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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th December, 2012

+ **MAC. APP. 373/2007**

RITU SHARMA & ORS. Appellants
Through: Mr. O.P. Mannie, Advocate.

Versus

GANGA CHARAN & ORS. Respondents
Through: Ms. Reeta Kaul, Advocate for the
Respondents No.2 & 3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹8,52,000/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) in favour of the Appellants for the death of Lalit Sharma who died in a motor vehicle accident which occurred on 28.02.2002.
2. In the absence of any Appeal by the driver, owner or the insurer, the finding on negligence has attained finality.
3. During the inquiry before the Claims Tribunal, it was claimed that the deceased was in business and was earning ₹66,411/- per annum. The Claims Tribunal deducted a sum of ₹1,230/- as liability to Income Tax, deducted 1/3rd towards the personal and living expenses and applied a multiplier of 18 taking the age of the deceased to be 30 years.

4. The following contentions are raised on behalf of the Appellants:
- (i) Even if there was no evidence with regard to the future prospects, the Appellants were entitled to 30% addition towards inflation.
 - (ii) The number of dependents, including the deceased's mother, were four; the deduction towards the personal and living expenses should have been $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ taken by the Claims Tribunal.
5. It is stated by the learned counsel for the Appellants that deceased was born on 26.11.1969. Thus, he was aged 32 years and 09 months on the date of the accident and the multiplier of 16 would be relevant in the context as per *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121.
6. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that the compensation awarded is just and reasonable.
7. The deceased's income was proved to be ₹66,411/- per annum which was accepted by the Claims Tribunal. It was also proved that the deceased was liable to pay an Income Tax of ₹1,230/- on the said income. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors*, (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121 and *Santosh Devi v. National*

Insurance Company Ltd. & Ors., 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had a fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category

periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

8. There is no dispute that the deceased was survived by four dependents, that is, his widow, two minor children and his mother. As per *Sarla Verma*, the deduction towards personal and living expenses would be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ taken by the Claims Tribunal. Further, the appropriate multiplier would be 16 as against 18 adopted by the Claims Tribunal. The loss of dependency, thus comes to ₹10,16,823/- (₹66,411/- - 1,230/- + 30% x $3/4$ x 16).
9. The Claims Tribunal awarded a sum of ₹55,000/- towards non-pecuniary damages which is in consonance with the overall award of compensation towards non-pecuniary damages. On addition of ₹25,000/- towards loss of love and affection, ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses, the overall compensation comes to ₹10,71,823/-.

10. The enhanced compensation of ₹2,19,823/- shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. 15% each of the enhanced compensation along with proportionate interest shall be payable to the Appellants No.2 to 4, rest 55% along with proportionate interest shall be payable to Appellant No.1. The share of amount payable to the Appellants No.2 to 4 shall be held in fixed deposit till they attain the age of 21 years. 50% of the amount payable to Appellant No.1 shall be held in fixed deposit for a period of two years, rest shall be released to her on deposit. The Appellant No.1 shall be entitled to quarterly interest on the amount held in fixed deposit. The Appellants shall be entitled to premature withdrawal of the amount held in fixed deposit payable to Appellants No.2 to 4 in case the money is needed for their higher education subject to the satisfaction of the Claims Tribunal.
11. The enhanced compensation of ₹2,19,823/- along with interest shall be deposited with the Claims Tribunal within six weeks.
12. The Appeal is allowed in above terms.
13. Pending Applications stand disposed of.
14. Dasti to the parties.

(G.P. MITTAL)
JUDGE

DECEMBER 17, 2012

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