

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 18th October, 2011
Pronounced on: 18th November, 2011

+ **MAC APP. 184/2008**

SAROJ BALA & ORS. Appellants
Through: Ms. Suman N. Rawat, Advocate.

Versus

RAJESH KUMAR & ANR. Respondents
Through: Mr. Mohan Babu Agarwal Advocate
with Mr. Harkesh Chand Aggarwal
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

1. Whether reporters of local papers may be allowed to see the Order? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Order should be reported in the Digest? Yes

J U D G M E N T

G. P. MITTAL, J.

1. The Appellants impugn the award dated 14.11.2007 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby the Appellants were awarded compensation of ₹ 3,77,000/- on the ground that the compensation awarded is too low and cannot be said to be just compensation as envisaged under Section 168 of the Motor Vehicles Act, 1988 (the Act).
2. It is admitted case of the parties that on 24.12.1992 i.e. on the date of the accident, the deceased was aged about 29 years and

was employed as a Constable in Delhi Police. He was getting a salary of ₹ 2393/- per month. He was survived by his widow, two sons, a daughter besides his old parents (the Appellants herein).

3. The grievance of the Appellants is that the deceased had bright future prospects and would have received a salary of ₹ 11,429/- per month, as proved by PW-6. It is averred that the multiplier of 14 applied by the Tribunal was too low as a multiplier of 18 (on the age of 29) has been given in the second schedule to the Act.
4. It is submitted that deduction of one third of the salary was made by the Tribunal though it ought to have been one fourth as the number of dependents of the deceased was six.
5. On the other hand, it is urged by the learned counsel for the Insurance Company that the future prospects were taken into consideration by the Tribunal; multiplier has been rightly applied and deduction of one third for personal expenses was justified as the deceased was working as a Constable in Delhi Police.
6. The Hon'ble Supreme Court reviewed the law with regard to the selection of multiplier and consideration of the future prospects and held that uniformity has to be achieved in payment of the compensation. The Supreme Court in the case of *Sarla Verma v. Delhi Transport Corporation, 2009 (6) Scale*

129 laid down the following principles for grant of compensation in death cases:-

“I. MULTIPLIER

Age of the deceased (in years)	Multiplier
15-20	18
21-25	18
26-30	17
31-35	16
36-40	15
41-45	14
46-50	13
51-55	11
56-60	09
61-65	07
Above 65	05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

- (i) Deduction towards personal expenses.
: 1/2 (50%)
- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased.
: 1/3rd (33.33%)

Deceased – married

- (i) 2 to 3 dependent family members. : 1/3rd
- (ii) 4 to 6 dependent family members : 1/4th
- (iii) More than 6 family members : 1/5th

(iv) Subject to the evidence to the contrary. :

Father, brother and sisters will not be considered as dependents.

III. FUTURE PROSPECTS

- (i) Permanent job : Actual salary – tax + 50%
Below 40 years of age towards future prospects.
- (ii) Permanent job : Actual salary – tax + 30%
Between 40-50 years towards future prospects.
- (iii) More than 50 years with: Actual salary only.
permanent job. No addition for future prospects.
- (iv) Deceased employed at a fixed: Only actual income to be
Salary (without provision for taken. No addition.
Annual increments)”

7. In the present case the date of birth of the deceased as per the matriculation certificate was 09.01.1963 which was not disputed during trial. The salary certificate Ex.PW-6/A established deceased's gross salary as ₹ 2393/- per month. There was deduction of ₹ 30/- towards group insurance and ₹ 100/- towards GPF subscription.
8. In *Shyamwati Sharma & Ors. v. Karam Singh & Ors.* 2010 ACJ 1968, the Supreme Court held that deduction towards GPF, Life Insurance Premium, etc. should be excluded from the income while determining the income for the purposes of computation of compensation.

9. Admittedly, the deceased was not paying any income tax and thus, the deceased's salary at the time of his death was ₹ 2393/-.
10. Since this claim petition was filed under Section 166 of the Act, the multiplier of 18 as given in the second schedule cannot be applied. Though the age of the deceased at the time of accident was 29 years, yet the Tribunal mistook the age as 39 years. This appears to be a clerical mistake. Thus, the Tribunal committed error in selection of the multiplier. On the age of 29 the multiplier as per *Sarla Verma (supra)* would be 17. Similarly, if we add 50% of the salary to the salary of the deceased at the time of his death on the basis of the principles laid down in *Sarla Verma (supra)*, towards future prospects, the multiplicand would come to ₹ 2393/- + 50% of ₹ 2393/- = ₹ 3589/-. Moreover, since the number of dependents was six, the deduction would be $\frac{1}{4}^{\text{th}}$ and not $\frac{1}{3}^{\text{rd}}$ as held by the Tribunal. The compensation to be awarded on the basis of the principles enumerated above would come to ₹ 3589/- minus $\frac{1}{4}^{\text{th}}$ (i.e. ₹ 898/-) = ₹ 2691/-. Applying the multiplier of 17 the compensation works out to $(2691 \times 12 \times 17) = ₹ 5,48,964/-$.
11. Thus, in addition to the compensation already awarded by the impugned award, the Appellants are entitled to an additional sum of ₹ 1,71,964/- along with interest @ 7.5% per annum from the date of filing of the petition till date of deposit.

12. Respondents No. 1 and 2 are jointly and severally liable to pay the compensation. Since the offending vehicle No.HNU-5805 was insured with Respondent No.2 (The Oriental Insurance Company Ltd.); the Respondent No.2 is directed to deposit the balance amount of compensation i.e. ₹ 1,71,964/- alongwith interest within thirty days.
13. This accident took place on 24.12.1992. The three minor children might have attained the age of majority. Therefore, out of additional compensation awarded, the Appellants No. 2 to 5 shall be paid a sum of ₹ 15,000/- each along with proportionate interest; rest of the compensation shall be payable to Appellant No.1 (widow of the deceased).
14. The amount awarded to the Appellants No.2 to 5 shall be kept in a fixed deposit for a period of three years. Out of the additional compensation payable to the Appellant No.1. a sum of ₹ 15,000/- shall be deposited in Appellant No.1's saving account. Rest of the amount payable to the Appellant No.1 shall be kept in an FDR for a period of ten years. The Appellants shall be entitled to payment of interest every month which shall be credited in her savings account.
15. The appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

NOVEMBER 18, 2011/vk