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

Date of Decision: 24th February, 2016

+ **MAC.APP. 226/2011**

SATYAVIR SINGH & ORS

..... Appellants

Through: Ms Arati Mahajan Shedha with Mr.
Manoj Kumar, Advs.

versus

OM PRAKASH SINGH & ORS

..... Respondents

Through: Mr. Rahul Ranjan Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Gajender Kumar @ Karan, aged 21 years, died as a result of injuries suffered in a motor vehicular accident that occurred at about 6.00 pm on 08.10.2007 involving Tata Tempo bearing No.DL-ILE-4958 (offending vehicle) which was concededly insured against third party risk with the third respondent herein. On the claim petition presented on 19.05.2008 under Sections 166 and 140 of Motor Vehicle Act, 1988 (MV Act) by his parents (the appellant herein), the motor accident claims tribunal (Tribunal) registered it as suit No.193/2008 and held inquiry. The driver and owner respectively of the offending vehicle were impleaded on the allegations that the accident had occurred on account of rash or negligent driving of the offending vehicle by its driver resulting in collision against Motorcycle bearing no.DL-3S-BB-2989 driven by the deceased.

2. By judgment dated 17.03.2010, the tribunal awarded compensation in the sum of ₹3,70,848/- in favour of the claimants with interest @ 7.5% per annum from the date of filing of the petition till realization. The compensation thus awarded included ₹2,95,848/- towards loss of dependency. It is this part of the compensation along with the rate of interest, which are the bone of contention in the appeal at hand.

3. Before the tribunal, the claimants had pleaded that he was a bachelor earning ₹11,750/- per month approximately. His father (first appellant herein) examined himself (as PW-1) on the basis of his own affidavit (Ex.PW-1/A). In the said affidavit, he stated that the deceased was working as field boy with Mahavir Leasing and Finance P. Ltd. 34, Devli, Khanpur, New Delhi, getting a salary of ₹11,750/- per month. The salary certificate presented with the said affidavit (Ex.PW-1/A) is shown to be Ex.PW-1/60. Noticeably, the document Ex.PW-1/60 had been prepared on the letter head of company named as "Above All Chit Fund Pvt. Ltd. 34, Devli Road, Khanpur, New Delhi-62" purporting to have been signed by its authorized signatory. It is also pertinent to note that the salary certificate does not bear the date on which it was issued. The document does not jell with the facts affirmed in the affidavit Ex. PW-1/I wherein the name of the employer company was described as "Mahavir Leasing and Finance P. Ltd. 34, Devli, Khanpur, New Delhi".

4. The tribunal observed in the impugned judgment that no sufficient income proof had been filed. Undoubtedly, this was not a correct approach for appreciating the evidence as the document Ex.PW-1/60 referred to above and the declaration made in the affidavit Ex. PW-1/A required mention, scrutiny and proper conclusions to be reached.

5. Be that as it may, the tribunal adopted ₹3,516/- per month as notional income of the deceased on the basis of minimum wages for unskilled labourer on the date of accident (08.10.2007). It may be added here that though it was claimed by the first appellant in his affidavit Ex.PW-1/A that the deceased was pursuing a computer course, no formal proof of such computer course was submitted.

6. The tribunal, however, seems to have failed to notice that amongst the documents submitted with the affidavit Ex. PW-1/A, the first appellant had also placed on record copy of the matriculation certificate (PW-1/34) of the deceased and, thus, there was an error in adopting appropriate rate of minimum wages.

7. The tribunal referred to the judgment of a learned single judge of this Court in *National Insurance Company Ltd. v. Kailash Devi II* (2008) ACC 77 and the decision of the Supreme Court in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, to factor in the prospects of increase in future income. Having adopted the minimum wages of unskilled worker at ₹3,516/- as the notional income, it proceeded to calculate the average income by assuming it to be ₹3,522/- per month, on the basis of multiplier method ($\text{₹}2,348/- \times 2 + 2,318/-$ divided by two). There is some confusion in the discussion to this effect in (para 10 of) the impugned judgment as it is nowhere clarified as to from where the said figure of '2348' had been picked up. At the same time, it is clear from the discussion in the said paragraph that the endeavour of the tribunal was to calculate the notional income on the basis of prospects of increase of income in future.

