

(2011) 09 DEL CK 0165

Delhi High Court

Case No: Mac. App. 18 of 2007

Shakuntala and Others

APPELLANT

Vs

Sudhir and Another

RESPONDENT

Date of Decision: Sept. 22, 2011**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140, 166

Hon'ble Judges: Reva Khetrapal, J**Bench:** Single Bench**Advocate:** O.P. Mannie, for the Appellant; D.D. Singh, Advocate for the Insurance Company, for the Respondent

Judgement

Reva Khetrapal, J.

The present appeal has been filed against the judgment and award dated 30th October, 2006 passed by the Motor Accident Claims Tribunal, Delhi in Suit No. 454/2005, whereby and whereunder the learned Tribunal awarded a sum of Rs. 8,50,000/- to the Appellants.

2. Brief facts necessary for the disposal of the present appeal are that an application u/s 166 read with Section 140 of the Motor Vehicles Act, 1988 was filed by the Appellants, who are the legal representatives of the deceased - Kashi Ram, claiming compensation in the sum of Rs. 50,00,000/- on account of the untimely demise of the said Kashi Ram in a motor vehicular accident, against the driver, the owner and the insurer of the offending vehicle. In the said claim petition, it was stated that the deceased was of 40 years age and was working as a Marketing Manager in M/s. Shiv Shakti Cold Storage, Main Jati Raod, Kundli, Sonapat (Haryana) on a salary of Rs. 9,000/- per month.

3. The learned Tribunal, for the purpose of ascertaining the loss of dependency of the Appellants, assessed the monthly income of the deceased to be in the sum of Rs. 6,000/- per month, and deducting one-fourth therefrom towards the personal

expenses of the deceased, computed the average monthly loss of dependency of the Appellants in the sum of Rs. 4,500/- per month, that is, Rs. 54,000/- per annum. To augment the said multiplicand constituting the loss of dependency of the Appellants, the learned Tribunal applied the multiplier of 15, thereby arriving at a sum of Rs. 8,10,000/- as the total loss of dependency of the Appellants. In addition to this, the learned Tribunal also awarded to the Appellants, a sum of Rs. 15,000/- each towards the loss of love and affection and loss of consortium and a sum of Rs. 10,000/- towards the funeral expenses of the deceased, that is, in all a sum of Rs. 8,50,000/- was awarded by the learned Tribunal to the Appellants. Aggrieved therefrom, the present appeal has been filed by the claimants seeking enhancement of the amount of compensation awarded by the Tribunal.

4. A look now at the relevant portion of the award of the learned Tribunal, which is reproduced herein below:

But for the wages payment sheets Ex.PW5/2 (Colly), attendance register Ex.PW6/1 and the balance sheet Ex.PW6/2 of Shiv Shakti Cold Storage (P) Ltd., no other document to prove the income of the deceased has come to be adduced in evidence. Purported wages payment sheet Ex.PW5/2, I am not inclined to believe to have been genuinely prepared and signed by the deceased. These wages payment sheets, which bear the revenue stamps and the purported signatures of 9 employees of Shiv Shakti Cold Storage Pvt. Ltd., do not bear even any initial of either any Chartered Accountant or any auditor for having been taken into account, while preparing the balance sheet of Shiv Shakti Cold Storage Pvt. Ltd. and which is Ex. PW6/2. A bare perusal of these purported receipts against payment of salaries, would show that the day the salary was paid and the receipt signed, is nowhere indicated. Quite surprisingly, even none of the employees is shown to have put any date of signing the receipts for any of the months. Another glaring feature of these receipts Ex.PW5/2 is that the purported signatures of the deceased on these receipts, are not similar. Purported attendance register by itself also does not bear signature of any one, either the employees or any Manager or Director or any other authority. This also appears to have been prepared in a cyclo-styled fashion at one point of time. I am, therefore, not inclined to believe the veracity and correctness of the wages payment receipt, purportedly signed by the deceased, to show his income to be Rs. 9,000/- p.m. Factum of the deceased being working as Marketing Manager/Executive with Shiv Shakti Cold Storage Pvt. Ltd., I however observe, has gone un rebutted. While working in the said capacity, the salary of the deceased of course, shall be higher than the prescribed minimum wages and keeping in view the fact that the deceased had five dependants to support, I reasonably assess his income at Rs. 6,000/- p.m. In the absence of any cogent evidence, as regards the future prospects of the deceased, the compensation is therefore to be assessed taking into account only such income of the deceased.

