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

Date of decision: 13th January, 2015

+ **MAC.APP.23/2013**

GEETA & ORS. Appellants

Through: Mr. Anshuman Bal, Adv.

versus

DINESH CHANDER & ORS. Respondents

Through: Mr. S.K. Ray, Adv. with
Mr. Amitava Poddar, Adv. For R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. By way of this appeal, the Appellants seek enhancement of compensation of Rs.13,32,672/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) to the Appellants (the Claimants) for the death of Raj Kumar, who died in a motor vehicular accident which occurred on 01.03.2010.
2. In the absence of any appeal filed by the Insurance Company, the finding on negligence has attained finality.
3. Evidence was led before the Claims Tribunal that the deceased was an income tax assessee. At the same time, the Claims Tribunal opined that the business of the deceased's proprietorship firm is still being

carried out in as much as now the brother of the deceased along with two employees is running the business. Therefore, instead of granting loss of dependency based on the income of the business being carried by deceased Raj Kumar, the Claims Tribunal proceeded to award compensation on the basis of the income of a skilled worker. The Claims Tribunal further added certain amounts towards non-pecuniary damages to compute the overall compensation of Rs.13,32,672/-

4. The following contentions are raised on behalf of the Appellants:-

- (i) The Claims Tribunal erred in not considering the income of the deceased from the business while considering the loss of dependency on the basis of income of a skilled worker.
- (ii) The Appellants proved the Income Tax Returns (ITRs) for the Assessment Years 2006-2007, 2007-2008 and 2009-2010 and the Claims Tribunal ought to have granted loss of dependency on the income as returned by the deceased Raj Kumar to the Income Tax Department. Since the income of the deceased was gradually increasing and he was aged only 35 years at the time of his death, the Appellants are entitled to an addition of 50% towards future prospects;

- (iii) The compensation awarded towards non-pecuniary damages is

on the lower side; and

(iv) Father of the deceased was aged 63 years. He ought to have been considered as a dependent and, therefore, there should have been deduction of 1/5th share instead of 1/4th share towards personal expenses as taken by the Claims Tribunal.

5. *Per contra*, the learned counsel for Respondent no.3 urges that the vehicle involved in the accident was carrying 14 passengers as against the sanctioned capacity of 7. This was in violation of the terms and conditions of the permit. Respondent no.3, therefore, will not have any objection to grant of compensation to the Appellants but it would be entitled to recovery rights because of breach of the terms and conditions of the insurance policy.

INCOME FROM BUSINESS:

6. The learned counsel for the Appellants referred to the judgment in *Rukmani Devi & Ors. v. Om Prakash & Ors.*, Civil Appeal no.4608/1984 decided on 17.01.1990 whereby the Supreme Court set aside the order of the High Court whereby the compensation was reduced from Rs.1,25,000/- to Rs.48,000/- on the reasoning that the benefit from the business was still enuring for the benefit of the claimants. The Supreme Court held that there was no justification

whatsoever to reduce the compensation in such case. It appears that *Rukmani Devi* was decided on its own facts. At the same time, it may be noted that the deceased was running a small business and even if the business is continued either by the widow of the deceased or by the brother of the deceased or by employing other workers, it will be difficult to say that the loss will be only that of the wages of a skilled worker. In my view, in the peculiar circumstances of the case when the business was small, the loss of dependency ought to have been granted on the income of the deceased from the business.

MULTIPLICANT & FUTURE PROSPECTS

7. I have the Trial Court record before me. Smt. Geeta filed her Affidavit Ex.PW-1/A by way of evidence and proved ITRs of the firm for the Assessment Years 2005-2006 and 2006-2007 as Ex.PW-1/1 and PW-1/2 respectively. The statement of accounts filed with the ITR for the Assessment Year 2006-2007 was proved as Ex.PW-1/3. In cross-examination by the learned counsel for the Insurance Company, PW-1 stated that her deceased husband was carrying on business in the name of Shree Ganesh Electronics and he was dealing in electronic items. She stated that her husband was maintaining bills for purchase of goods as well as for sale of goods. She was also ready to come

forward to produce the same, if required.

