

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

Reserved on: 13th April, 2012

Pronounced on: 31st May, 2012

+ **MAC.APP. 908/2011**

ORIENTAL INSURANCE CO LTD Appellant

Through: Ms. Manjusha Wadhwa,
Advocate

versus

HARI OM GOEL & ORS Respondents

Through: Ms. Faizal Shakil, Advocate
Mr. Sanjiv Kalra, Advocate for
the Respondents No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Oriental Insurance Company Limited impugns a judgment dated 12.07.2011 whereby several Claim Petitions including Suit No.01/06/2011 (out of which the present Appeal has arisen) were decided. A compensation of ₹8,14,048/- was awarded for the death of deceased Shashi Bala who died in a motor accident which occurred on 11.05.2006.
2. Respondents No.1 to 4's case before the Claims Tribunal was that on 1.05.2006 at about 5:00 A.M. the deceased Shashi Bala along with other relations was travelling in a Toyota Qualis

No.HR-55D-0654. The vehicle (Toyota Qualis) was being driven in a rash and negligent manner by Respondent No.5. The vehicle went out of control and fell in a deep trench resulting into injuries to the occupants of the Toyota Qualis. In case of Shashi Bala, the injuries proved fatal.

3. The Motor Accident Claims Tribunal (the Claims Tribunal) reached the conclusion that the accident was caused on account of rash and negligent driving of the Qualis by the Fifth Respondent.
4. On the basis of the Income Tax Returns (ITRs), the Claims Tribunal held that the deceased was aged 50 years, she was a self employed and was having an annual income of ₹70,365/-. The Claims Tribunal made an addition of 50% on account of future prospects; deducted one-third towards the personal and living expenses and awarded a sum of ₹7,74,048/- towards the loss of dependency; added ₹25,000/- towards loss to estate and consortium and ₹15,000/- towards funeral expenses to compute the overall compensation of ₹8,14,048/-.
5. Following contentions are raised on behalf of the Appellant:-
 - (i) The negligent driving on the part of Fifth Respondent was not established as Mahesh Kumar, one of the occupants of Qualis got registered a DD entry No.7 on 11.05.2006 at about 5:30 P.M. wherein he did not attribute any negligence on the part of Fifth Respondent (the Qualis

driver). The Claim Petition filed with the allegation is an afterthought.

- (ii) Respondents No.1 to 4 were not financially dependent on the deceased and thus, no compensation could have been awarded on account of loss of dependency.

- 6. On the other hand, it is urged by the learned counsel for Respondents No.1 to 4 that the compensation awarded is very conservative and does not call for any interference.

NEGLIGENCE:-

- 7. On the issue of negligence, the Claims Tribunal observed as under:-

“9. In support of the claim the petitioner, husband of the deceased Sh. Hari Om Goel examined himself as PW1. He tender his examination in chief by way of affidavit stating therein that on 11.05.2006, at about 5 a.m., Smt. Shashi Bala (since deceased) was travelling in the car (make Toyota Qualis) bearing registration no.HR-55D-0654, alongwith her relatives and was going to Haridwar from Delhi. He further stated that the aforesaid vehicle was being driven in a rash and negligent manner by its driver, respondent no.1. He also stated that as the aforesaid vehicle was passing through “uncha Pul”, kankhal, due to the rash and negligent driving of R-1 the same was fell into a deep trench. He further stated that a police complaint pertaining to the aforesaid accident stands registered with the Police Station, Kankhal, Uttaranchal, vide General Diary (Roznamch Aam) no.560513/2006 dated 11.05.2006, same is Ex.PW1/1. He further stated that due to fatal

injuries suffered in the abovesaid road accident the deceased was (sic) expired and her post mortem was conducted by Dr.S.Agarwal at PHC, Jwalapur, Haridwar, her post mortem report is Ex.PW1/2 and death certificate is Ex.PW1/3. PW3 Dr. Suresh Aggarwal, S/o Justice B.D. Aggarwal, CMO office, Haridwar deposed on oath that he has seen the photocopies of postmortem report of deceased Smt. Shashi Bala, mark A, same is in his handwriting.”

