



2024-DHC:1853



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

% **Date of decision: 6th March, 2024**

+ MAC.APP. 119/2023

SMT. BIMLA DEVI & ANR. Appellants

Through: Mr. Mayank Khurana,
Advocate.

versus

SHRI SUNIL & ORS. Respondents

Through: Ms. Suman Bagga, Adv. for R3.

+ MAC.APP. 128/2023

SMT. BIMLA DEVI & ANR. Appellants

Through: Mr. Mayank Khurana,
Advocate.

versus

SHRI SUNIL & ORS. Respondents

Through: Ms. Suman Bagga, Adv. for R-
3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 10979/2023 in MAC. APP. 119/2023 (Delay)

CM APPL. 11353/2023 in MAC. APP. 128/2023 (Delay)

1. These are the applications filed by the applicants/appellants seeking condonation of delay of 340 days in filing the present appeals.
2. For the reasons stated in the applications and in the interest of justice, the same are allowed. The delay of 340 days in filing the present appeals is condoned.
3. The applications stand disposed of.



2024: DHC: 1853

**MAC.APP. 119/2023 & MAC.APP. 128/2023**

1. This common judgment shall decide the above-noted two appeals filed under Section 173 of the Motor Vehicles Act, 1988¹ preferred by the appellants/claimants assailing the quantum of compensation awarded by the learned Presiding Officer, Motor Accident Claims Tribunal-01 (North), Rohini, Delhi in MACT No. 6159/2016 and MACT No. 6155/2016, both titled 'Smt. Bimla Devi & Anr. v. Sh. Sunil & Ors.', and thereby seeking enhancement of compensation.

2. Shorn of unnecessary details, appellant No.1 is the mother while appellant No.2 is the minor son of the deceased Sh. Sonu Singh, who was aged about 30 years, in MACT No. 6159/2016 and likewise appellant No. 1 is the mother-in-law while appellant No.2 is the minor child of deceased Smt. Neelam, who was aged 27 years, in MACT No. 6155/2016.

3. The aforesaid appeals arise out of separate judgments delivered by the learned Tribunal. There is no dispute that both husband-wife Sonu and Neelam sustained fatal injuries in a motor vehicle accident on 05.08.2015 at about 1.30 p.m. at Dadri Road, Chhuchhakvas, Jhajjar, Haryana when their car bearing no. DL-14-B-8252 was hit by the offending Canter tempo bearing registration No. HR-61-A-7800² driven by respondent No.1/Sunil. The appellants/claimants have filed two separate claim petitions seeking an enhanced compensation for the loss of lives of the deceased Sonu and Neelam.

¹MV Act

²Offending Vehicle



2024: DHC: 1853



4. Suffice to state that the learned Trial Court *vide* impugned judgment-cum-award dated 10.01.2019 found that respondent No.1 was driving the offending vehicle in a rash and negligent manner resulting in the accident and therefore was solely responsible for causing their death.

5. The only issue which is raised by the learned counsel for the appellants is that the learned Tribunal dealt with the issue of quantum of compensation in a mechanical manner and has not assigned any reasons as to how the compensation amount has been arrived at and even loss of compensation on account of loss of consortium, loss of estate and funeral expenses have not been given due consideration.

6. At the outset, the learned Tribunal while holding that the appellants/claimants are entitled to compensation in MACT No. 6159/2016 on account of death of the deceased Sonu, about 30 years of age and evidently employed as a Constable in Delhi Police, arrived at the compensation amount of Rs.73,00,000/- (Rupees Seventy-Three Lacs only). Further, the Tribunal provided that the claimants would be entitled to interest @ 9% per annum on amount of Rs.57,48,013.60 (Rupees Fifty-Seven Lac Forty-Eight Thousand Thirteen & paisa Sixty only) w.e.f. 08.02.2019 i.e. date of filing of the petition till realization.

7. Likewise, the learned Tribunal in MAC APPL. 128/2023 also found that deceased Neelam was employed as a Constable in Delhi Police and assessed the compensation amount of Rs.58,89,000/- including interest @ 9% per annum for 36 months and finally directed that the respondent No.3/Insurance Company shall pay compensation



2024-DHC-1853



Rs.58,89,000/- to the claimants failing which it would pay interest @ 9% on the amount of Rs.42,28,510.20 paisa w.e.f. date of filing of petition i.e. 08.2.2019 till realization.

8. Evidently, the offending vehicle was ensured with respondent No.3. Therefore, this Court is only considering a limited issue as to whether the quantum of compensation has been correctly arrived at and whether or not the same is a just and reasonable compensation?

MAC.APP. 119/2023

9. In the present appeal, it is brought out that the deceased was working as a Constable in Delhi Police, then posted in Traffic South District, Sukhdev Vihar, New Delhi and his monthly income was Rs.30,926/-³. The claimant mother was about 59 years of age and one minor child, Sushant, was 6 years of age at the time of filing of the petition. It appears that the Tribunal has deducted 10% towards TDS, added future prospect @ 50%, and deducted 1/3rd of the annual financial loss towards personal use and living expenses; and applied multiplier of 17. Further, Rs. 40,000/- was awarded towards loss of love and affection, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Accordingly, compensation amount of Rs. 57,48,013.60/- was arrived at.

