

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

+ MAC APP.1192/2012

Judgement reserved on: 9th May, 2014

% Judgement pronounced on: 28th May, 2014

ROYAL SUNDRAM ALLIANCE INSURANCE CO. LTD.

..... Appellant

**Through: Ms.Suman Bagga, Adv.
versus**

VIMLA DEVI & ORS.

..... Respondents

**Through: Mr.G.K.Sachdeva, proxy
counsel for Mr.M.C.Premi,
Adv.**

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. In this case the insurance company has challenged the award dated 18th August, 2012 awarding compensation of Rs.6,74,904/- and 22nd September, 2012 awarding compensation of Rs.10,25,256/-vide this appeal.

2. An FIR no.100/2010 under Section 279/337/304-A IPC was registered against the driver of truck bearing no.DL 1M 2691. On 20th June, 2010, one Anil Kumar along with deceased Hans Raj

was strolling on pavement on leftside foot path of Delhi Cantt Fly over and thereafter they came down on the road due to a tree standing in the middle of the pavement when suddenly a truck bearing no. DL-1M-2691 being driven by its driver in a very high speed in a rash and negligent manner without blowing any horn, hit both of them from behind. Both of them were removed to Base Hospital, Delhi Cantt and from there they were transferred to DDU Hospital. Anil was discharged after treatment whereas Hans Raj was taken to Balaji Action Hospital, Paschim Vihar. He was declared as brought dead. The deceased was 21 years of age and was pursuing his graduation in Delhi University. The case of the legal heirs of the deceased is that he was working as a Helper in a school bus.

3. Counter claim has also been filed by the legal heirs of the deceased whereby they have claimed Rs.50,000/- on account of funeral expenses. Rs.10,000/- awarded towards treatment and claim enhancement in the compensation.

4. The learned Tribunal reached to the conclusion that accident was the result of rash and negligent driving by the driver of the

offending vehicle and that the deceased was 21 years of age and pursuing his graduation but since there was no evidence that he was working as a Helper on a school bus, his income was taken as per schedule of minimum wages of a unskilled worker and the loss of dependency was calculated. Subsequently, an application under Section 114 read with Order 47 of the Code of Civil Procedure was moved wherein it was pointed out that since the deceased was matriculate, the minimum wages ought to have been taken of a matriculate. His matriculation certificate Ex.PW1/E and diploma certificate Ex.PW1/C was proved on record. In view of these documents, the learned Tribunal reached to the conclusion that minimum wages ought to have been taken of a matriculate and accordingly, recalculated the loss of dependency and awarded a sum of Rs.10,25,256/-. Vide its earlier order dated 18th August, 2012, the tribunal had awarded a sum of Rs.6,74,904/-. The Tribunal has also fixed the liability to pay the compensation upon the insurance company.

5. The appellant has assailed this award on various grounds. The first ground is that the tribunal has erred in modifying the

earlier order dated 18th August, 2012 and there was an order dated 22nd September, 2012 is liable to be quashed. This contention of the appellant has no merit in it for the simple reason that the Tribunal is empowered to review its order if a Tribunal feels that there was an error apparent on the record which needed to be corrected. In its earlier order dated 18th August, 2012, the learned Tribunal had reached to the conclusion that the deceased was pursuing his graduation. This very fact shows that the deceased was a matriculate, yet while calculating loss of dependency, the minimum wages of matriculate was not used. Subsequently, when in the application of review, documents showing passing of matriculate and other relevant document were produced before the Tribunal, it was the duty of the Tribunal to correct the wrong. I find no reason to quash the impugned award dated 22nd September, 2012.

6. The next contention of the appellant is that the Tribunal has wrongly taken the multiplier as per the age of the deceased. Since the deceased was a bachelor of 21 years of age and he is survived by his parents, the multiplier ought to have been taken as per

average age of parents.

7. The contention of the appellant has force. It is a settled law that the multiplier has to be taken as per the age of the deceased or the survivor whichever is higher. In this case, the age of the survivor is higher and, therefore, multiplier has to be taken as per the age of the parents. The age of the parents was 55 years approximately. Therefore, in view of case of *Sarla Verma v. DTC 2009 ACJ 129* the multiplier of 9 ought to have used while calculating the loss of dependency.