8. PW-2 Mahesh and PW-3 Smt. Raj Bala also corroborated PW-1's testimony on negligence.
9. I have perused DD No.7 dated 11.05.2006 recorded in Police Station Kankhal, Haridwar. Even if, the same is taken into consideration, it nowhere absolves the Fifth Respondent of his negligence. What has been stated in the DD entry is that the Qualis being driven by the Fifth Respondent reached near *Uncha Pul*, Kankhal. Another vehicle came from the opposite direction upon which the offending vehicle went off the road and capsized. The DD entry on which the Appellant relies also clearly shows that the Fifth Respondent was not in control of the Qualis and that is why on seeing the vehicle coming from the opposite direction it went off the road and fell in a trench.
10. PW-1, 2 and 3's testimonies could not be discredited in cross-examination, simply because Mahesh Kumar, the deceased's brother did not want any criminal action against the Qualis's driver, did not mean that there was no negligence on his part. The manner of the accident speaks volumes of Fifth

Respondent's negligence, which is duly corroborated from PW-1, PW-2 and PW-3's testimony. The contention raised on behalf of the Appellant Insurance Company that negligence on the part of driver is not proved, must be rejected.

COMPENSATION:-

11. Deceased Shashi Bala was a self employed person. She was an income tax assessee and had returned an income of ₹87,962/-, 70,365/- and 70,365/- during the assessment years 2003-04, 2004-05 and 2005-06 respectively. Her date of birth as per the ITR was 07.05.1956. Thus, she had just crossed 50 years.
12. During inquiry before the Claims Tribunal, it was proved that Respondent No.1 was the deceased's husband, Respondents No.2 and 3 were married sons and Respondent No.4 was the deceased's married daughter. There is no evidence that Respondents No.1 to 4 were financially dependent on the deceased. In such cases, compensation on account of loss of financial dependency cannot be granted, rather compensation towards loss to estate can be granted. The matter of awarding loss to estate in a case where both husband and wife were working came up for consideration before the Division Bench of Karnataka High Court in *A.Manavalagan v. A.Krishnamurthy & Ors.*, 2005 ACJ 1992. Hon'ble Mr. Justice R.V. Raveendran, who authored the judgment (as His Lordship then was) emphasized that the Tribunals do not have unbridled freedom to

render awards as per their individual notions of what is 'just'. The hallmarks of justness, are reasonableness, fairness, consistency, uniformity and equitableness and those can be achieved only by following the settled principles evolved by Courts relating to the determination of compensation, in the absence of any statutory guidelines. His Lordship referred to *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1, where it was held as under:-

"12.....Referring to Sections 1 and 2 of the Fatal Accidents Act (Sections 1-A and 2 after 1951 amendment to the said Act), the Supreme Court pointed out the difference between damages recoverable under the said two Sections. It was held that while under Section 1 (new Section 1-A) damages are recoverable for the benefit of the persons mentioned therein, under Section 2, compensation goes to the benefit of the estate; whereas under Section 1, damages are payable in respect of loss sustained by the persons mentioned therein, under Section 2 damages can be claimed, inter alia, for loss of expectation of life and loss to the estate. The Supreme Court held that persons who claim benefit under Sections 1 and 2 need not be the same as the claims under the said two Sections are based upon different causes of action. The supreme Court held:-

"The principle in its application to the Indian Act has been clearly and succinctly stated by a Division Bench of the Lahore High Court in Secretary of State v. Gokal Chand AIR 1925 Lahore 636. In that case, Sri Shadi Lal C.J., observed thus:

"The law contemplates two sorts of damages: the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is

the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered from part of the assets of the estate.

An illustration may clarify the position X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependants (we will ignore the other expenditure incurred by him). $X - Y$, i.e., Z is the amount he saves every year. The capitalised value of the income spent on the dependants, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation under Section 1, representing the amount that the deceased would have spent on them, if alive, to that extent there should be deduction in their claim under Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently, if under Section 1 they got capitalised value of Y, under Section 2 they could get only the capitalised value of Z, for the capitalised value of $Y + Z$, i.e., X, would be the capitalised value of his entire income."

"The rights of action under Sections 1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the Sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not

be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of personal loss under Section 1 of the Act, the portion shall be excluded in giving compensation under Section 2 and vice versa."