10. At the outset, this Court finds no legal infirmity, perversity or incorrect approach adopted by the learned Trial Court in deducting TDS of 10% from the monthly salary of the deceased. The said issue is no longer *res integra* and was dealt with in the matter of **New India**

³As per salary certificate for the month of July, 2015 (Annexure- A3)



Assurance Co. Ltd. Vs. Farzana Rahat⁴ wherein reliance was placed on **Sarla Verma Vs. DTC**⁵. It primarily states that generally, the actual income of the deceased less income tax should be the starting point of calculating the compensation. Reference may be invited to the following observations:-

“45. With regards to the issue of deduction of income tax, it will be profitable to refer to the decision in *Vimal Kanwar v. Kishore Dan* reported as (2013) 7 SCC 476, wherein it was held that:

“22. The third issue is “whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act”.

23. In Sarla Verma (supra), this Court held :

“20. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation.”

This Court further observed that :

“24. ... Where the annual income is in taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’.”

keep in mind that under Section 192(1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (“TDS”, for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should income of the victim is only from “salary”, the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an

⁴2022 SCC OnLine Del 4153

⁵ (2009) 6 SCC 121



objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.”

11. Hence, in the present case, the learned Tribunal, although has not assigned any reasons in the body of the impugned judgment-cum-award however, the basis of assessment in computation has been indicated in the prescribed form viz. Form-IV-A. Further, an addition of 50% of the annual income towards future prospects has been rightly taken, as also a multiplier of 17 based on the decision in the case of **National Insurance Co. Ltd. v. Pranay Sethi**⁶ and the other non-pecuniary losses in the sense of loss of estate and funeral expenses @ 15,000/- each have been correctly recorded, except for reckoning loss of love and affection at 40,000/-, which should be for both the appellants and hence, it should be Rs.80,000/-. Accordingly, the compensation is arrived at as under:

S.NO	Compensation head	Compensation awarded
1.	Annual Income	Rs. 3,34,000/- (Rs. 27,833 x 12)
2.	Addition towards Future Prospects	Rs. 1,67,000/- (50% of Rs. 3,34,000)
3.	Personal expenses of the deceased	1/3 rd (Rs. 1,67,000)
4.	Multiplier	17
5.	Total Income assessed	Rs. 56,78,000/- (Rs. 3,34,000 x 17)

⁶(2017) 16 SCC 680



6.	Loss of estate	Rs. 15,000/-
7.	Funeral expenses	Rs. 15,000/-
8.	Compensation for loss of love and affection	Rs. 80,000/-
9.	Total Compensation	Rs. 57,88,000/-
10.	Rate of interest	9%

12. Therefore, this Court modifies the impugned award dated 10.01.2019 so as to provide that the appellants/claimants shall be entitled to a sum of Rs. 57,88,000/- which should be payable to them with interest @ 9% per annum from the date of filing of the petition till realization.

MAC.APP. 128/2023

13. In the instant matter, the deceased Smt. Neelam was 27 years of age at the time of the accident (DOB 15.12.1988) and her monthly salary was Rs. 30,926/-⁷. The Tribunal has detailed in the Form IV-A that 10% of the income was deducted towards TDS and monthly income was, therefore, assessed at Rs.27,833.40/-. Also, 50% was reckoned towards addition of future prospects. One-half was reduced towards personal use and expenses since mother-in-law was not dependent upon the deceased daughter-in-law and naturally, the amount of compensation would go to the minor son only. Multiplier of 17 was adopted. Total loss of future income was arrived at Rs.42,58,510.20/-. Further, there were awarded reimbursement of medical expenses of Rs.71,705/- + Rs.40,000/- towards loss of love and affection and Rs.15,000/- each towards loss of estate and funeral expenses.

⁷as per salary slip in the Month of July 2015



2024 : DHC : 1853



14. Compensation is tabulated as under:

S.NO	Compensation head	Compensation awarded
1.	Annual Income	Rs. 3,34,000/- (Rs. 27,833.4 X 12)
2.	Addition towards Future Prospects	Rs. 1,67,000/- (50% of Rs.3,34,000)
3.	Personal expenses of the deceased	1/2 (Rs. 2,50,500.6)
4.	Multiplier	17
5.	Total Income assessed	Rs. 42,58,510/- (Rs. 2,50,500.6 X 17)
6.	Re-imbursement of medical expenses	Rs. 71,705/-
6.	Loss of estate	Rs. 15,000/-
7.	Funeral expenses	Rs. 15,000/-
8.	Compensation for loss of love and affection	Rs. 40,000/-
9.	Total Compensation	Rs. 44,00,205/-
10.	Rate of interest	9%

15. I find that the learned Tribunal has not committed any illegality, infirmity or has adopted any incorrect approach in arriving at total compensation of Rs.44,00,205.20/- which is to be awarded to the appellant No.2/ Master Sushant through his legal guardian/grandmother. Accordingly, total compensation of Rs. 44,00,205/- is granted to the appellant No.2 with interest @ 9% per annum from the date of filing of the petition till realization.

16. The present appeals are disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 06, 2024/sa

Signature Not Verified

Digitally Signed By: PRANJAN KUMAR VATS
Signing Date: 07/03/2024
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MAC. APP. 119/2024 & 128/2023

Page 8 of 8