

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

Reserved on: 27th April, 2012

Pronounced on: 11th May, 2012

+ **MAC APP. 142/2011**

M.S. SHERAWAT & ORS.

..... Appellants

Through:

Mr. Deepak Thukral, Advocate

Versus

ORIENTAL INSURANCE COMPANY LTD Respondent

Through: Mr. J.P.N. Shahi, Advocate for
the Respondent No.1 Insurance
Company

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appeal is for enhancement of compensation of ₹9,45,703/- awarded for the death of Smt. Santosh who died in an accident which occurred on 04.12.2006.
2. The deceased was a self employed person working as a stenotypist. As per the Income Tax Return for the A.Y. 2006-07, she returned an Income Tax of ₹2,12,000/-. Since her husband was also working, the Claims Tribunal following the Division Bench judgment of the Karnataka High Court in *A. Manavalagan v. A. Krishnamurthy & Ors.*, 2005 ACJ 1992 which was relied upon by this Court in *Keith Rowe v. Prashant*

Sagar & Ors., 2011 ACJ 1734 held that where the husband and wife are working and the other legal heirs were not dependent, the Claimants would be entitled to a compensation towards loss to estate only to the extent of 1/3rd of the deceased's income. The Claims Tribunal further made a deduction of 1/3rd towards the personal and living expenses to award an overall compensation of ₹9,45,703/-.

3. The following contentions are raised on behalf of the Appellants:
 - (i) The Claims Tribunal after applying *Keith Rowe (supra)* wrongly deducted 1/4th towards the personal and living expenses of the deceased.
 - (ii) The Claims Tribunal erred in taking just 1/3rd of the deceased's income as savings. Since she did not have any dependent; the savings would have been at least 2/3rd.
 - (iii) The Claims Tribunal erred in not granting any compensation for loss of gratuitous services rendered by the deceased in looking after her husband and the married children.
4. On the other hand, it is urged by the learned counsel for the Respondent Insurance Company that the compensation awarded is excessive. No deduction was made towards payment of Income Tax on the income of ₹2,12,000/-.

DEDUCTION OF 1/4th TOWARDS THE PERSONAL AND LIVING EXPENSES:

5. As far as the first contention is concerned, the learned counsel for the Appellants is right that there cannot be deduction of 1/4th towards the personal and living expenditure of the deceased because 2/3rd of the deceased's income has already been taken as her personal and living expenditure and 1/3rd is taken as the saving which ultimately comes in the hands of the legal representatives as loss to estate. No such deduction of 1/4th was made either in *A. Manavalagan(supra)* or in *Keith Rowe(supra)*. The Claims Tribunal erred in making a deduction of 1/4th towards the personal and living expenses of the deceased.
6. In *A. Manavalagan(supra)*, which was relied in *Keith Rowe(supra)*, the Karnataka and Delhi High Court had given detailed reasons as to why only 1/3rd of the deceased's income would be taken as loss to estate. In *A. Manavalagan(supra)*, it was held as under:

“(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of ‘loss of dependency’ may not arise. Each will be spending from his/her earning towards his living and personal

expenses. Even if both pool their income and spend from the common income pool, the position will be the same. In such a case the amount spent for personal and living expenses by each spouse from his/her income will be comparatively higher, that is three fourth of his/her income. Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be ₹2250/- per month or ₹27000/- per annum. By adopting the multiplier of 14, the loss to estate will be ₹3,78,000/-.

Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing the expenses. As stated in Burgess v. Florence Nightingale Hospital 1955(1) S.B. 349, 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income. In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say ₹1,000/- per month or ₹12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is ₹3,000/- per month or ₹36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 = 1,68,000/-$ and loss to estate would be $36000 \times$

14 = 5,04,000/-. In all ₹6,72,000/- will be the compensation.

7. In my view, there are no substantial reasons to deviate from the deduction of 2/3rd made towards the personal and living expenditure in case of the husband, wife and non-dependent children were staying together.
8. It is urged by the learned counsel for the Appellants that although the deceased was employed as a steno typist, yet she was also rendering gratuitous services to all the Appellants before and after the working hours and, thus the Appellants are entitled to be compensated towards loss of gratuitous services rendered by the deceased. I have perused the affidavit Ex.PW1/1 produced by the First Appellant by way of evidence. He is completely silent that the deceased was rendering any household services. There is no gainsaying that if there is loss on account of gratuitous services rendered by a home maker who is also working, the legal representatives are entitled to be adequately compensated for the loss of such services. However, in the absence of any such evidence, it would be difficult to hold that the deceased Santosh was rendering any household services. In some of the houses, the working women do render domestic services while in others, they employ servants/maids to carry out day to day work at home. In the absence of any evidence, I am not inclined to award any compensation towards

the claim of gratuitous services which has been raised for the first time in the Appeal.

9. In *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, it was held that the starting point for calculation of loss of dependency is the actual income less Income Tax. Thus, the Income Tax payable was to be deducted from the deceased's income. Although, no Cross-Appeal or Cross-Objections have been filed by the Respondent Insurance Company, yet under Order XLI Rule 22 the Respondent can resist the Appeal without filing the Cross-Objections and challenge the judgment on other grounds. In *Jayakodi & Ors. v. Branch Manager, NIC & Anr.*, Civil Appeal No.401/2008 (arising out of SLP (Civil) No.13746/2004 decided on 11.01.2008), the Supreme Court held as under:

“5 When an appeal is filed by claimants claiming enhancement, the appellate court will calculate the just compensation, in accordance with law. If the amount so calculated is in excess of what is awarded, the difference is awarded as additional compensation. If the amount calculated is found to be less than or equal to the amount awarded by the court below, then the amount awarded by the court below is maintained. But there cannot be any objection for recalculation of compensation under various heads in accordance with law. So long as the total amount awarded is not less than what is awarded by the court below, there cannot be any objection if the amount is reduced under any particular head.”

10. In view of the discussion above, the loss of dependency comes to ₹ 11,15,963/- (₹ 2,12,000/- - 13,900/- (Income Tax) + 30%

X 1/3 X 13. On adding the notional sum of ₹50,000/- awarded (by the Claims Tribunal) towards loss of consortium, the overall compensation comes to ₹11,65,963/-.

11. The compensation is thus enhanced by ₹2,20,260/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its deposit in this Court.
12. The Respondent Insurance Company is directed to deposit the enhanced amount along with interest in the name of the First Appellant in UCO Bank, Delhi High Court Branch within six weeks, which shall be held in Fixed Deposit for a period of two years. The enhanced amount and the interest shall enure for the benefit of the First Appellant.
13. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 11, 2012
pst