8. The Appellants also examined Income Tax Inspector P.P. Singh as PW-3 who proved ITRs for the Assessment Years 2007-2008, 2009-2010 and 2010-2011 as Ex.PW-3/1 collectively. The last ITR filed on 29.07.2010 whereas the accident had taken place on 01.03.2010.
9. In the case of *V. Subbulakshmi & Ors. v. S. Lakshmi & Anr., (2008) SCC 224*, the Supreme Court held that the ITRs filed after the death of the deceased ought not to be taken into consideration.
10. In *Oriental Insurance Company Limited v. Kanika Arora & Ors., MAC APP.141/2012, decided on 27.08.2012*, this Court referred to the judgment of the Supreme Court in *V. Subbulakshmi & Ors. v. S. Lakshmi & Anr.,(supra)*, and held that it was not laid down as a proposition of law that the ITRs filed after the death of the deceased cannot be taken into consideration at all.
11. In the instant case, the deceased filed ITRs for a period of about five years before his death and his income was gradually increasing. In the Assessment Year 2007-2008, he returned the income of Rs.1,51,250/-. In the Assessment Year 2009-2010, he returned the income of Rs.1,80,370/- and for the Assessment Year 2010-2011, he returned the income of Rs.2,20,950/-. The last ITR for the relevant period was

filed on 29.07.2010 on behalf of the deceased by his legal representatives.

12. I do not find any reason to suspect or doubt the ITRs as the income from the Assessment Year 2005-2006 was gradually increasing. Thus, as on the date of death, I take the income of the deceased to be Rs.2,20,950/-.
13. In *Sarla Verma v. Delhi Transport Corporation*, 2009 6 SCC 121, the Supreme Court simply stated that in case of self employed persons, usually actual income at the time of death should be considered. Since in this case the income was gradually increasing and the deceased was aged only 34 years, I would grant him future prospects on the scale of *Sarla Verma (supra)* i.e. 50%.
14. It is urged by the learned counsel for the Appellant that deduction of income tax should be made from the income of the deceased after adding future prospects.
15. In my judgment in *ICICI Lombard General Insurance Co. Ltd. v. Chanderwati & Ors.*, MAC APP.904/2011, decided on 09.02.2012, I had referred to the judgment of the Supreme Court in *Sarla Verma & Ors. V. DTC & Ors.* (2009) 6SCC 121 and *Shyamwati Sharma & Ors. V. Karan Singh & Ors*, 2010(12) SCC 378 and held that the income

tax has to be deducted from the gross salary before making addition towards future prospects. Paras 9 and 10 of the report in *Chanderwati & Ors.* are extracted hereunder:-

“9. I have already held above that deduction of Income Tax was required to be made to compute the loss of dependency. In Sarla Verma(Supra), it was held that while granting future prospects, addition of 50% of actual salary to the actual salary income of the deceased towards future prospects was required to be made in a case where the deceased had a permanent job. The actual salary was taken as gross salary minus income tax. The question for determination is whether the Income Tax should be deducted first or after making an addition of the future prospects as it may affect the quantum of compensation. I would like to extract Para 24 of the report in Sarla Verma(supra) for ready reference:

“24. In G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, this Court increased the income by nearly 100%, in Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179, the income was increased only by 50% and in Abati Bezbaruah v. Geological Survey of India, (2003) 2 SCC 148, 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.”(underlines are mine)

10. In *Shyamwati Sharma & Ors. V. Karan Singh & Ors*, 2010(12) SCC 378, the Supreme Court relied upon on *Sarla Verma*(supra) regarding addition of income towards future prospects and held that the actual salary (less Tax) should be increased by 50% towards future prospects. Thus, the Supreme Court was clear that Tax has to be deducted from the actual salary before making addition towards future prospects but while making actual computation, in para 7 the Supreme Court deducted the Tax after making an addition of 30% in the income towards future prospects. Since the principles laid down in *Sarla Verma* were approved in para 6 of the report in *Shayamwati* (supra), I would hold that the deduction towards liability on Income Tax should be first made in the actual income and only then an addition is to be made towards future prospects. Para 6 and 7 of the report in *Shyamwati*(supra) are extracted as under:

*“6. This Court in *Sarla Verma v. DTC* has stated the principles relating to “addition to income” towards future prospects. This Court held that wherever the deceased was below 40 years of age*

and had a permanent job, the actual salary (less tax) should be increased by 50% towards future prospects, to arrive at the monthly income. It also held that where the number of dependents of a deceased are in the range of 4 to 6, the deduction towards personal and living expenses of the deceased should be 25%. It further held that in regard to persons aged 36 to 40 years, the appropriate multiplier should be 15. We will recalculate the compensation by applying the said principles. (underlines are mine)

7. As noticed above, the gross salary was ₹13,794/- per month or ₹1,65,528 per annum. By adding 50% towards future prospects (as the deceased was less than 40 years of age), the deemed gross income would have been ₹20,691/- per month or ₹2,48,292/- per annum. The percentage of deduction towards income tax and surcharge, taken as 30% by the High Court, does not require to be disturbed, having regard to the income. On such deduction, the net annual income of the deceased would have been ₹1,73,800/-. From the said sum, one-fourth (25%) had to be deducted towards the personal and living expenses of the deceased. Thus the contribution of the deceased to his family would have been ₹1,30,350/- per annum. By applying the multiplier of 15, the total loss of dependency will be ₹19,55,250/-. By adding a sum of ₹5000/- each under the heads of loss of consortium, loss of estate and funeral expenses, the total compensation is determined as ₹19,70,250/-."