13. The Karnataka High Court referred to the decision of the Supreme Court in *Madhya Pradesh State Road Transport Corporation v. Sudharak* 1977 ACJ 290, where the husband claimed compensation in regard to death of his wife, who was employed on monthly salary of ₹200/- to ₹250/-. The Karnataka High Court extracted the report in *Sudhakar (supra)* as under:-

"18. We find it difficult to agree that only half of that amount would have been sufficient for her monthly expenses till she retired from the service, so that the remaining half may be taken as the measure of her husband's monthly loss. It is not impossible that she would have contributed half of her salary to the household, but then it is reasonable to suppose that the husband who was employed at a slightly higher salary would have contributed his share to the common pool which would have been utilised for the lodging and boarding of both of them. We do not therefore think it is correct to assume that the husband's loss amounted to half the monthly salary the deceased was likely to draw until she retired. If on an average she contributed Rs.100/- every month to the common pool, then his loss would be roughly not more than Rs.50/-per month....."

14. In Para 19 of the report in *A. Manavalagan (supra)*, the Division Bench of the Karnataka High Court laid down the principles for award of compensation which are extracted

hereunder:-

“19. We may summarise the principles enunciated, thus:-

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, Learned Claims Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by (sic. Claimants who are) the dependant, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional

amount is awarded towards loss of expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants on the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased. A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as the multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

20. The following illustrations with reference to the case of a deceased who was aged 40 years with a monthly income of Rs. 9000/- will bring out the difference between cases where claimants are dependents and cases where claimants are not dependents.

(i) If the family of the deceased consists of a dependant wife and child, normally one-third will be deducted towards the personal and living expenses of the deceased. The balance of Rs. 6000/- per month (or Rs. 72000/- per annum) will be treated as contribution to the dependent family. The loss of dependency will be arrived by applying a multiplier of 14. The loss of dependency will be Rs. 10,08,000/- plus Rs. 10,000/- under the head of loss to Estate.

(ii) *If the family of the deceased was larger, say consisting of dependent parents, wife and two children, necessarily the deceased would spend more on his family and the deduction towards personal and living expenses of the deceased will shrink to one-fifth instead of one-third (Note: In Gulam Khader v. United India Insurance Co., Ltd., - 2001 ACJ 163 (Karnataka) details of this illustration have been given). Therefore the deduction toward personal and living expense would be Rs. 1800/- per month (one-fifth of Rs. 9000/-) and contribution to the family would be Rs. 7200/- per month or Rs. 86,400/- per annum. Thus loss of dependency will be Rs. 12,09,600/- (by applying the multiplier of 14). The award under the head of loss to estate would be Rs. 10000/-.*

(iii) *If the deceased was a bachelor with dependent parents aged 65 and 60 years, normally 50% will be deducted for personal and living expenses of the deceased. This is because a bachelor will be more care free as he had not yet acquired a wife or child and, therefore, would tend to spend more on himself. There was also a possibility of the bachelor getting married in which event, the contribution to parents will get reduced. Therefore, the contribution to the family (parents) will be Rs. 4500/- per month or Rs. 54000/- per annum. As the multiplier will be 10 with reference to age of the mother, the loss of dependency will be Rs. 5,40,000/-. Loss to Estate would be a conventional sum of Rs. 10,000/-.*

Note: The above three illustrations relate to cases where the claimants are dependants. The said illustration demonstrate that even though the income of the deceased and age of the deceased are the same, the 'loss of dependency' will vary, having regard to the number of dependants, age of the dependants and nature of dependency. The ensuing illustrations relate to cases where the legal heirs of the deceased are not dependants.

(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 Rs. 2250/- per month or Rs. 27000/- per annum. By adopting the multiplier of 14, the loss to estate will be Rs. 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) Q.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 Rs. 1,000/- per month or Rs. 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 Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 = 168,000/-$ and loss to estate would be $36000 \times 14 = 504,000/-$. In all Rs. 6,72,000/- will be the compensation."

