicle Allowance, Medical Allowance and contribution towards Provident Fund, Superannuation, House Maintenance,

Telephone Expenses, Mobile Charges and Hard Furnishing allowances. The Tribunal relied on *Asha & Ors. v. United India Insurance Company & Anr.* 2004 ACJ 448 in not adding the allowance in the deceased's income. While interpreting *Asha* (*supra*), the Supreme Court in *National Insurance Co. Ltd. v. Indira Srivastava*, (2008) 2 SCC 763 held as under:-

“17. This Court in Asha (supra) did not address itself the question raised before us. It does not appear that any precedent was noticed nor the term “just compensation” was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be “just compensation” must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-package is what the dependants have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.”

5. *National Insurance Co. Ltd. v. Indira Srivastava*, (2008) 2 SCC 763 was considered and approved in the latest report of the Supreme Court in *Sunil Sharma & Ors. v. Bachitar Singh & Ors.*, (2011) 11 SCC 425. The Supreme Court quoted Para 9 of the Report in *Indira Srivastava* (*supra*) as under:-

"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-package 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 on monetary terms."

6. In *Sarla Verma (supra)* the Supreme Court had the occasion to consider the grant of compensation in fatal accident cases and dwelled in detail as to how the multiplicand is to be arrived and how the multiplier is to be selected. It was held that generally the income tax should be deducted from the actual income to arrive at the deceased's net income. In Para 20 of the report it was held as under:-

"20. 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."

7. Thus, there is no manner of doubt that the deceased's entire income was to be used by him for himself as well as for the members of his family. In this view of the matter, there is no manner of doubt that the deceased's entire income i.e. ₹ 18,34,391/- was to be considered for computation of dependency less income tax.

CONTENTION NO. (ii)

8. In the case of *Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176*, it was held that the multiplier should be selected

according to the age of the deceased or the Claimant whichever is higher. In other words, the Court has to accept the higher age whether of the dependent or the victim. While using the multiplier method for award of compensation, the amount as per the multiplier is awarded to the Claimants. Thus, if the Claimants are old and the deceased is young the dependency would end earlier (according to the age of the Claimants). Similarly, where the Claimants are young but the deceased is old, the deceased would not be able to provide for the maintenance of the Claimants during the entire life time of the Claimants.

9. In *New India Assurance Company Ltd. vs. Smt. Shanti Pathak & Ors.*, 2007 (10) SCC 1, the Tribunal and the High Court granted the multiplier of 13 according to the age of the Claimants. The same was reduced by the Supreme Court to 8 according to the age of the deceased.
10. The deceased's age being 46 years is not in dispute. The appropriate multiplier according to *Sarla Verma (supra)* between the age of 46 to 50 years would be 13. The Tribunal fell into error in applying the multiplier of 10.

CONTENTION NO. (iii)

11. It is urged by the learned counsel for the Appellants that the deceased at the time of the accident was working as Director (Technical) in a Multinational company. The learned counsel

for the Appellants referred to the testimony of PW-2 Samik Basu who was working as HR Director in the same company i.e. Frito-Lay India where the deceased was working as Director (Technical) at the time of the accident. He deposed that the deceased was getting a salary of ₹ 18,34,391/- per annum including perquisites. He deposed that in the year 1996 the deceased was appointed as Vice President (Technical) Export Division in Pepsi Foods Ltd. Later on he was transferred to Frito-Lay India as Vice President (R&D) and then as Director (Operations & R&D).

12. The witness gave the details of his salary right from the year 1996-1997 which raised from ₹ 8,84,000/- to 18,34,000/- within a span of four years.
13. Appellant Meenakshi Mishra also filed her evidence by way of affidavit and testified that another colleague of the deceased was posted as Director (HR) in Thailand and was drawing a salary of ₹ 45 lacs.
14. No evidence was brought on record regarding the educational qualification and the previous experience of Mr. Pawan Bhatia who was getting ₹ 45 lacs per annum. It is true that the deceased was employed at a senior position in a multinational company and had a bright future. The Appellants/Claimants are, therefore, entitled to the benefit of 30% of the deceased's

income towards future prospects considering the deceased's age as 46 years.

15. In *K.R. Madhusudhan & Ors. (supra)* there was incontrovertible evidence that the deceased was bound to get raise in the income in the future and therefore, the future prospects were awarded by raising his salary to ₹ 25,000/- per month instead of ₹ 15,646/-. In para 10 of the report, the Supreme Court held as under:-

“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”.

16. In the absence of any evidence to grant future prospects beyond the normal one in view of *Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179*, the Appellants are entitled to the increase in the deceased's income by 30%.
17. After adding 30% towards future prospects, the deceased's income works out as ₹ 23,84,708/- (i.e. ₹ 18,34,391/- + 5,50,317/-). The liability of tax on the income of ₹ 23,84,708/- is ₹ 7,58,353/-. The net income after deduction of income tax is

₹ 16,26,355/- (i.e. ₹ 23,84,708/- - ₹ 7,58,353/-). The personal expenses of the deceased as taken as one-third. The loss of dependency after deducting one-third towards deceased's personal expenses works out as ₹ 10,84,237/- (i.e. ₹ 16,26,355/- - 5,42,118/-). Applying the multiplier of 13, the total loss of dependency works out as ₹ 1,40,95,081/- (10,84,237/- x 13).

18. After adding the notional amount under conventional heads of loss of love and affection, loss of consortium, loss of estate, the total compensation works out as under:-

Head	Awarded by the Tribunal in (₹)	Awarded by This Court in (₹)
Loss of dependency	63,53,940/-	1,40,95,081/-
Loss of consortium and Loss of love & affection	20,000/-	35,000/-
Funeral Expenses	10,000/-	10,000/-
TOTAL	63,83,940/-	1,41,40,081/-

19. Hence, the total compensation works out as ₹ 1,41,40,081/-. The compensation awarded by the Tribunal is enhanced by ₹ 77,56,141/-.
20. The Tribunal awarded interest @ 6% per annum. There is again rising trend in the Bank's rate of interest. The inflation is already in the double digits. In *Sarla Verma (supra)* the Supreme Court granted interest @ 7.5% per annum.

21. The enhanced amount shall carry interest @ 6% per annum from the date of filing of the petition till the date of the award i.e. 22.11.2006. Since the award amount along with interest was deposited in this Court, the enhanced amount further shall carry interest @ 7.5% per annum from the date of the Tribunal's award till the date of the payment. Since the offending vehicle was insured with Respondent No.3 The New India Assurance Company Limited, it is directed to pay the compensation within thirty days.
22. The awarded compensation shall be apportioned as under:-
- (i) 50% of the awarded amount along with proportionate interest to Meenakshi Mishra (widow of the deceased Prafull Chandra Mishra);
 - (ii) 25% of the awarded amount along with proportionate interest to Master Mehul Mishra (son of the deceased Prafull Chandra Mishra); and
 - (iii) 25% of the awarded amount along with proportionate interest to Master Anjaneya Mishra (son of the deceased Prafull Chandra Mishra).
23. Out of the 50% awarded amount to Meenakshi Mishra alongwith the proportionate interest a sum of ₹ 10 lacs shall be released to her forthwith. The remaining amount awarded to her along with proportionate interest shall be converted into four

FDRs in equal amount for one year, three years, five years and seven years respectively.

24. The amount awarded to Master Mehul Mishra and Master Anjaneya Mishra shall be held in two separate FDRs till they attain the age of 21 years. If any amount is needed for their higher education, their mother Meenakshi Mishra shall be entitled to apply to the Tribunal for premature encashment of the amount for that purpose.
25. The Appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

DECEMBER 19, 2011

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