

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

Reserved on: 22nd November, 2012

Pronounced on: 19th February, 2013

+ **MAC.APP. 93/2012**

NEELAM SINGH & ORS. Appellants

Through: Mr. O.P. Gulabani, Advocate

versus

DOLPHIN INTERNATIONAL & ORS. Respondents

Through: Mr. Vishwanath Bahuguna, Adv. for R-1.
Mr. Abhishek Kumar Adv. with
Mr. Punit Vinay, Advocate for R-2.

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 ₹17,35,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellants (the Claimants) for the death of Sunil Kumar who died in a motor vehicle accident which occurred on 20.07.1997.
2. In the written statement filed by Respondent No.2 (the Oriental Insurance Company Limited) it disputed the liability to pay the compensation. On appreciation of evidence, the Claims Tribunal found that Respondent No.2 being insurer of the vehicle involved in the accident was liable to pay the compensation.
3. In the absence of any Appeal filed by Respondent No.2, the finding on liability as also the negligence of the driver of Respondent No.1 has attained finality.

4. The following contentions are raised on behalf of the Appellants:-
- (i) The deceased was a little more than 37 years. The multiplier of 15 adopted by the Claims Tribunal was on the lower side.
 - (ii) The deceased was getting an annual salary of ₹5,05,936/- as reflected in the salary certificate Ex.PW-1/B which was duly proved. The Claims Tribunal erred in computing the loss of dependency on the basis of the income as reflected in Form 16 (Ex.PW-1/G) for the previous year.
 - (iii) The deceased was a highly qualified person who was working as a General Manager with Dolphin International Ltd. He had good future prospects, the Claims Tribunal did not make any provision for the future prospects.
 - (iv) A sum of ₹5 lacs granted by Respondent No.1, the deceased's employer, was on account of the dues payable by the employer. The Claims Tribunal erred in deducting the said sum of ₹5 lacs.
5. On the other hand, learned counsel for Respondent No.2 Insurance Company submits that the compensation awarded is just and reasonable.

MULTIPLIER

6. During evidence, the deceased's date of birth was proved to be 01.01.1960. Thus, on the date of the accident, the deceased was aged about 37 years and 7 months. At the age of 37, the appropriate multiplier is 15 (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*). The Claims Tribunal rightly adopted the multiplier to compute the loss of dependency.

FUTURE PROSPECTS

7. It is proved on record that the deceased was a highly qualified person. He passed out his Postgraduate Diploma in Business Management from a prestigious institution in National Capital Region, that is, Institute of Management Technology, Ghaziabad. The deceased was working as a General Manager in Dolphin International Ltd.
8. In *Sarla Verma* it was laid down that any person in stable employment upto the age of 40 years will be entitled to an addition of 50% towards future prospects. There is no reason to deny the benefit of 50% towards future prospects in the instant case as well. Thus, I hold that the Appellants are entitled to an addition of 50% towards future prospects.

MULTIPLICANT

9. The Appellants placed on record a copy of Form 16 Ex.PW-1/G which showed that the deceased was paid a sum of ₹2,92,353/- for the period ending 31.03.1997. The Appellants further proved the salary certificate Ex.PW-1/B which showed the annual income of the deceased including all allowances to be ₹5,05,936/-. Although, the salary certificate was proved by the Appellant herself but nothing substantial was brought in her cross-examination to discard the authenticity of the salary certificate Ex.PW-1/B. Since, in the instant case the owner of the offending vehicle was the employer of the deceased. Kishan Kumar Dua, Vice President (Finance) of Dolphin International Ltd. filed his Affidavit Ex.R-1 and entered the witness box as RW-1. He admitted the correctness of the salary certificate Ex.PW-1/B. The genuineness thereof was not disputed by Respondent No.2 in cross-examination of RW-1. It is well settled that to compute the loss of dependency salary of the deceased at the time of his death is to be taken into consideration. The Claims Tribunal relied

upon Form 16 (Ex.PW-1/G) for the period of 31.03.1997, that is, four months before the date of death on the ground that it was a more authentic document. The whole approach followed by the Claims Tribunal was illegal as the salary certificate Ex.PW-1/B had not been disputed by Respondent No.2.

10. It has to be borne in mind that in late 1990s highly qualified MBAs were getting quantum jumps on year to year basis. Thus, simply because there was a substantial jump in the salary for the next year, the salary certificate Ex.PW-1/B should not have been rejected. Moreover, a perusal of the certificate Ex.PW-1/B shows that a sum of ₹50,736/- was paid towards reimbursement of petrol, ₹30,000/- towards salary of a driver, ₹9,000/- towards repair of the vehicles; ₹ 10,000/- for reimbursement of medical allowances; ₹6,000/- each towards reimbursement for purchase of books and magazine and telephone and contribution of ₹15,000/- by the employer to the Provident Fund were not shown in the Form 16 being non taxable. Thus, if all these allowances are added to the salary reflected in Form 16 (Ex.PW-1/G), the salary would be a little less than the salary of ₹5,05,936/- reflected in the salary certificate Ex.PW-1/B for the next year. Thus, there is no reason to reject the certificate Ex.PW-1/B.
11. It is urged by learned counsel for Respondent No.2 that reimbursement of petrol, driver's salary, reimbursement for books and magazines, telephone were personal to the deceased. Therefore, the same cannot be considered to compute the loss of dependency. I would not agree. It was the case of the parties that one car was kept at the disposal of the deceased by Respondent No.1 Company, the deceased's employer. Reimbursement of ₹50,736/- towards purchase of petrol indicates that the car was to be used by the deceased for himself as well as for the members

