

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

Date of decision: 17th July, 2012

+ **MAC.APP. 255/2004**

SMT. SUSHMA DEVI & ANR. Appellants
Through: Mr. J.S. Kanwar, Adv.

versus

DEVENDER SINGH & ANR. Respondents
Through: Ms. Manjusha Wadhwa, Adv.
for R-2. .

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants who are legal representatives of deceased Pradeep Kumar who died in a motor vehicle accident which occurred on 12.02.1999 seek enhancement of compensation of ₹3,96,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) by a judgment dated. 04.07.2003.
2. The finding on negligence has not been challenged by the driver, owner or the Insurer. Thus, the same has attained finality.

3. During inquiry before the Claims Tribunal, it was claimed that the deceased was aged about 41 years, he was working as an Electrician and had an income of ₹3500/- per month.
4. The Claims Tribunal accepted the deceased's income, deducted ₹1100/- per month towards the personal and living expenses and applied the multiplier of '13' to compute the loss of dependency as ₹3,74,400/-.
5. The Claims Tribunal further awarded a sum of ₹2,000/- towards funeral expenses and ₹20,000/- towards pain and suffering.
6. The following contentions are raised on behalf of the Appellants:-
 - (i) The Appellants were entitled to an addition of 50% towards the future prospects/inflation due to rise in price index.
 - (ii) The deduction towards personal and living expenses should be one-fourth as the numbers of dependents were '6'. Reliance was placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.
 - (iii) The appropriate multiplier at the age of 41 was '14' as against '13' taken by the Claims Tribunal. (*Per: Sarla Verma*).
7. The Appeal must succeed on all the three grounds:-

8. This Court in *Rakhi v. Satish Kumar & Ors*, MAC APP.390/2011 decided on 16.07.2012 reviewed the law on the subject and referred to the judgment of this Court in *Smt. Dhaneshwari Devi & Anr. v. Tejeshwar Singh & Ors.*, MAC APP. No.997/2011 decided on 07.03.2012, which relied on the judgments in *National Insurance Co. Ltd. v. Pooja & Ors., II*, (2007) ACJ 1051; *Om Kumari & Ors. v. Shish Pal & Ors*, 140 (2007) DLT 62; *Narinder Bishal & Anr. v. Rambir Singh & Ors.*, MAC APP. 1007-08/2006, decided on 20.02.2008; and *New India Assurance Co. Ltd. v. Vijay Singh* MAC APP. 280/2008 decided on 09.05.2008. The Division Bench judgments of this Court in *Delhi Transport Corporation and Anr. v. Kumari Lalita* 22 (1982) DLT 170 and *Rattan Lal Mehta v. Rajinder Kapoor & Anr. II* (1996) ACC 1 and the Supreme Court judgments 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; *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559; and *Reshma Kumari v. Madan Mohan* (2009) 13 SCC 422 and held that even in the absence of any future prospects the victims/legal representatives would be entitled to an increase of 30% in the income.
9. This Court in Para 19 of the report in *Rakhi v. Satish Kumar & Ors*, MAC APP.390/2011 decided on 16.07.2012 referred to

Para 14 of the report of the Supreme Court in *Santosh Devi* (*supra*), which 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."

10. Thus, the Appellants are entitled to an increase of 30% towards inflation in this case as the deceased who was working as an Electrician was a self-employed person.
11. In *Sarla Verma (supra)* it was held that where the number of dependents are 4 to 6, the deduction towards the personal and living expenses would be one-fourth and in the age group of 41-45, the appropriate multiplier would be '14'. Applying the

same, the loss of dependency comes to ₹5,73,300/- (3500/- + 30% x 3/4 x 12 x 14).

12. The compensation of ₹20,000/- awarded towards pain and suffering in case of death is treated as compensation towards loss of love and affection. I further make a provision of ₹5,000/- each towards loss of consortium, loss to estate and funeral expenses. The overall compensation thus comes to ₹6,08,300/-.
13. The compensation is thus enhanced from ₹3,96,000/- to ₹6,08,300/-.
14. The enhanced compensation of ₹2,12,300/- shall carry interest @ 7.5 % per annum from the date of filing of the Petition till the date of award and then from the date of filing of the Appeal till the date of payment as the Appeal was filed after a delay of 229 days which was condoned by order of this Court dated 16.01.2008.
15. Respondent No.2 the National Insurance Company Limited is directed to deposit the enhanced compensation along with interest with UCO Bank, Delhi High Court, New Delhi within six weeks.
16. On deposit, 10% of the enhanced compensation along with proportionate interest shall be payable to each of the Appellants No.2 to 5; 20% of the enhanced compensation along with

proportionate interest shall be payable to Appellant No.6. Rest 40% of the enhanced compensation along with proportionate interest shall be payable to Appellant No.1, who is the deceased's widow.

17. The Appeal is allowed in above terms.
18. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 17, 2012
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