

(2011) 09 DEL CK 0073

Delhi High Court

Case No: Mac. App. 826 of 2011

Mala Dutta Gupta and Another

APPELLANT

Vs

National Insurance Company
Ltd. and Others

RESPONDENT

Date of Decision: Sept. 28, 2011

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: Dev Dutt, for the Appellant; Manoj Ranjan Sinha, for the Insurance Company,
for the Respondent

Final Decision: Allowed

Judgement

Reva Khetrapal, J.

This appeal is directed against the judgment and award of the Motor Accidents Claims Tribunal dated 31.12.2000, whereby a sum of Rs. 13,89,000/- (Rupees Thirteen Lac Eighty Nine Thousand Only) was awarded to the Appellants alongwith interest @ 12% per annum from the date of the petition till realisation (inclusive of the interim award).

2. Concisely, the facts are that the Appellants are the widow and minor son of the deceased Shri Onkar Dutta Gupta, who met with a fatal accident on 17.07.1996, near the Chittranjan Park Chowk, with a TSR bearing No. DL 1RB 0048. The deceased was aged 36 years and was working as a Manager Executive (Selections) in M/s. Quest Consultants and Engineering Pvt. Ltd. on a salary of Rs. 14,700/- per month. A Claim Petition was filed by the Appellants claiming compensation in the sum of Rs. 40 lacs for his untimely demise against the Respondent No. 3-driver, the Respondent No. 2-owner and the Respondent No. 1-M/s. National Insurance Company Ltd., the insurer of the offending vehicle. The Motor Accidents Claims Tribunal after conducting an enquiry held that the accident was the outcome of the rash and negligent driving of the aforesaid TSR by the Respondent No. 3 and proceeded to compute the compensation payable to the legal representatives of the deceased by

assessing the income of the deceased to be in the sum of Rs. 1,37,400/- per annum on the basis of his salary certificate (Ex.PW4/1) and his income tax return for the financial year 1995-96 (Ex.PW4/2). The Tribunal adopted the formula laid down by the Supreme Court in the case of [Smt. Sarla Dixit and another Vs. Balwant Yadav and others](#), to assess the future emoluments of the deceased and then deducting one-third (1/3rd) therefrom computed the annual loss of dependency of the Appellants at Rs. 1,37,400/-. To the aforesaid multiplicand, the Tribunal applied a multiplier of 10 and held that, calculated in this manner, the capitalized sum came to Rs. 13,74,000/-, to which it added a sum of Rs. 15,000/- towards the loss of consortium and funeral expenses of the deceased. The learned Tribunal thus passed an award in the sum of Rs. 13,89,000/- with interest at the rate of 12% per annum from the date of the petition till realisation.

3. Aggrieved by the quantum of the award, the present appeal has been preferred by the legal representatives of the deceased claiming enhancement in the compensation to the extent of Rs. 40 lacs. Although a number of grounds of appeal are set out in the Memorandum of Appeal, Mr. Dev Dutt, the Learned Counsel for the Appellants in the course of hearing raised a two-fold contention. The first limb of his argument is that the learned Tribunal erroneously applied a multiplier of 10 to augment the multiplicand constituting the average annual loss of dependency of the Appellants. He contended that keeping in view the fact that the deceased was 36 years of age on the date of the accident and fell in the age group of victims between 36 years to 40 years, and the multiplier approved of by the Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), for the said age group is the multiplier of 15, the Tribunal should have applied the multiplier of 15. The second limb of Mr. Dutt's argument is that no amount whatsoever was awarded by the learned Tribunal towards non-pecuniary damages under the heads of loss of love and affection of the deceased and loss of estate of the deceased.