15. Thus, there is force in the contention raised on behalf of the Insurance Company that Respondents No.1 to 4 were not entitled to any compensation on account of loss of financial dependency. Yet, in view of the judgment in *A. Manavalagan (supra)* which was followed by the judgment of this Court in *Keith Rowe v. Prashant Sagar & Ors.* 2011 ACJ 1734, the Claimants are entitled to compensation on account of loss to estate to the extent of one-third of the deceased's income.
16. The next question that falls for consideration is whether the Claimants were entitled to increase on account of future prospects.
17. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176 and *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, addition on account of future prospects was made because there was evidence that the deceased's income was going to increase in due course.
18. Following *Sarla Dixit (supra)* and *Susamma Thomas (supra)* in *Bijoy Kumar Dugar v. Bidyadhar Dutta & Ors.*, AIR 2006 SC 1255 the Supreme Court laid down that increase on account of future prospects must be given where there is evidence with regard to the same.

19. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the Supreme Court laid down that usually where the deceased is a self employed person having fixed income, increase towards the future prospects should not be given. This was not laid down as a proposition of law that under no circumstances future prospects would be granted in case of a self employed person. While relying on *Sarla Verma (supra)* this Court in *Santosh Khandelwal & Ors v. Abbas & Ors.*, MAC.APP. 31/2010 decided on 16.03.2012, granted addition on account of future prospects in case of a self employed person on the basis of the specific evidence produced by the Claimants with regard to the consistent increase in the income.
20. In the instant case, not only the deceased had crossed 50 years of age, her income in the assessment year 2003-04 was ₹87,962/- which decreased to ₹70,365/- in the two subsequent assessment years. Thus, it was a case where the Claims Tribunal ought not to have made any addition on account of future prospects.
21. Since the deceased was just a few days more than 50 years, the appropriate multiplier as per *Sarla Verma (supra)* would be '13'. Following *A. Manavalagan (supra)* and *Keith Rowe (supra)*, the compensation towards the loss to estate comes to ₹3,04,915/- (70,365/- x 1/3 x 13).

22. It is urged by the learned counsel for the Respondents No.1 to 4 (the Claimants) that the Respondents were deprived of the gratuitous services rendered by the deceased in looking after the household work.
23. In Para 7 of the Affidavit filed by way of evidence, the first Respondent deposed that the deceased used to take care of the household affairs and was also contributing towards the family income by running the business. The fact that the deceased was looking after the household was not disputed in cross-examination, yet the extent of the time devoted by the deceased was not stated by PW-1.
24. In case of *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, MAC.APP. 590/2011, decided on 30th January, 2012 this Court laid down the principles for assessment of compensation in case of death of a housewife. Since the deceased was in fulltime business and in the absence of any evidence as to the extent of contribution made to the household work, I would grant a lumpsum compensation of ₹1,00,000/- towards the loss of gratuitous services rendered by the deceased.
25. In addition, the Claimants would be entitled to a sum of ₹25,000/- towards loss of love and affection, ₹10,000/- towards loss of consortium and ₹15,000/- towards funeral expenses (as awarded by the Claims Tribunal). The overall compensation is

re-computed as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	₹7,74,048/-	--
2.	Loss of Estate & Consortium	₹ 25,000/-	--
3.	Funeral & Other Expenses	₹ 15,000/-	₹ 15,000/-
4.	Loss of Love & Affection	--	₹ 25,000/-
5.	Loss of Consortium	--	₹ 10,000/-
6.	Loss to Estate	--	₹3,04,915/-
	Total	₹ 8,14,048/-	₹ 3,54,915/-

26. The compensation is thus reduced from ₹8,14,048/- to ₹3,54,915/- which shall carry interest @ 7.5% per annum as granted by the Claims Tribunal.
27. By order dated 16.11.2011 on deposit of 70% of the award amount along with interest with UCO Bank, Delhi High Court Branch, New Delhi, the execution of the award against the Appellant was stayed.
28. Out of the amount held payable to the Claimants, a sum of ₹50,000/- each along with proportionate interest shall be payable to the Respondents No.2 to 4. Rest of the amount along

with proportionate interest shall enure for the benefit of the first Respondent which shall be released to them immediately.

29. The excess amount along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
30. The statutory amount of ₹25,000/- shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MAY 31, 2012
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