5. Mr. O.P. Mannie, the Learned Counsel for the Appellants, has challenged the aforesaid computation of the income of the deceased on the sole ground that the learned Tribunal erred in not appreciating the evidence placed on record by the Appellants to prove that the income of the deceased at the time of his death was Rs. 9,000/- per month, which income would have increased in the future had he not died abruptly, and resultantly the Tribunal erred in assessing the income of the deceased at the time of his demise to be in the sum of Rs. 6,000/- per month only, and in not making any addition thereto towards the future prospects of the deceased.

6. Mr. D.D. Singh, the Learned Counsel for the Respondent No. 3-Insurance Company, on the other hand, contended that the learned Tribunal has dealt with the evidence placed on record by the Appellants in detail and the findings of the learned Tribunal in respect thereto are justified and do not call for any interference.

7. Having heard the counsel for the parties and scrutinized the records of the learned Tribunal, I am inclined to accept the contentions of the Learned Counsel for the Appellants. It is not in dispute that the deceased was working as a Marketing Executive with M/s. Shiv Shakti Cold Storage Pvt. Ltd., which fact is also taken note of by the learned Tribunal. As regards the income of the deceased from his employment with M/s. Shiv Shakti Cold Storage Pvt. Ltd., I find from the record that the same was stated to be Rs. 9,000/- per month by the Appellants/claimants in the Claim Petition. The same income is also mentioned in the evidence of the widow of the deceased filed by way of affidavit (Exhibit PW2/A). Further, in her cross-examination as PW2, she stated that the certificate of the employment of her husband was PW2/R3/1 and categorically denied the suggestion that the deceased was not earning Rs. 9,000/- per month or any other sum. She also denied the suggestion that the certificate Exhibit PW2/R3/1 was forged and fabricated. The assertion of the Appellant No. 1 (PW2) regarding the income of the deceased is corroborated by the testimony of PW5 - Shri Suresh, an employee of M/s. Shiv Shakti Cold Storage Pvt. Ltd., who deposed that the deceased was working in the said concern as Marketing Executive since August, 2003 and was being paid a salary of Rs. 7,000/- per month besides house allowance of Rs. 2,000/- per month. The said witness also deposed that his annual increments were Rs. 400/- to Rs. 500/- per month. PW5 further proved on record the certificate regarding the salary of the deceased as Exhibit PW5/1, which bears the signature of Shri Gajender Yadav, the Managing Director of M/s. Shiv Shakti Cold Storage Pvt. Ltd., and the vouchers signed by the deceased and various other employees of M/s. Shiv Shakti Cold Storage Pvt. Ltd., for the receipt of salary exhibited as PW5/2 (Colly).

8. The testimony of PW5 is further corroborated by the testimony of PW6, Shri Gajender Yadav, Managing Director of M/s. Shiv Shakti Cold Storage Pvt. Ltd., who deposed that the deceased was working in his Company as Marketing Executive and his monthly salary was Rs. 9,000/- per month. The said witness categorically stated

that certificate Exhibit PW5/1 was issued by him and bears his signature at point "A" thereon. PW6 also affirmed the veracity of the original wages payment sheets (Exhibit PW5/2) and produced the attendance register maintained at M/s. Shiv Shakti Cold Storage Pvt. Ltd. in original, copies whereof, from October, 2004 to March, 2005, were proved on record as Exhibit PW6/1 (Colly). In addition to these, PW6 also proved on record copy of the audited balance sheet of M/s. Shiv Shakti Cold Storage Pvt. Ltd. as Exhibit PW6/2.