of his family. Similarly, reimbursement of books and magazine, telephone, entertainment, etc. etc. was for the benefit of the deceased employee as well as for his family. 50% of all these allowances can be expected to be spent by the employee on himself and 50% on the family. Thus, out of the gross pay of ₹5,05,936/- a sum of ₹50,736/- towards petrol, ₹9,000/- towards repair of car; ₹12,000/- towards entertainment; ₹30,000/- towards salary of driver; ₹6,000/- towards purchase of books/magazines and ₹6,000/- towards reimbursement of telephone can be said to be equally apportioned between the deceased on the one hand and all the members of his family on the other hand, instead of one-third which is to be taken in this case in respect of the rest of the salary as there were three dependents who survived the deceased.

12. The loss of dependency thus comes to ₹52,15,529/- (₹3,92,200/- - ₹1,29,800/- (income tax) x 2/3 + ₹56,868/- (50% of allowances i.e. of ₹1,13,736/-) + 50% (future prospects) x 15).
13. In addition, the Appellants would be entitled to a sum of ₹25,000/- towards loss of love and affection and ₹10,000/- each towards funeral expenses, loss of consortium and loss to estate.
14. The overall compensation comes to ₹52,70,529/-.

DEDUCTION OF ₹5 LACS AS EX GRATIA

15. The case of the Appellants is that a sum of ₹5 lacs was paid to them towards service benefit which was payable to the family. This sum was not paid on account of the accidental death of the deceased. In this connection, it would be appropriate to refer to the Affidavit Ex.R-1 of Kishan Kumar Dua, Vice President (Finance) of Respondent No.1. He testified that a sum of ₹ 5 lacs was paid to the Appellants along with other

benefits as settlement with Respondent No.1. He further deposed that another sum of ₹1 lac was paid by the Insurance Company on account of death of deceased Sunil Kumar. In cross examination, the witness deposed that sum of ₹ 1 lac was paid on account of damage to the insured vehicle. No question was put to RW-1 in cross-examination to suggest that sum of ₹ 5 lacs was paid only on account of accidental death.

16. Referring to *Helen C. Rebello (Mrs.) & Ors. v. Maharashtra State Road Transport Corporation and Anr.*, (1999) 1 SCC 90 learned counsel for the Appellant argues that even if the amount of ₹5 lacs was paid by Respondent No.1. (the deceased's employer) on account of the accidental death of Sunil Kumar, the amount would not be liable to be deducted as an employer may have given ex gratia payment to his deceased's employee's family even on account of natural death.
17. In *Helen C. Rebello* the question before the Supreme Court was whether the amount received under Life Insurance Policy was liable to be *deducted* on the principle of balancing the loss and gain. The Supreme Court referred to the Law of Torts by Fleming and differentiated between the amount received under the Life Insurance Policy and an Accident Insurance Policy. It was, thus held that the payment received under the Life Insurance Policy was not deductible whereas the payment received under the Personal Accident Insurance was deductible. The reason was that in case of payment received under the Accident Insurance Policy, the amount was receivable only on account of death in an accident and not otherwise, whereas in case of Life Insurance Policy, the amount was receivable irrespective of the death.
18. Similarly, in *Delhi Transport Corporation v. Meena Chaturvedi & Ors.* 122 (2005) DLT 75 (FB) a Full Bench of this Court relying on *Jahirabi &*

Ors. v. V.S. Siddalingappa & Ors., 2001 ACJ 1340 (Karnataka High Court); *Savitri Devi & Ors. v. Pala Ram & Ors. II* (2000) ACC 152; *Rajeshwari & Ors. v. Divisional Controller, Bangalore Transport, II* (1999) ACC 84; *Fulmati Bai & Ors. v. Pancham Singh & Ors., II* (1998) ACC 651; *Revben & Ors. v. Kantibhai Narttambhai Gohil & Anr.*, 1995 ACJ 548; *Prataprai Arjandas Dhameja v. Bhupatsing Gaggi*, 1982 ACJ 316; and *Arunaben v. Mehmoodbhai Imamali Kaji*, 1983 ACJ 409 pointed out that the benefits receivable by the Claimants irrespective of as to how the deceased died would not be deductible from the compensation payable under the Motor Vehicles Act.

19. No evidence was brought by Respondent Insurance Company that the sum of ₹ 5 lacs was paid by Respondent No.1 only on account of Sunil Kumar's (deceased) death in this accident. Thus, sum of ₹5 lacs is not liable to be deducted from the amount of compensation payable to the Appellants.
20. In view of the above, the compensation stands enhanced by ₹30,35,529/- (₹52,70,529/- -22,35,000/-) which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
21. Twenty five per cent of the compensation shall be payable to each of the Appellants No.2 and 3. Rest 50% shall enure for the benefit of the First Appellant.
22. Eighty per cent of the compensation awarded to the Appellants shall be held in fixed deposit in any nationalized bank for a period of three years. Rest shall be released to them on deposit.
23. The Appellants No.2 and 3 shall be entitled to premature release of the amount of their share if the money is needed by them for the purpose of their higher education or marriage.

24. Respondent Insurance Company is directed to deposit the enhanced compensation along with interest within six weeks with the Claims Tribunal.
25. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 19, 2013
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