

R-12

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO NO.30/2003

%

Reserve on : 27th January, 2012
Date of decision : 27th April, 2012

N.D.M.C. & ORS. Appellants
Through : Mr. Arjun Pant, Adv.
versus

I.C. MALHOTRA & ANR. Respondents
Through : Mr. Ashok Bhasin, Sr. Adv.
with Mr. Bhagwan Sharma,
Mr. Sunklan Porwal and Ms.
Anuradha Anand, Advs.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the judgment of the Claims Tribunal whereby compensation of ₹8,31,816/- has been awarded to the respondents. The respondents have filed cross-objections seeking enhancement of the award amount.

2. The accident dated 9th January, 1997 resulted in the death of Arvind Malhotra. The deceased was aged 27 years and survived by his parents who filed the claim petition. The deceased was working as Management Trainee with Ballarpur Industries Limited earning ₹9,750/- per month. The Claims Tribunal took the income of the deceased as ₹8,250/- per month, added 50% towards future prospects, deducted 50% towards the personal expenses and applied the multiplier of 11

to compute the loss of dependency to ₹8,16,816/-. ₹10,000/- has been awarded towards pain and suffering and ₹5,000/- has been awarded towards funeral expenses. The total compensation awarded by the Claims Tribunal is ₹8,31,816/-.

3. The learned counsel for the appellant has urged at the time of hearing of this appeal that the deceased was contributory negligent to the extent of 50% and, therefore, the compensation is liable to be reduced on that account. It is further submitted that the future prospects awarded to the respondents be reduced.

4. The learned counsel for the respondents have filed cross-objections seeking enhancement of the award amount on the following grounds:-

- (i) The income of the deceased be taken as ₹1,00,000/- per month.
- (ii) The multiplier be enhanced from 11 to 17.
- (iii) The compensation be awarded for loss of love and affection and loss of estate.

5. With respect to the issue of rashness and negligence, it is noted that the accident occurred at Shanker Road on 9th January, 1997 at 10AM. The offending truck bearing No. DL-1LB-0495 was wrongly parked at the right side of the road along with the divider and the deceased, who was driving his

motorcycle, hit against the stationary truck. The claimants examined the eye-witness PW1, who deposed that the truck was un-manned and un-attended at the time of the accident. PW1 further deposed that the parking lights were not on and the accident occurred due to the wrong parking of the offending truck. The defendant examined the driver and holder of truck as RW1 and RW2. The Claims Tribunal found serious discrepancies in their statements. The Claims Tribunal held that the accident occurred due to the negligent parking of the offending truck by the driver in the peak hours.

6. After considering the testimonies of the witnesses, this court is of the view that although the offending truck was parked on the wrong side, the accident would not have occurred if the deceased had exercised due care and caution. The deceased was contributory negligent to the extent of 25% and therefore, the compensation to the deceased is liable to be reduced to the extent of 25%.

7. The deceased was aged 27 years at the time of the accident. Since the deceased was unmarried at that time, the multiplier has to be taken according to the age of the parents. The mother of the deceased was 53 years at the time of the accident. The proper multiplier according to the age of mother is 11 as per the judgment of Supreme Court in **Sarla Verma v.**

DTC, AIR 2009 SC 3104. The Claims Tribunal has applied the correct multiplier of 11 and it does not warrant any enhancement.

8. The deceased was holding a Degree of Engineering as well as Post Graduate Diploma in Business Management and was working as a Management Trainee with Ballarpur Industries Limited drawing a salary of ₹9,750/- per month besides LTA, medical, PF and superannuation.

9. The claimants have filed cross-objections seeking enhancement of the award amount. Along with cross-objections, the claimants filed CM No.1106/2003 to lead additional evidence to prove the future prospects of the deceased. Vide order dated 6th March, 2009, the claimants/respondents No.1 and 2 were permitted to lead additional evidence. The claimants/respondents No.1 and 2 examined two witnesses. RW1-Chiranjeev Singh, General Manager, Ballarpur Industries Limited proved the certificate dated 18th March, 2009 issued by M/s Ballarpur Industries Limited. The contents of Ex. RW1/A are reproduced herein under:-

“To Whomsoever it may concern.”

This is to certify that Late Arvind Malhotra was employed in our organization with effect from June 1996. He was an engineer and a MBA and his gross

emoluments at the start of the career was Rs.1.50 lacs per annum, besides Medical Insurance and benefit of encashment of Privilege Leave up to 30 days a year.

Had he remained in our employment till date and under normal circumstance, one could expect such a profile to grow up to a level of Deputy General Manager and his annual cost to the company could have risen in the range of Rs.10 to 12 lacs per annum.”

10. RW2-Ravinder Singh Negi, batch-mate of the deceased in Fore School of Management, New Delhi, is working with Bharti Airtel Ltd. as Vice-President, Sales & Marketing, Delhi Circle drawing a salary ₹41 lacs per annum. He has proved the salary slip of February, 2009 as Ex. RW2/A. He further deposed that the deceased held a Degree of Engineering and Post Graduate Diploma in Business Management. In cross-examination, RW 2 deposed that all his other batch mates would be getting similar salary packages.

