

\$~42

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

Date of decision: 24th September, 2012

+ **MAC. APP. No.1061/2012**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. L.K. Tyagi, Advocate

Versus

RAM PRAKASH & ORS. Respondents
Through: None

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

J U D G M E N T

C.M. APPL No.16795/2012(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 30.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹17,50,000/- was awarded for the death of Manju @ Manju Devi aged 30 years who died in a motor vehicle accident which occurred on 07.08.2011.

2. It is urged by the learned counsel for the Appellant that the compensation awarded is exorbitant and excessive. It is contended that 1/3rd deduction ought to have been made towards personal and living expenses of the deceased.
3. This case is covered by the judgment of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors.*, 2012 ACJ 721. This Court noticed the following judgments of the Supreme Court:-
 - (i) *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176,
 - (ii) *National Insurance Company Limited v. Deepika & Ors.*, 2010 (4) ACJ 2221,
 - (iii) *Amar Singh Thukral v. Sandeep Chhatwal*, ILR (2004) 2 Del 1,
 - (iv) *Lata Wadhwa & Ors. v. State of Bihar & Ors.*, (2001) 8 SCC 197,
 - (v) *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC 1,
 - (vi) *A. Rajam v. M. Manikya Reddy & Anr.*, MANU/AP/0303/1988,
 - (vii) *Morris v. Rigby* (1966) 110 Sol Jo 834 and
 - (viii) *Regan v. Williamson* 1977 ACJ 331 (QBD England),

and laid down the principles for determination of loss of dependency on account of gratuitous services rendered by a housewife. Para 34 of the judgment in *Master Manmeet Singh* is extracted hereunder:-

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*
- (v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) There shall not be any deduction towards the personal and living expenses.*
- (viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*

(ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

4. The issue of deduction towards personal and living expenses was specifically dealt with by this Court in paras 24 to 33 in *Master Manmeet* which are extracted hereunder:

"24. The next question that falls for consideration is whether there should be any deduction towards the personal living expenses of the deceased (Home maker). While awarding damages there is balancing of the loss to the Claimants of the pecuniary benefits with the gain of the pecuniary advantages which comes to them by reason of death. In Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC 1, it was observed as under:-

".... The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."

25. *In A. Rajam v. M. Manikya Reddy & Anr., MANU/AP/0303/1988, the Hon'ble Mr. Justice M.J. Rao (as he then was) referred to a number of English decisions.*

26. *In Morris v. Rigby (1966) 110 Sol Jo 834, the husband who was a medical officer, earning £ 2,820 a year, claimed damages for the death of his wife. He had five children aged two to fifteen years. He got his wife's sister to come and take care of them and do the domestic duties, paying her a gross wage of £ 20 a week. The judge awarded £ 8,000 and the award was confirmed.*

27. *The Learned Judge further referred to Regan v. Williamson 1977 ACJ 331 (QBD England) where the housekeeper employed was a relative. There, the wife was 37 years when she died and she left behind her husband and four sons aged 13, 10, 7 and 2 years respectively. A relative came daily (except weekends) to provide meals and to look after the boys. She was paid £ 16 per week and it cost the Plaintiff further £ 6.50 per week for her food, journeys to and from her home and for national insurance stamp. The Plaintiff estimated that his wife's loss had cost him £ 10 per week to cloth and feed his children and himself. Watkins, J. held that though, according to precedents, £22.50 (£ 16+6.50) per week minus £ 10 per week, would be sufficient as justice required that the term 'services' should be widely construed. Watkins, J. observed:-*

“I am, with due respect to the other Judges to whom I have been referred, of the view that the word 'services' has been too narrowly construed. It should, at least, include an acknowledgement that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is a fact, at work. During some of those hours she may well give the children instructions on essential matters to do with their upbringing and, possibly, with such things as their home work. This sort of attention seems to be as much a service, and probably more valuable to them, than the other kinds of service conventionally so regarded.”

