

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

+ **MAC. APP. 386/2008**

KUMARI GUNGUN & ORS. Appellants
Through: **Mr. Santosh Chaurihaa,**
Advocate

versus

SURESH SINGH & ORS Respondents
Through: **Mr. Manoj Ranjan Sinha,**
Advocate for the respondent
No.3

% **Date of Decision : July 27, 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?

} yes

J U D G M E N T

: REVA KHETRAPAL, J.

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 12.12.2007 passed by the Motor Accidents Claims Tribunal on account of the untimely demise of one Sudhir Garg on 23.05.2006 in a road accident. The

prayer in the present appeal is for enhancing the compensation to the tune of ₹ 50 lakhs with costs and interest.

2. With the consent of the parties, the appeal is taken up for final hearing at this stage.

3. At the outset, it may be stated that the Claim Petition claiming compensation for the unfortunate death of the deceased was filed before the learned Claims Tribunal by the wife, the minor daughter and the parents of the deceased. During the pendency of the Claim Petition, however, the father of the deceased expired and shortly thereafter, the wife of the deceased also expired and their names were deleted from the array of parties. The appellant No.1 herein is the minor daughter of the deceased and the appellant No.2 is the mother of the deceased. Mr. Santosh Chaurihaa, the learned counsel for the appellants has challenged the award, *inter alia*, on the following grounds:

- (i) The learned Claims Tribunal, while computing the loss of dependency of the claimants, erred in assessing the average annual income of the deceased to be ₹ 1,50,000/-, whereas the

deceased was an income-tax payee at the time of his death and his future income would have been at least ₹ 5 lakhs per annum.

- (ii) The learned Claims Tribunal erred in scaling down the assessed compensation of ₹ 19,20,000/- to ₹ 14,00,000/- on the reasoning that if ₹ 19,20,000/- is kept in a bank it can easily fetch ₹ 2,00,000/- as annual interest, which, according to the Tribunal, was more than what the deceased was earning.
- (iii) The learned Claims Tribunal erred in granting interest @ 7.5% per annum from the date of the petition till its realisation. The learned Claims Tribunal ought to have granted interest at the rate of at least 9% per annum from the date of the petition till its realisation.

4. Mr. Manoj Ranjan Sinha, the learned counsel for the respondent No.3-Insurance Company, on the other hand, sought to support the award on the ground that it was a just and fair award and no interference in the computation of compensation would be justified. Relying upon the judgment of the Hon'ble Supreme Court

in *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, Mr. Sinha contended that the deceased was a self-employed person, and as such, while calculating the compensation payable to his legal representatives there was no reason for the learned Claims Tribunal to take into account the future prospects of the deceased. Notwithstanding, the Tribunal had assessed the income of the deceased in the sum of ₹ 1,50,000/-, which was much more than his annual income on the date of the accident. Mr. Sinha also contended that the sum of ₹ 1,00,000/- awarded to the claimants by the learned Claims Tribunal towards loss of love and affection was on the higher side.

5. The records of the learned Claims Tribunal were requisitioned by this Court and scrutinized with the assistance of the counsel for the parties, which revealed that the date of birth of the deceased was 10.10.1980, meaning thereby that the deceased was not yet 26 years of age at the time of his death. The records also revealed that the deceased had declared his annual income from business for the assessment year 2004-05 as ₹ 1,25,222/-, on which he had paid tax of

₹ 9,244/-. Further, for the assessment year 2005-06, he had declared his annual income at ₹ 1,28,910/-. The return for the assessment year 2005-06 was filed by the deceased prior to the date of the accident and could not have been manipulated in any manner. The learned Claims Tribunal, therefore, accepted the income mentioned in the income-tax return filed by the deceased for the year 2005-06 without formal proof thereof relying upon the following observations made by the Hon'ble Supreme Court in the case of ***United India Insurance Company vs. Patricia Jean Mahajan and Ors.*** reported in ***2001 ACJ 1051***:

"I also hold that the income tax returns of the deceased were admissible in evidence without any further proof and constituted a valid basis for assessment of his income and loss of dependency."

6. The learned Claims Tribunal then returned the finding that the income of the deceased was steadily increasing and in the coming years his income would have easily touched the figure of ₹ 1,50,000/-. It then proceeded to assess the loss of dependency of the legal representatives of the deceased to be in the sum of

₹ 18,00,000/-. Adding ₹ 1,00,000/- thereto towards the loss of love and affection and ₹ 20,000/- towards funeral expenses, the Tribunal calculated the total compensation in the sum of ₹ 19,20,000/- but scaled down the said compensation to ₹ 14,00,000/- by adopting the following process of reasoning:

“To sum up, I hold that petitioners are entitled to receive Rs.19,20,000/-.