4. Mr. Manoj Ranjan Sinha, on the other hand, sought to support the findings of the learned Tribunal and urged that the award was a just and fair one. He, however, contended that the assessment of the income of the deceased by the learned Tribunal was flawed, inasmuch as the learned Tribunal took into account the gross salary of the deceased without deducting income tax therefrom. In this context, Mr. Sinha drew the attention of this Court to the evidence of PW4 Deepak Singh, an official of the Company in which the deceased was working as a Manager Executive (Selections), namely, M/s. Quest Consultants and Engineering Pvt. Ltd. In the course of his testimony, PW4 Deepak Singh with regard to the tax liability of the deceased stated that his tax liability was Rs. 8,860/- per annum, but after rebate and on account of Provident Fund, Life Insurance Policy and NSC, the net tax payable by him was Rs. 4,840/- per annum and the same was deposited by him with the income tax Department as per Form 16, photocopy whereof was exhibited as Ex.PW4/2. Mr. Sinha contended that keeping in view the fact that in the case of Sarla Verma (supra)

relied upon by the counsel for the Appellants as well as in a catena of decisions of the Supreme Court, it had been held that the tax payable by the deceased must be deducted from his annual income for the purpose of computing the loss of dependency of his legal representatives, the learned Tribunal had erred in not deducting the tax from the annual income of the deceased.

5. There is no manner of doubt that it is well established that income for the purpose of assessment of compensation payable to victims of motor accidents is the actual income less income tax payable thereon. Accordingly, it is proposed to deduct the income tax payable by the deceased from his annual income. Thus calculated, the annual income of the deceased for the financial year 1995-96 comes to Rs. 1,37,400/- minus Rs. 4,840/- = Rs. 1,32,560/-. His average annual income after addition of 50% towards his anticipated future earnings thus works out to Rs. 1,32,560/- (actual earnings) plus Rs. 66,280/- (50% increase) = Rs. 1,98,840/- per annum. Deducting one-third (1/3rd) therefrom, the average annual loss of dependency of the Appellants comes to Rs. 1,32,560/-. Adopting the multiplier of 15 to augment the aforesaid amount in consonance with the judgment of the Supreme Court in the case of Sarla Verma (supra), the total loss of dependency of the Appellants comes to Rs. 1,32,560/- x 15 = Rs. 19,88,400/- (Rupees Nineteen Lac Eighty Eight Thousand and Four Hundred Only).

6. The learned Tribunal in addition to the pecuniary damages has awarded a sum of Rs. 15,000/- towards loss of consortium and funeral expenses, which award is maintained as it is. Apart from this amount, however, the Appellants are held entitled to receive non-pecuniary damages under the heads of loss of love and affection of the deceased and loss of estate of the deceased in the sum of Rs. 10,000/- each. Thus, in all, a sum of Rs. 35,000/- is awarded towards the funeral expenses of the deceased and non-pecuniary damages. Thus, the total compensation payable to the Appellants comes to Rs. 20,23,400/- (Rupees Twenty Lac Twenty Three Thousand and Four Hundred Only).

7. In view of the aforesaid, the impugned award stands modified and enhanced by a sum of Rs. 6,34,400/- (that is, Rs. 20,23,400/- minus Rs. 13,89,000/-), which may be rounded off to Rs. 6,34,000/- (Rupees Six Lac Thirty Four Thousand Only). Interest on the enhanced amount shall be payable at the rate of 7.5% per annum from the date of the filing of the petition till the date of realisation. In view of the fact that a sum of Rs. 12 Lacs has already been deposited by the Insurance Company in terms of this Court's order dated 10.08.2001, the Insurance Company shall be liable to pay the balance sum of Rs. 1,89,000/- with interest thereon as awarded by the learned Tribunal at the rate of 12% per annum from the date of the institution of the petition till the date of realisation. The Respondent No. 1-Insurance Company is directed to deposit the enhanced amount as also the balance sum of Rs. 1,89,000/- along with the interest thereon as set out hereinabove with the Registrar General of this Court within 30 days from the date of passing of this order, which shall be released to the

Appellants.

8. The appeal is allowed in the above terms. Parties shall bear their own costs.

9. Records of the Claims Tribunal shall be sent back to the concerned Tribunal forthwith.