

\$~7

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

Date of decision: 16th August, 2012

+ **MAC. APP. No.437/2004**

SRIKANT SHARMA & ORS. Appellants

Through: Mr.Peeyush Sharma, Advocate

Versus

SURENDER KUMAR & ORS. Respondents

Through: Ms.Manjusha Wadhwa, Advocate

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 ₹4,07,500/- awarded in favour of the Appellant for the death of Mr. Rakesh Sharma a bachelor who died in a motor vehicle accident which occurred on 04.11.1997.
2. During enquiry before the Motor Accident Claims Tribunal (the Claims Tribunal) it was claimed that the deceased was working as Manager (Operation) with M/s Auto Transport, New Delhi w.e.f. 01.10.1997 and was getting a salary of ₹13,000/- per month.
3. The Claims Tribunal declined to believe that the deceased was getting a salary of ₹13,000/-. On the other hand, it took his salary as ₹5,000/- per month, added 50% towards future prospects, adopted a multiplier of 13 (as per the age of the parents) and deducted 2/3rd towards personal and living expenses to compute the loss of dependency as ₹3,90,000/-. The

Claims Tribunal further awarded a sum of ₹17,500/- towards non-pecuniary damages and thus granted a total compensation of ₹4,07,500/-.

4. The following contentions are raised on behalf of the Appellants.
 - (i) The Claims Tribunal erred in disbelieving the deceased's salary as ₹13,000/- per month.
 - (ii) The appropriate multiplier should have been adopted as per the age of deceased's mother which at the age of 45 should have been '14' instead of '13'.
5. On the other hand, it is urged by the learned counsel for the Respondent/Insurance Company that in case of a bachelor the compensation awarded is just and reasonable and it does not call for any interference.
6. The Claims Tribunal disbelieved the deceased's salary to be ₹13,000/- per month mainly on the ground that no document except the offer of appointment was produced by PW-1 Rohit Khanna partner of M/s Auto Transport. At the same time, the Claims Tribunal believed the salary of another employee Gurpreet Singh who was injured in this very accident and was travelling with the deceased as ₹5100/-. The Claims Tribunal opined that Gurpreet Singh was a better qualified person than the deceased and, therefore, it was not plausible that deceased would be getting a salary of ₹13,000/- per month. The reasoning of the Claims Tribunal is extracted hereunder:-

“15. On the question of quantum of compensation, DW-2 Manmohan Sharma deposed that his deceased son Rakesh Sharma was working as an Operation Manager with M/s Auto Transport Kapashera Border New Delhi w.e.f. 01.10.97 at a salary of ₹13,000/- per month. He stated that deceased was M.A.(Hisotry). He stated that the deceased was having good

health and he was a sportsman. In his cross-examination he has stated that his son was not income tax assessee and had no Bank Account. He deposed that his son was paying him ₹5000/- or ₹5500/- per month. He denied the suggestion that the deceased was neither employed nor earning any amount. PW-1 Rohit Kaithan partner of M/s Auto Transport deposed that the deceased Rakesh Sharma was working as an Operation Manager in their firm w.e.f. 01.10.97 at a salary of ₹13,000/- per month and there was possibility of the deceased being promoted as Chief Executive Office within a period of 5 years at a salary of ₹42,000/- per month. In his cross-examination he deposed that he does not know as to whether their firm is registered. He admitted that he has not brought the Employee Register, Salary Payment Register, Cash book and Ledger. He admitted that they have been deducting TDS from the salary of the eligible employee but does not remember if any TDS was deducted from the salary of deceased Rakesh Sharma. He denied the suggestion that the deceased was neither working nor they were paying any salary to him. Ex.PW-2/1 is copy of Certificate of passing All India Secondary School Examination by the deceased Rakesh Sharma showing his date of birth as 28.11.1978 and thus he would be aged about 25 years at the time of accident in question. Ex.PW-2/2 copy of Degree awarded to the deceased Rakesh Sharma in Bachelor of Arts (Honours Course) in the year 1994 from Delhi University in 3rd Division. EXP.PW-2/3 is a copy of his passing M.A.(History) examination in 2nd Division from Maharishi Dayanand Universit Ajmer on 06.05.1996. Ex. PW-1/1 is letter of offer issued by M/s Auto Transport to the deceased Rakesh Sharma dated 01.10.1997 offering him the post of operation Manager at a salary of ₹13,000/- per month w.e.f. 01.10.1997. The Ld. Counsel for respondent No. 3 argued that as per this document the deceased was appointed on 01.10.1997 and he died on 03.11.1997 but the partner of Auto Transport while appearing as PW-1 did not bring Employment Register, Employee register, Salary Payment Register, Cash Book or ledger and he has also not filed any document as to whether they have deducted any TDS from the salary of Rakesh Sharma. In the connected case the petitioner Gurpreet Singh was also appointed by his Firm as Management Trainee vide letter