8. It is also argued on behalf of the appellant that the Tribunal has wrongly awarded future prospects while he was not entitled to any future prospects in view of *Sarla Verma's* case (Supra). It is argued on behalf of the LRs of the deceased that the Tribunal has rightly awarded the future prospects, however, in view of the *Sarla Verma's* case (supra) it ought to have been 50% since the age of the deceased was below 40 years instead of 30% which the Tribunal has used.

9. I have given careful consideration to the findings of the apex court. The apex court in *Sarla Verma (supra)* has clearly laid down

the proposition for grant of the future prospects. It has categorised the categories of persons entitled for the future prospects. The relevant paragraphs are reproduced as under:-

“10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In *Susamma Thomas*, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs.1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs.2000/- as gross income before deducting the personal living expenses. The decision in *Susamma Thomas* was followed in *Sarla Dixit v. Balwant Yadav* [1996 (3) SCC 179], where the deceased was getting a gross salary of Rs.1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the

time he retired, his earning would have nearly doubled, say Rs.3000/-. This court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs.2200/- per month. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India* [2003 (3) SCC 148], as against the actual salary income of Rs.42,000/- per annum, (Rs.3500/- per month) at the time of accident, this court assumed the income as Rs.45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

“11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations

being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Re : Question (ii) - deduction for personal and living expenses.”

10. From the directions in *Sarla Verma Case (supra)* , it is apparent that only two categories of persons are not entitled to future prospects, one, where the deceased was self-employed and secondly, where the deceased was working on a fixed salary (without prospect of annual increment etc).

11. The Apex court has made a reference of *Sushma Thomas Case* wherein the future prospects were given to a deceased who had a ‘stable job’. In other referred cases also, the deceased were salaried persons. The careful reading of the findings of the Apex court clearly shows that it had intended to exclude only two categories i.e. where the deceased was self-employed or where he was working on a fixed salary with no provision of annual increment etc. By necessary implication, it can be concluded that

the Hon'ble Apex court has not intended to exclude the salaried persons who are not employed on a fixed salary. Thus, the Apex court had meant to include all those persons which are in employment but not on a fixed salary.

12. In the present case, the deceased was treated as a daily wager. The government revises the minimum wages twice annually i.e on 1st of Feb and 1st of August. The deceased thus does not fall in the exempted category in *Sarla Verma Case (Supra)*. As per *Sarla Verma Case (supra)*, since the age of the deceased was below 40 years, he was entitled for addition of 50% of his salary towards future prospect.

a)	Minimum wages of matriculate + 50% future	Rs.6448 Rs.6448 + 3224 = Rs.9672
b)	1/2 deductions on personal living expenses	Rs.9672 - 4191 = Rs.5481/-
c)	Loss of dependency	5481x12x9 = Rs.591954/-

13. In the counter claim, the legal heirs of the deceased as contended that The Tribunal has awarded only a meagre sum of

Rs.10,000/- towards funeral expenses. They had spent Rs.50,000/- towards funeral expenses and they ought to have been awarded the same. Learned counsel for the appellant has stated that the Tribunal has correctly awarded the funeral expenses.

14. The apex court in the case of **2013 (9) SCC 54** titled ***Rajesh and Others vs. Rajbir Singh and Others*** has explained what is a just for compensation. The relevant paragraph is reproduced as under:

“7. The expression ‘just compensation’ has been explained in **Sarla Verma’ case** (supra), holding that the compensation awarded by a Tribunal does not become just because the Tribunal considered it to be just. ‘Just Compensation’ is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardized the norms for the assessment of damages in Motor Accident Claims.”

The court has also held as under:

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of

compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least amount of Rs. 25,000/-."

15. In view of this, I award a sum of Rs.25,000/- towards funeral expenses. I award the following compensation.

1.	Loss of dependency	Rs.5,91,948/-
2.	Loss of affection	Rs.1,00,000/-
3.	For funeral expenses	Rs. 25,000/-
4.	Loss of Estate	<u>Rs. 10,000/-</u>
Total		Rs.7,26,948/-

16. I award a sum of Rs.7,26,948/- with interest at the rate of 9% per annum from the date of filing the petition till its realization.

17. The compensation shall be distributed as per the directions of award of learned Tribunal dated 22nd September, 2012.

18. In view of the above, the appeal and the counter claim stand disposed of.

DEEPA SHARMA, J

MAY 28, 2014

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