.. and hastened to add:- “am aware that there are good mothers and bad mothers. It so happens that I am concerned in the present case with a woman who was a good wife and mother”. On the basis, the figure for dependency was raised from £ 12.50 (£ 22.50 -10.0) per week to £ 20 per week and a further sum of £ 1.50 was added for the deceased's financial contribution to the home, had she eventually gone out to work again. A multiplier of 11 was applied as the Plaintiff was 43 years. The award under the Fatal Accidents Act, was £ 1238.

28. *Learned Judge further referred to Mehmet v. Perry 1978 ACJ 112 (QBD, England), wherein the husband had to look*

*after five children aged 14, 11, 7, 6 and 3 years respectively. The two youngest children suffered from a serious hereditary blood disease requiring medication and frequent visits to the hospital. Consequently, the husband had to give up his employment after his wife's death and devoted his full time to care for the family. Between September, 1973 when his wife was killed and the trial that was conducted in October, 1976, his net average loss of earnings were £ 1,500 a year. His future net loss would be at the rate of £ 2,000 a year. It was held by Brain Neill, QC (sitting as a deputy Judge) that, in view of the medical evidence concerning the health of the children his giving up of his job was proper and that damages should be assessed not at the cost of employing a housekeeper but by reference to the Plaintiff's loss of wages, since the loss of wages represented the cost of providing the services of a full time housekeeper in substitution for his wife. In addition, the children were entitled, on the basis of *Regan v. Williamson* 1977 ACJ 331 (QBD, England), to get £ 1,500 as part of their damages, a sum of £ 1,000 for the loss of 'personal attention' to them by a 'mother' which is distinct from her services as a housekeeper but, that sum must be kept within modest limits as the Plaintiff was at home all the time. The Plaintiff as a husband was also held to be entitled to some damages for his loss of the 'personal care and attention of the wife' but that sum should be quite small to avoid any overlap with the damages awarded for housekeeping services. The last two children require to support for 12 years, as per medical advice. A multiplier of 8 was adopted for the family as a unit and 12 for the Plaintiff and a sum of £ 19,000 was arrived at.*

29. While awarding compensation for loss of gratuitous services rendered by a homemaker the Claims Tribunals or the Court simply value the services. It goes without saying that the husband looks after the wife and some amount is definitely spent on her maintenance. But, whether that amount is liable to be deducted from the value of the gratuitous services rendered by her?

*30. As held in *Gobald Motor Service Ltd. and Helen C. Rebello* that while estimating damages, the pecuniary loss has to be arrived at by balancing on the one hand the loss to the*

Claimants of the future pecuniary benefits that would have accrued to him with the gain of the pecuniary advantages which comes to him from whatever sources by reason of the death.

31. In, Regan v. Williamson, the learned Judge found that the expenditure on the deceased housewife was £10 per week. While the value of gratuitous services rendered by her was £ 22.50 per week. The figure on dependency of £ 12.50 (£ 22.50 - £ 10.0) was taken as £21.50 per week. Thus, the amount spent on personal living expenditure was not really deducted in Regan v. Williamson.

32. Even on the basis of Gobald Motor Service Ltd. and Helen C. Rebello, the pecuniary advantages which the Claimant gets on account of accidental death is only liable to be deducted. The amount of money paid on account of death by the Life Insurance Corporation was held to be not deductible in Helen C. Rebello.

33. Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become receivable only on account of accidental death, in my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted."

5. An Appeal being SLP (C) No.19711/2012 filed against the above referred judgment as *ICICI Lombard General Insurance Company Limited v. Shiv Kumar & Ors.*, was dismissed by the Supreme Court by an order dated 24.07.2012.
6. The Claims Tribunal has strictly followed the principles as laid down in *Master Manmeet Singh*. The impugned judgment does not call for any interference.
7. The Appeal is dismissed *in limine*.

8. CM. APPL.16794/2012 which is for stay of execution of the impugned judgment is hereby dismissed.
9. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

SEPTEMBER 24, 2012
pst