

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

Reserved on: 25th November, 2011

Pronounced on: 2nd December, 2011

+ **MAC APP. 224/2010**

SHYAM SUNDER & ANR. Appellants

Through: Mr. Manish Mannie, Adv.

Versus

SUNIL SHARMA & ANR. Respondents

Through: Mr. M. K. Tiwari, Adv. for Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This appeal is for enhancement of compensation in respect of death of Anuj Sharma, who was aged about 25 years at the time of accident, which took place on 07.12.1999. The Motor Accident Tribunal by the impugned award dated 08.12.2009 granted a compensation of ₹ 6,14,275/-.
2. The contentions raised on Appellant's behalf are: -
 - (i) The deceased was offered a salary of \$ 50,000 per year by the letter dated 27.09.1999 mark 'A'. The deceased was to join his new employment in USA. The deceased's

salary, therefore, ought to have been considered \$ 50,000 per year and compensation should have been granted accordingly.

- (ii) The multiplier should have been applied as per the deceased's age, which was 25 years or in any case as per mother's age which was 42 years on 06.09.1991 according to the photocopy of the Ration Card and thus 50 years at the time of accident.
- (iii) The accident took place on 07.12.1999, the deceased succumbed to the injuries on 21.12.1999, therefore, some compensation ought to have been awarded on account of pain and suffering.

CONTENTION NO.1

- 3. I have gone through the offer of appointment purported to be given by M/s. R. Systems INC. The authenticity of this letter was not proved. Moreover, page 6 of this letter clearly shows that the offer was valid for 15 days from the date of letter thus the offer lapsed on 12.10.1999. In this view of the matter the letter mark 'A' cannot be taken into consideration to determine the Appellant's dependency.

CONTENTION NO.2

- 4. After taking note of *Kerala State Road Transport Corporation v. Susamma Thomas*, (1994) 2 SCC 176; *Sarla Dixit v. Balwant*

Yadav, (1996) 3 SCC 179; *Abati Bezbaruah v. Geological Survey of India*, (2003) 2 SCC 148, the Hon'ble Supreme Court laid down the following principles grant of compensation in death cases in the case of *Sarla Verma & Ors. v. Delhi Transport Corporation*, (2009) 6 SCC 121 as under: -

“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)”

IV. NON-PECUNIARY DAMAGES

- (i) Compensation for loss of estate : ₹ 5,000/- to
₹ 10,000/-
- (ii) Compensation for loss of consortium : ₹ 5,000/- to
₹ 10,000/-
- (iii) Compensation for pain and sufferings : Nil
and hardship
- (iv) Funeral expenses, cost of transportation : Actual
of body and medical expenses”

5. It is urged by the learned counsel for the Appellant that as per *Sarla Verma & Ors. v. Delhi Transport Corporation*, it was held that age of the deceased was to be taken into consideration for the purpose of selection of multiplier. This position, according to the learned counsel, was clarified by the Supreme Court in the later decision in *P.S. Somnathan & Ors. v. District Insurance Officer & Ors.*, 2011 (3) SCC 566.
6. I am not inclined to agree with the contention raised on Appellant's behalf. In *Sarla Verma* (supra) the Supreme Court considered and approved *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.*, 1996 (4) SCC 362 where it was laid down that while applying the multiplier the age of the claimant or that of the deceased, whichever is higher is to be considered. It is very obvious that the multiplier has to be applied as per the age of the deceased or the claimants whichever is lower because if the claimants are very old the dependency would soon come to an end early and likewise if the deceased is very old he would survive for the lesser years as compared to the claimants. In the latest decision of the Supreme Court in *National Insurance Co. Ltd. v. Shyam Singh & Ors.*, 2007 (11) SCC 365 the Supreme Court approved the multiplier of 8 applied by the Tribunal by taking the average age of the parents of the deceased, who were 55 & 56 years of age. In the circumstances there is no manner of doubt that the multiplier according to the age of the claimants or the deceased

whichever is lower has to be selected for the purpose of calculation of dependency.

7. Turning to the facts of the instant case the mother's age is claimed to be 50 years on the basis of the Ration Card Ex. PW-5/15 issued in the year 1991. Generally, age in a Ration Card is mentioned only by approximation and the same cannot be presumed to be the accurate age. It may be noticed that in the Ration Card, the age of the deceased is mentioned as 10 years, which would imply that the age of the deceased on the date of the accident was just 19 years, which was not correct. In fact, his age was 25 years at the time of the accident. Therefore, the age of Appellant No.2 can be inferred from the claim petition filed by the Appellants in the year 2002 where her age was mentioned as 62 years. Thus, I take the age of the deceased's mother to be 59 years on the date of the incident.
8. For the purpose of computing the income of the deceased a reference can be made to his Form-16 Ex. PW-5/12 wherein the gross salary of the deceased is mentioned as ₹ 1,05,550/-. After deducting the conveyance, HRA and standard deductions from the gross salary, the income of the deceased comes out to be ₹ 47,673/-, which is not taxable. The Tribunal, however, ought not to have deducted the conveyance and HRA as these were part of the deceased's income. That being so, the net income of the deceased shall be considered as ₹ 1,05,550/-; adding 50% towards future prospects and deducting half towards his

personal expenses, multiplicand comes to ₹ 79,162/-. Now, applying the multiplier of 9 (according to the age of the mother) to the said amount, the loss of dependency comes to ₹ 7,12,458/- After adding conventional sum of ₹ 25,000/- towards love and affection, ₹ 10,000/- towards funeral expenses and ₹ 10,000/- towards loss of estate. In addition, ₹ 10,000/- towards treatment (before the deceased's death). The total compensation comes to ₹ 7,57,458/-. Appellants would be entitled to interest @ 7.5% per annum on the enhanced compensation of ₹ 1,43,183/- from the date of filing of the petition till realization of the amount, which the Respondent No.1 (Sunil Sharma) and Respondent No.2 (Insurance Company) are liable to pay jointly and severally. Respondent Insurance Co. is directed to make the payment of enhanced compensation within six weeks from the date of this order. 30% of the enhanced compensation shall be released to the Appellants immediately in equal shares. Rest of the amount shall be held in Fixed Deposit for a period of three years.

9. The appeal is allowed in above terms. No cost.

(G.P. MITTAL)
JUDGE

DECEMBER 02, 2011

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