

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

Date of decision: 10th December, 2012

+ **MAC. APP. 1166/2011**

SMT. ANITA RANI & ORS. Appellants
Through: Mr. O.P. Mannie, Adv.

versus

SH. DHARAMVIR & ORS. Respondents
Through Ms. Barkha Babbar, Adv. for UOI.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. Since Respondents No.2 and 3, owners of the offending vehicle are appearing and the finding on negligence has not been challenged, service of Respondent No.1 is dispensed with.
2. The Appeal is for enhancement of compensation of ₹6,27,820/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants for the death of Kapil Verma, a bachelor who died in a motor vehicle accident which occurred on 18.12.2008.
3. The finding on negligence has not been challenged by the Respondents, thus, the same has attained finality.
4. During inquiry before the Claims Tribunal it was claimed that the deceased Kapil Verma was in private service and was earning ₹8,000/- per month. In the absence of any cogent evidence with regard to

deceased's income, the Claims Tribunal took the minimum wages of a Matriculate as per his qualification, added 50% towards inflation, deducted one-half towards personal and living expenses (in case of a bachelor), applied the multiplier of 15 as per the age of the deceased's mother (40 years) to compute the loss of dependency as ₹5,57,820/-.

5. The Claims Tribunal further awarded a sum of ₹50,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
6. The following contentions are raised on behalf of the Appellants:-
 - (i) The deceased Kapil Verma left behind a widowed mother and younger unmarried sister as his dependents. In the circumstances, the deduction towards personal and living expenses should have been one-third instead of one-half taken by the Claims Tribunal.
 - (ii) It is urged that the Claims Tribunal although stated that the Appellants would be entitled to interest but, the rate of interest was not specified.
7. On the other hand, the learned counsel for Respondents No.2 and 3 urges that the Claims Tribunal made an addition of 50% towards future prospects. In the absence of any evidence with regard to future prospects, an addition of 50% should not have been made. On the other hand, an addition of 30% could have been given on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
8. It is further urged that the compensation of ₹50,000/- awarded towards loss of love and affection is on the higher side.

9. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 it was laid down that as a rule of thumb, there should be deduction of 50% towards personal and living expense in case of a bachelor as in due course a bachelor has to get married and raise his own family and dependency of parents is to diminish or to come to an end. At the same time, it was stated that where the bachelor had the responsibility of a widowed mother and younger siblings, deduction towards personal and living expenses should be one-third.
10. In the instant case, the deceased left behind widowed mother and an unmarried sister. Thus, the deduction towards personal and living expenses should have been one-third instead of one-half made by the Claims Tribunal.
11. The Claims Tribunal made an addition of 50% towards inflation.
12. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. Relevant portion of *Santosh Devi* is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in

the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

13. Thus, there should be an addition of 30% in the deceased's income to compute the loss of dependency.
14. In view of the foregoing discussion, the loss of dependency thus comes to ₹6,44,436/- (4131/- + 30% x 2/3 x 12 x 15).
15. The Claims Tribunal awarded a sum of ₹50,000/- towards loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.
16. The Appellants are further awarded a sum of ₹10,000/- each towards loss of estate and funeral expenses.
17. The overall compensation is thus comes to ₹6,89,436/- as against ₹6,27,820/- awarded by the Claims Tribunal.

18. The enhanced compensation of ₹61,616/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
19. The enhanced compensation along with interest shall be deposited with the Claims Tribunal within six weeks.
20. The enhanced compensation shall enure for the benefit of the First Appellant and shall be released to her on deposit.
21. The Appeal is allowed in above terms.
22. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 10, 2012

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