16. As far as deduction towards personal expenses is concerned, it is

proved on record that the father of the deceased was getting a pension. It will depend on the facts and circumstances of each case whether father of a deceased son getting pension would be considered dependant on his son or not. If the father is getting a handsome amount to maintain himself, he will not be considered as a dependant. In the instant case, the amount of pension received by the father was not brought on record by the Appellants and therefore, the father will not be considered as a dependant. The Claims Tribunal rightly made the deduction of 1/4th towards personal and living expenses.

17. The loss of dependency accordingly comes to Rs.38,67,390/- (2,20,950/- - 6095/- (income tax) +50% -1/4 x 16).
18. The Claims Tribunal awarded a compensation of Rs.1,00,000/- towards loss of love and affection in addition to Rs.10,000/- each towards loss to estate and funeral expenses. No compensation was awarded towards loss of consortium. Relying upon *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, I tend to award a sum of Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium. The overall compensation is hence, tabulated as under:-

Sl. No.	Compensation under various heads	Awarded by this Court (in Rs.)
1.	Loss of Dependency	38,67,390/-
2.	Loss of Love and Affection	1,00,000/-
3.	Loss to Estate	10,000/-
4.	Funeral Expenses	25,000/-
5.	Loss of consortium	1,00,000/-
	Total	Rs.41,02,390/-

19. Now, turning to the plea raised on behalf of Respondent no.3 Insurance Company that there was a breach of the terms and conditions of the insurance policy as there were 14 passengers being carried in the offending vehicle as against its capacity of 7. Section 149(2) of the Motor Vehicles Act, 1988 (the M.V.Act) entitles an insurer to avoid its liability on certain conditions only. The relevant conditions regarding permit are given in Section 149(2)(a)(i)(c) of the M.V. Act, which are extracted hereunder:-

“149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1).....

(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long

as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a)

(b)

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or.....”

20. In the instant case, it is not the case of Respondent Insurance Company that the vehicle was being used for a purpose not allowed by permit. There is hence, no violation of the terms and conditions of the policy. In case of overloading of a transport vehicle, the Supreme Court in *National Insurance Company Limited v. Anjana Shyam & Ors.*, (2007) 7 SCC 445, held that where persons more than the permitted capacity are carried by the driver/owner of the vehicle, the liability of the Insurance Company will be limited only to the number of passengers which the owner was authorised to carry and the said compensation can be apportioned amongst all the Claimants and the balance compensation shall be paid by the owner.

21. In the instant case, it is admitted by the learned counsel for

Respondent no.3 that there was only one claim arising out of the accident. In the circumstances, Respondent no.3 is under an obligation to satisfy the award.

22. The compensation is thus, enhanced from Rs.13,32,672/- to Rs.41,02,390/-.
23. The enhanced compensation of Rs.27,69,718/- shall carry interest @ 7.5% per annum from the date of filing of the petition till payment of the amount.
24. Respondent no.3 is directed to deposit the enhanced compensation along with proportionate interest within six weeks, failing which the Appellants shall be entitled to interest @ 12% per annum for the delayed period.
25. 10% each of the compensation shall go to the minor children of deceased Raj Kumar (Appellants no.2 to 5). 25% shall go to mother of the deceased (Appellant no.7) and rest 35% shall go to widow of the deceased (Appellant no.1).
26. The compensation awarded to Appellants no.2 to 5 shall be held in Fixed Deposit till they attain the age of 21 years. Appellant no.1 will be entitled to apply to the Claims Tribunal for premature withdrawal

of the compensation only for the educational needs of Appellant nos. 2 to 5.

27. 50% of the enhanced compensation awarded to Appellants no.1 and 7 shall be held in Fixed Deposit for a period of two years, four years and six years in equal proportion. Rest shall be released to them on deposit.
28. The appeal stands disposed of in above terms.
29. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 13, 2015
vk/pst