8. In the appeal, the grievance of the claimants essentially has been that the evidence of PW-1 about the income should have been accepted,

particularly as it was supported by salary certificate (PW-1/60). It is submitted that when questions arose as to whether the said document could be relied upon, the appellants have adduced proper proof by having Satish Kumar son of Mahavir, the person under whose purported signature the said document (Ex.PW1/60) was issued, summoned and examined, he affirming that the salary certificate had been issued by M/s Above All Chit Fund Pvt. Ltd. 34, Devli Road, Khanpur, New Delhi. Whilst commencing her arguments, learned counsel for the appellant submitted that she had personally verified from the witness Satish Kumar, a practicing Advocate, and only thereafter had got him summoned to prove the facts relating to the above-mentioned employment of Gajender Kumar.

10. A perusal of the deposition of Satish Kumar and the salary certificate Ex.PW-1/60, which was affirmed to have been issued by him under his own signature, when seen against the declaration made by appellant (PW-1) gives rise to serious doubts above the veracity of the evidence and the claim made before the tribunal in relation to the employment of Gajender Kumar around the time of his death. The certificate issued by Satish Kumar claiming to be director of M/s Above All Chit Fund Pvt. Ltd. is not supported by any material or record maintained by the said company. When questioned in this regard, Satish Kumar took cover under the plea that the company had since been wound up and it's records were no longer available. He claimed that it was a private limited company duly registered, but he would not give any document showing registration of the said company with the Registrar of Companies. He would not also give any information as to when or by which order the company had been wound up. He would not produce any record, including about his own authorization, to prove the salary certificate Ex.PW-

1/60 which he claims had been issued by him as the 'authorized signatory' for and on behalf of the company. Since the salary certificate Ex.PW-1/60 does not bear any date and since the date of the so-called winding up of the company is not even disclosed, it cannot even be said as to whether the company had been wound up before the certificate was issued or the certificate was issued while the company was still operational.

11. Curiously, Satish Kumar also produced in the course of his deposition, apparently at the instance of the appellant, twelve counter-foils showing certain deposits having been made in Punjab National Bank, at 7 Bikajikama place, New Delhi. The said counter-foils showing the name of the purported depositor as Gajender Kumar pertain to the period June to September 2007 and are pressed in aid to show that Gajender Kumar was actually engaged as a 'field boy' with the above said company. It is, however, not explained by Satish Kumar as to how these counter-foils have continued to be in his control and after the company had been wound up, particularly in the teeth of his position that he is unable to produce record of the company for such reasons. Noticeably, there is no evidence adduced even to show connection of the Company with the account in which the said deposits were made.

12. In the above facts and circumstances, the evidence of Satish Kumar presented during hearing of the appeal, is found to be highly suspect and not worthy of belief, particularly as the facts affirmed by the first appellant (PW1) had sought to show that the deceased was working in a company known as Mahavir Leasing and Finance P. Ltd., the connection between the said company and the company referred to by the witness Satish Kumar not having been explained.

13. For the foregoing reasons, the claim about income of the deceased at ₹11,750/- per month from Mahavir Leasing and Finance P. Ltd. has gone unsubstantiated. The approach of the tribunal, against the above backdrop, to assess the income of the deceased on basis of minimum wages, thus, cannot be faulted except that, as noted above, instead of minimum wages for unskilled workers, the benefit of minimum wages for of matriculates should have been the correct measure, which at that time was ₹3,964/-, per month. The loss of dependency needs to be recalculated on such basis.

14. The appellant relied upon *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and the decision in *The New India Insurance Company Ltd. vs Afsana Khatoon MAC APP. 585/2013 decided on 26.05.2015*, rendered by a learned single judge of this Court following the said view, to argue that the prospects of future increase should be factored in death cases.

15. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

16. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in

MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court. This applies to the matter at hand because the claimants here have not led any evidence showing that the income was subject to any periodic increase.

17. For the above reasons, the calculation of the loss of dependency has to be on the basis of a minimum wages of Rs.3,964/- per month only.

18. Another submission of learned counsel for the appellant is that the tribunal failed to take note of the fact that the father i.e. the first appellant, has been rendered incapable of supporting himself since he has undergone some surgical procedure. It is urged that, in such circumstances, the personal and living expenses should have been deducted to the extent one fourth rather than one half.