*14. The object behind granting compensation is to prevent beggary and destitution. An attempt is made to apply soothing balm on the wounds of the victims. It should not become a source of windfall profits. If Rs.19,20,000/- is kept in a bank, it can easily fetch Rs.2 lacs as annual interest. This would be much more than what the deceased had been earning. It would be appropriate if the sum of Rs.19,20,000/- is scaled down to 14,00,000/-. The amount of Rs.14 lacs would roughly fetch interest which would be equivalent to earning of the deceased. I, therefore, hold that petitioners are entitled to receive **Rs.14 lacs** from the three respondents. The liability to pay shall be of all the respondents jointly and severally.”*

7. Having carefully considered the rival contentions of the parties, I am of the view that though the Claims Tribunal rightly came to the conclusion that the income of the deceased was steadily increasing and there was every indication to show that in the coming years the

income of the deceased would have escalated, there was no justification for pegging the income at ₹ 1,50,000/-. I also find no merit in the contention of Mr. Sinha that merely because the deceased was engaged in business and fell in the category of “self-employed”, his prospects of advancement in his chosen vocation cannot be taken into consideration. Laying down the guidelines for computation of compensation, the Supreme Court in the case of *Sarla Verma (supra)* held that where the deceased was self-employed, the Court shall *usually* take only the actual income at the time of death, and a departure therefrom should be made only in rare and exceptional cases involving special circumstances. Thus, in special circumstances, it is always open to the Courts in their discretion to take into account the future prospects of rise in the income of the deceased regardless of whether the deceased was self-employed or otherwise employed. In the instant case, evidence has come on record that the income of the deceased was on an ascending scale and the returns filed by the deceased clearly reflect that he was doing quite well from a very young age. Though, the learned Claims Tribunal did

take into account the fact that the income-tax returns of the deceased showed that his income was steadily increasing, it ought to have taken the future prospects of increase in income into account by adding 50% to the actual earnings of the deceased on the date of the accident, more so, as the deceased was around 25 years of age and had a long way to go instead of preamptorily assessing his income at ₹ 1,50,000/-.

8. It is accordingly proposed to re-compute the loss of dependency of the legal representatives of the deceased, upon which exercise I now embark. If the annual income of the deceased on the date of the accident is taken to be in the sum of ₹ 1,28,910/-, the average annual income of the deceased for the purpose of assessment of loss of dependency of his legal representatives must be taken to be ₹ 1,28,910/- + ₹ 64,455/- (50% of his annual income) = ₹ 1,93,365/-. Deducting a sum of ₹ 31,000/- therefrom towards the income-tax payable on the aforesaid sum of money, the average annual income of the deceased comes to ₹ 1,62,365/-. Deducting one-third from the net income of the deceased towards the personal expenses of the

deceased, the loss of dependency of the appellants comes to ₹ 1,08,243/- per annum. It is settled law that this multiplicand has to be augmented by the use of an appropriate multiplier. The learned Claims Tribunal has applied the multiplier of 18, which is the appropriate multiplier in consonance with the judgment of the Supreme Court in the case of *Sarla Verma (supra)*. Thus calculated, the total loss of dependency of the appellants comes to ₹ 1,08,243/- x 18 = ₹ 19,48,374/- (Rupees Nineteen Lakh Forty Eight Thousand Three Hundred and Seventy Four Only).

9. The sum of ₹ 19,48,374/- is accordingly adjudged to be the fair amount of pecuniary compensation payable to the appellants. Apart from the pecuniary compensation, the learned Claims Tribunal has awarded a sum of ₹ 1,00,000/- towards the loss of love and affection of the deceased and a sum of ₹ 20,000/- for funeral expenses. The grant of ₹ 20,000/- towards the last rites and funeral expenses of the deceased is upheld. The sum of ₹ 1,00,000/- awarded towards the loss of love and affection is scaled down to ₹ 25,000/- as it is settled law that only a token amount is awarded towards the non-pecuniary

damages for the loss of love of a near and dear one. Thus, the total amount of compensation payable to the appellants comes to ₹ 19,93,374/-, to which a conventional sum of ₹ 5,000/- is added towards the loss of estate of the deceased, in all, a sum of ₹ 19,98,000/- (rounded off).

10. On the aspect of scaling down of the compensation by the learned Claims Tribunal from ₹ 19,20,000/- to ₹ 14,00,000/-, a specific query was put by me to Mr. Manoj Ranjan Sinha, the learned counsel for the respondent No.3, as to whether there was any cogent reason for scaling down of the compensation which the appellants in law were entitled to receive. Mr. Sinha was unable to cite any precedent or to give any justification for the same. Accordingly, the scaling down of the compensation by the learned Claims Tribunal is held to be unjustified and unwarranted.

11. In view of the aforesaid, the judgment and award dated 12.12.2007 is set aside. The respondent No.3-Insurance Company is directed to deposit the entire award amount with up-to-date interest at the rate of 7.5% per annum from the date of filing of the petition till

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the date of payment within 30 days of the date of receipt of this order by depositing the same with the learned Tribunal. The learned Tribunal shall determine the apportionment and disbursement thereof.

12. The records of the learned Tribunal be sent back forthwith.

13. The appeal stands disposed of accordingly.


REVA KHETRAPAL
(JUDGE)

July 27, 2011
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