11. From the testimony of RW1 and RW2, it has been proved that the deceased, who was working as a Management Trainee at a salary of ₹12,500/- per month had the future prospects of becoming Deputy General Manager with a salary of ₹10 lakhs to ₹12 lakhs per annum.

12. It is well settled that in the cases of death of professionals, the earning capacity of the professional has to be taken into consideration depending upon the professional

degrees held by him. The following judgments may be referred in this regard :-

- (i) Ganga Devi v. New India Assurance Co. Ltd., III (2010) ACC 6.
- (ii) Ramesh Chand Joshi v. New India Assurance Co. Ltd., MAC.APP.No.212/2006 decided on 20th January, 2010.

13. It is also well-settled that future prospects beyond 50% can be awarded in rare and exceptional cases involving special circumstances. In **K.R. Madhusudhan v. The Administrative Officer, I (2011) ACC 700 (SC)**, the Supreme Court awarded future prospects in respect of the deceased aged more than 50 years on the ground that the judgment of **Sarla Verma v. DTC** (supra) permits the future prospects to be awarded in respect of deceased aged more than 50 years in rare and exceptional cases involving special circumstances. The relevant portion of the judgment of the Supreme Court in **K.R. Madhusudhan vs. The Administrative Officer** (supra) is as under:-

“8. The law regarding addition in income for future prospects has been clearly laid down in Sarla Varma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. VI (2009) SLT 663 = 162 (2009) DLT 278 (SC) = III (2009) ACC 708 (sc) = (2009) 6 SCC 121 and the relevant portion reads as follows:

In *Susamma Thomas* this Court increased the income by nearly 100%, in *Sarla Dixit* the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

9. In the *Sarla Verma* (supra) judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the opinion that the rule of thumb evolved in *Sarla Verma* (supra) is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

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."

14. In the present case, deceased was holding the Degree of Engineering and Post Graduate Diploma in Business Management. He was working as Management Trainee with Ballarpur Industries Limited at a salary of ₹12,500/- per month and had the future prospects of becoming a General Manager at a salary of ₹1,00,000/- per month. This case, therefore, falls within the 'exceptional circumstances' and is squarely covered by the judgment of the Supreme Court in **K.R. Madhusudan** (supra). Following the aforesaid judgments, this Court is of the view that it would be appropriate to take the income of the deceased as ₹35,000/- per month on the basis of his earning capacity, professional degrees held by him and certificate Ex. RW1/A.

15. The Claims Tribunal has not awarded any compensation towards loss of love and affection and loss of estate. ₹10,000/- is awarded as compensation towards loss of love and affection and ₹10,000/- is awarded towards loss of estate. The Claims

Tribunal awarded ₹10,000/- as pain and suffering which is not a permissible head in death cases and, therefore, ₹10,000/- is treated as compensation for funeral expenses and is added to the head of funeral expenses. Taking the monthly income of the deceased as ₹35,000/- per month, deducting ₹10,000/- towards Income Tax, deducting 50% towards his personal expenses, applying the multiplier of 11, the loss of dependency is computed to ₹16,50,000/-. The total compensation is computed to be ₹12,72,500/- as per break-up given hereinbelow:-

Income of the deceased	: ₹35,000/-
Income Tax (less)	: ₹10,000/-
Personal Expenses(less)	: ₹12,500/-
Loss of dependency (₹12,500/- x 11 x 12)	: ₹16,50,000/-
25% towards contributory negligence(less)	: ₹4,12,500/-
Compensation for loss of love and affection	: ₹10,000/-
Compensation for loss of estate	: ₹10,000/-
Funeral Expenses	: ₹15,000/-
Total	: <u>₹12,72,500/-</u>

16. For the reason as aforesaid, the appeal as well as the cross-objections are partially allowed. The awarded amount is enhanced from ₹8,31,816/- to ₹12,72,500/- along with interest @ 9% per annum from the date of filing of the claim petition till realization.

17. The appellant has deposited the entire award amount as awarded by the Claim Tribunal out of which 50% of the amount have been released to the claimants and the remaining 50% is lying in Fixed Deposit. The Registrar General is directed to release the amount lying in fixed deposit to the claimants in terms of the award to the Claims Tribunal.

18. The enhanced award amount be deposited by the appellant with UCO Bank, Delhi High Court Branch, by means of a cheque drawn in the name of UCO Bank A/c I.C. Malhotra within a period of 30 days. On the aforesaid amount being deposited, UCO Bank is directed to release 50% of the said amount to the respondents 1 and 2 by transferring the same to their savings bank account and the remaining amount to be kept in fixed deposit for three years.

19. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiaries.

20. Withdrawal from the aforesaid account shall be permitted to the beneficiaries after due verification and the Bank shall issue photo Identity Card to the beneficiaries to facilitate identity.

21. No cheque book be issued to the beneficiaries without the permission of this Court.

22. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiaries.

23. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

24. Half yearly statement of account be filed by the Bank in this Court.

25. On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

26. The beneficiaries shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).

27. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345).

J.R. MIDHA, J

APRIL 27, 2012