

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

Date of decision: 15th October, 2012

+ **MAC. APP. 179/2012**

SMT. PRAMILA DEVI & ORS. Appellants
Through: Mrs. Manjeet Chawla, Adv.

versus

AJAY KUMAR & ORS. Respondents
Through: Mr. Harsh Vardhan, 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 the legal representatives of deceased Jagan Nath Singh seeks enhancement of compensation of ₹15,52,568/- awarded for his death who died in a motor vehicle accident which occurred on 18.12.2010.
2. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.
3. The deceased Jagan Nath Singh was aged 58 years and working as a Head Constable in Delhi Police. At the time of the accident he was getting a gross salary of ₹28,204/- per month. He was survived by his widow, two sons aged 30 years and 28 years and one married daughter. The Claims Tribunal while dealing with the multiplicand and multiplier held as under:-

“9 It has come on the record that the deceased was employed as Head Constable with Delhi Police and was commanding an income of Rs.28,204/- per month. In the salary slip for the month of December, 2010, Ex.PW1/1, placed on record by the petitioners, it is shown that there were deductions of Rs.11,000/- as the deceased was contributing that much amount towards his GPF, which deduction appears to be voluntary as according to the government policy, the GPF @ 10% only according to the Basic pay, are to be deducted from the monthly salary. Accordingly, it is presumed that an amount of Rs.1,083/-, out of basic pay of Rs.10,830/-, must have been contributing by the deceased from his salary towards GPF, as for the purpose of calculating dependency benefits, his income to the above extent only is to be reduced. As per the salary slip placed on record, his net income was Rs.17,074/- and on being added sum of Rs.9,917/-, (difference of the GPF amount after deducting Rs.1,083/- which the deceased was contributing), the net income of the deceased comes to Rs.26,991/-. Since, the deceased was more than 50 years of age and was a government employee, no benefit of future prospects is to be imparted in view of the ruling of Hon’ble Apex Court in case titled, Sarla Verma Versus DTC, passed on 15.4.2009 in SLP No.3483/2008.

Deductions

Though, the petitioners have pleaded that all of them were dependent upon the deceased, yet no material has been placed on record to show that except the widow, the petitioner No.1, how the rest of the petitioners were dependent on deceased Jagan Nath Singh. The sons of the deceased, namely, Sudhir Singh and Raju Singh, petitioner Nos.2 and 3, have been shown as aged 30 years and 28 years respectively. Though, nothing has come on record to establish the factum of their commanding any income, yet being major and probably having their respective families, they cannot be termed dependent upon the deceased. Similarly, the petitioner No.4, i.e., daughter of deceased, namely, Savtia Kumari is married, having her own family and hence, cannot be termed strictly dependent on the deceased for her survival, though she may be receiving customary help out of social customs from time to time. In such circumstances, only the widow is considered as dependent upon deceased Jagan Nath Singh and accordingly, in view of the judgment of Sarla Verma (supra), dependency @

50% is calculated. To get the actual dependency of the widow of the deceased, the following formula is adopted :

26,991 divided by 2 = 13,495.50

26,991 – 13,495.50 = Rs.13,495.50

rounded off to Rs.13,496/-

For calculating the yearly dependency of the LRs of the deceased, the amount is to be multiplied with 12 and therefore, the yearly dependency comes to Rs.13,496 X 12 = Rs.1,61,952/-.

Thus, the actual yearly dependency of the petitioners is assessed as Rs.1,61,952/- which the deceased would have contributed to the family, had he remained alive.”

4. The Claims Tribunal applied the multiplier of 9 to compute the loss of dependency and awarded a sum of ₹ 14,57,568/-. It further awarded a compensation of ₹95,000/- towards non pecuniary damages.
5. It is urged by the learned counsel for the Appellants that Appellants No.2 and 3 were residing with the deceased. The Claims Tribunal therefore, should have considered them to be dependent on the deceased. Consequently, deduction towards personal and living expenses should have been made one-third instead of one-half. In the alternative, it is urged that as the deceased was not going to spend 50% of his income towards his personal and living expenses and, therefore, one-third of the deceased's income should have been awarded as loss to estate. Reliance is placed on *Keith Rowe v. Prashant Sagar & Ors. 2011 ACJ 1734*.
6. I have before me the Trial Court Record. In the Affidavit, age of the elder son was given as 30 years. In the cross-examination, his age was given as 32 years. The Appellants tried to conceal the fact that Appellant No.4 Savita Kumari was married. Her husband's name was not disclosed in the Claim Petition and her address was mentioned as that of

the deceased. In cross-examination, Smt. Pramila Devi (PW-1) the deceased's widow admitted that her daughter was married. No evidence was produced with regard to qualification and the work undertaken by her two sons, aged 32 years and 28 years. In the circumstances, the Claims Tribunal rightly held that the two major sons were not financially dependent on the deceased.

7. There is possibility that when a deceased has high or very high income, the expenditure towards the deceased's living expenses and towards expenses incidental to employment may not be very high. In such circumstances, it is the duty of the Claimants to bring in evidence as to the amount spent by the deceased on himself, the amount spent on the dependents and the savings made by the deceased which may form part of the estate. Although, *Keith Rowe* relied upon by the learned counsel for the Appellants is not attracted to the facts of the present case as the said case related to the death of a working wife wherein the husband was granted compensation on account of loss to estate. But, at the same time, there can be cases where there maybe savings and a larger sum instead of a nominal sum might be payable towards the loss to estate. In the instant case, no evidence was produced by the Appellants about the expenditure. In fact, out of the total salary of ₹28,204/- a sum of ₹2302/- was being paid to the deceased towards transport allowance, ₹ 60/- as washing allowance, ₹120/- as metro pass allowance and another sum of ₹60/- as conveyance allowance, which were personal to the deceased and incidental to his employment. These were to be deducted while computing the loss of dependency. Although, deduction towards GPF was not liable to be deducted while computing the loss of dependency, yet income tax payable on the income was liable to be deducted. The loss

of dependency comes to ₹ 13,18,297/- ($28,204/- - 2560/- = 25,644/- \times 12 = 3,07,728/- - 14,773/-$ (income tax) $\times 1/2 \times 9$).

8. Thus, the loss of dependency in fact comes to ₹13,18,297/- instead of ₹ 14,57,568/- awarded by the Claims Tribunal.
9. Thus, even if, a nominal sum of ₹10,000/- is treated towards loss to estate and another sum of ₹10,000/- as loss of consortium, the compensation awarded is a little more than the compensation which is actually payable.
10. The Appeal, therefore, has to fail; the same is accordingly dismissed.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 15, 2012

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