Ex.PW-1/5 w.e.f. 27.06.1997 at a salary of ₹5,100/- per month. As per the photo copy of Certificate, the petitioner Gurpreet Singh has passed B.A. (Honours) Examination in April, 1994 from Gangadhar Meher College Sambalpur affiliated to Sambalpur University and he has also qualified to years full time Post Graduate Diploma in Business Management on 26.05.1997. On the face of it the petitioner Gurpreet Singh is better qualified than the deceased Rakesh Sharma. U/s 192 Income Tax Act, a firm is required to deduct income tax from the salary of its employees. He has also admitted in his cross-examination that they have been deducting TDS from the salary of eligible employees. If the salary of deceased was ₹13,000/- per month, he was liable for income tax and his employer should deducted income tax from his salary. They have also not filed copy of salary payment register and in the circumstances, I hold that the deceased would not have been earning more than ₹5000/- per month at the time of accident in question.”

7. I have before me the testimony of PW-1 Rohit Khanna. He was cross-examined at length on behalf of the Respondent/Insurance Company. It is true that PW-1 was not sure whether TDS from the deceased's salary was deducted or not yet it has to be seen that the deceased Rakesh Sharma died just after one month of his employment with M/s Auto Transport. Obviously, on an income of ₹13,000/- there would not be any deduction of tax at source in the relevant A.Y. 1998-99.
8. The deceased joined as Manager (Operation) whereas injured Gurpreet had joined only as a Management Trainee. PW-2 Manmohan Sharna, the deceased's father, testified that before joining M/s Auto Transport the deceased was employed with M/s Sheel International Limited and was getting a salary of ₹6,850/-. The salary certificate Mark A of M/s Sheel International was also placed on record. In the circumstances, there was no plausible reason to disbelieve the letter of offer Ex.PW-1/1 in pursuance of which the deceased joined as a Manager Operation with M/s

Auto Transport. The reasoning of the Claims Tribunal to compare the salary of Management Trainee with Manager (Operation) was also illogical. In the lengthy cross-examination PW-1 gave details of the deceased's qualification and experience. M/s Auto Transport is comparatively a large organization. In total, 250 employees were working with organization on contract basis in addition 16-17 regular employees. This fact was not challenged by the Respondent/Insurance Company in cross-examination. In the circumstances, I see no reason to believe the deceased's salary to be ₹13,000/- per month. The Claims Tribunal erred in taking the deceased's salary as ₹5,000/- per month.

9. As far as deceased's future prospects are concerned, he joined M/s Auto Transport just a month before he was getting a salary of ₹6,850/- from his previous employer M/s Sheel International Limited. It would be too early to say whether the deceased would have come up to the expectation of his employer; thus instead of an addition of 50% towards future prospects it would be appropriate to grant an addition of 30% only.
10. From the photocopy of ration card placed on record before the Claims Tribunal, it is proved that the deceased's mother was 40 years old in the year 1992. Thus, on the date of accident her age was 45 years. The appropriate multiplier in the circumstances would be '14' instead of '13' adopted by the Claims Tribunal.
11. The Claims Tribunal also erred in making a deduction of $\frac{2}{3}$ rd towards his personal expenses. It is now settled that in case of a bachelor the deduction towards personal expenses have to be 50%. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121). The loss of dependency thus comes to ₹11,10,200/- (13000x12-34,000(income tax) +30%x14x1/2). In addition, the Appellants are

entitled to a sum of ₹15,000/- towards loss of love and affection and ₹5,000/- each towards loss to estate and funeral expenses. The overall compensation comes to ₹11,35,200/-. Thus, there is an enhancement of ₹7,27,700/- in the compensation awarded which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.

12. The enhanced compensation shall be equally shared between the Appellants. This accident took place 15 years ago. 50% of the enhanced compensation shall be released to the Appellants on deposit and rest 50% shall be held in fixed deposit for a period of 2 years. If PAN Card is available with the Appellants, the same shall be provided to the Respondent/Insurance Company within four weeks through its counsel Ms.Manjusha Wadhwa.
13. The enhanced compensation of ₹7,27,700/- along with interest shall be deposited by the Respondent Insurance Company in the name of the Appellants in UCO Bank, Delhi High Court Branch within four weeks.
14. The Appeal is allowed in above terms.
15. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012

mr