19. In his affidavit (Ex.PW-1/A), the first appellant had made no claim to the above effect. When examined in the court, he did produce some documents relating to problem in the backbone. But then that by itself does not mean that he has to be treated as a person rendered absolutely unable to work for gain or support himself. Even otherwise, in view of the dictum in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, in a claim arising out of death of a bachelor, deduction to the extent of fifty percent (50%) on account of personal and living expenses must be made.

20. Thus, the loss of dependency is worked out at (3,964/- divided by 2) Rs.1,982/- per month. The tribunal adopted the multiplier of 14, on the basis of age of the mother (45 years), and rightly so. Therefore, the total loss of dependency is calculated as (1,982 x 12 x 14) Rs.3,32,976/-.

21. Though, it has not been argued, it is noted that the tribunal awarded only Rs.50,000/- towards loss of love and affection and did not make any award on account of loss to estate. In *Rajesh & Ors. v. Rajbir Singh & Ors.* (supra), the Supreme Court had awarded Rs.1,00,000/- towards loss of love & affection. In *Shashikala & Ors. Vs. Gangalakshamma & Ors.* (2015) 9 SCC 150 while adopting the same approach, Supreme Court added Rs.25,000/- towards loss to estate. In these circumstances, in addition to Rs.25,000/- already awarded on account of funeral charges, the non-pecuniary damages of Rs.1,00,000/- towards the loss of love & affection and Rs.25,000/- for loss to estate are added. Thus, the total compensation awardable in the case is calculated as (Rs.3,32,976 + Rs.1,50,000/-) Rs.4,82,976/- rounded off to Rs.4,83,000/-.

22. There is substance in the grievance as to the rate of interest. Following the consistent view of the Supreme Court on the subject in a series of such cases, the rate of interest is enhanced to nine percent (9%) per annum from the date of filing of the petition till realization. [*Kaushnuma Begum vs New India Assurance Co. Ltd.* (2001) 2 SCC 9; *Supe Dei vs National Insurance Co. Ltd.* (2009) 4 SCC 513; *Municipal Corporation of Delhi, Delhi vs Association of Victims of Uphaar Tragedy and Ors.* (2011) 14 SCC 481; *Basappa vs T. Ramesh* (2014) 10 SCC 789; *Syed Sadiq etc. vs Divisional Manager, United India Ins. Company* (2014) 2 SCC 735; *Surti*

Gupta vs United India Insurance Company and Ors. 2015 (3) SCALE 795; *Kumari Kiran vs Sajjan Singh* (2015) 1 SCC 539].

23. The enhanced compensation shall be subject to apportionment as directed by the tribunal in the impugned judgment.

24. The award is modified accordingly.

25. The Insurance Company is directed to deposit the balance compensation payable in terms of award, as modified above, with the tribunal within 30 days from today, whereupon it shall be released to the claimants. In case of default, the claimants shall be entitled to proceed with execution proceedings before the tribunal.

26. It is noted that the tribunal had directed the insurance company to deposit the awarded compensation with UCO Bank, Delhi High Court Branch in the name of claimants and file a compliance report with the tribunal. It is pointed out that this was pursuant to directions of this Court in MAC Appeal No.682/05 titled *Union of India v. Nanisiri* decided on 13.01.2010. The tribunal quoted directions (particularly para 16) of this Court in the said judgment to direct the deposit with UCO Bank, Delhi High Court Branch.

27. It is noted that the claimants are residents of Sangam Vihar, New Delhi-62 which is located in South Delhi. In these circumstances, it was not proper on the part of the tribunal not to have ascertained the convenience of the claimants and instead to *suo motu* direct the deposit of the compensation with UCO Bank branch in the premises of the High Court in New Delhi. In *Union of India v. Nanisiri* (supra) it was clearly directed that the convenience of the victim or legal representatives has to be borne in mind.

It is hoped that the tribunals shall hereafter bear in mind the spirit of the directions in *Nanisiri* (supra).

28. Be that as it may, the amount lying in UCO Bank shall also now be released to the claimants by the tribunal by issuing appropriate directions.

29. The appeal is disposed of in above terms.

30. The tribunal's record be returned.


R.K.GAUBA, J

FEBRUARY 24, 2016/afa