9. The aforesaid evidence, in my opinion, sufficiently establishes that the deceased was drawing a salary of Rs. 9,000/- per month from M/s. Shiv Shakti Cold Storage Pvt. Ltd., and there was, thus, no occasion for the learned Tribunal to scale down the salary/income of the deceased by doubting the genuineness of the documents placed on record in support of the same. The salary certificate (Ex.PW5/1) signed by the Managing Director of M/s. Shiv Shakti Cold Storage Pvt. Ltd. and proved on record by PW5 Shri Suresh as well as by PW6 Shri Gajender Yadav (the Managing Director himself) is unchallenged. So far as the vouchers relating to payment of wages (Exhibit PW5/2) are concerned, the same are also proved on record by the aforesaid witnesses, i.e., PW5 and PW6 by producing the originals of the same before the learned Tribunal. Neither the fact that the said vouchers (which bear revenue stamps) do not bear any initials of any C.A. or any auditor, nor the fact that they do not indicate the day on which the salary was paid or the day on which the receipt was signed, are, in my opinion, sufficient to doubt their veracity and correctness. The situation might have been different if only the copies had been filed by the Appellants without examining the officials of M/s. Shiv Shakti Cold Storage Pvt. Ltd., but the Appellants in the instant case have produced the officials of the concern, who, in turn, have produced and proved the documents in original (Exhibit PW5/2). Significantly also, PW6, in his cross-examination, clearly stated that the Auditor's Report (Ex.PW6/2) takes into account the wages paid to the employees as per the wages payment sheets (Ex.PW5/2). As regards the signatures of the deceased on the wages payment sheets, it may be observed that his signatures on sheets pertaining to August, 2003 to February, 2005 appear to be similar to each other. The learned Tribunal, therefore, in my opinion, erred in assessing the salary of the deceased in the sum of Rs. 6,000/- per month, when it was sufficiently clear from the service-cum-salary certificate (Exhibit PW5/1) and the wages payment sheets (Exhibit PW5/2) that the deceased was receiving salary in the sum of Rs. 9,000/- per month. So far as the attendance sheets (Exhibit PW6/1) are concerned, it may be noted that the same do not have any bearing on the aspect of the income of the deceased and the fact that the deceased was employed with M/s. Shiv Shakti Cold Storage Pvt. Ltd. has been held to be unrebutted by the learned Tribunal itself. It is also significant that no evidence in rebuttal has been led by the Respondents, either before the learned Tribunal or before this Court, to enable this Court to hold that the deceased was not earning Rs. 9,000/- per month either by producing any of the other eight signatories whose signatures appear on the vouchers along with

their respective names and father's name or the Chartered Accountant of the concern or in any other manner whatsoever.

10. In view of the aforesaid, it is deemed expedient to re-compute the amount of compensation payable to the Appellants by taking the salary of the deceased to be in the sum of Rs. 9,000/- per month. As regards the future prospects, there is the clear and un rebutted deposition of PW5 that the deceased was in a stable job and was entitled to annual increments of Rs. 400/- to Rs. 500/- per month. PW6, too, during his cross examination stated that the deceased was appointed for his past experience in the field. I am, therefore, inclined to hold that the income of the deceased would most certainly have increased in the future, had he not died in the unfortunate accident. Keeping in view the guidelines laid down by the Supreme Court in the case of Sarla Verma (supra) and the fact that the deceased was in the age-group of 40 years to 50 years, an addition of 30% to the actual income of the deceased is, in my opinion, warranted towards the future prospects of the deceased.

11. Thus calculated, the average monthly income of the deceased comes to Rs. 11,700/- per month (that is, Rs. 9,000/- plus 30% of Rs. 9,000/-) or say Rs. 1,40,400/- per annum. In view of fact that there is no dispute with regard to the deduction made by the Tribunal towards the personal expenses of the deceased as also the multiplier adopted by the Tribunal, the said aspects are not being touched upon. Thus, deducting one-fourth (1/4th) from the average annual income of the deceased towards the personal expenses of the deceased and applying the multiplier of 15 to augment the resultant multiplicand, the total loss of dependency suffered by the Appellants comes out to Rs. 1,40,400/- x 3/4 x 15 = Rs. 15,79,500/- (Rupees Fifteen Lac Seventy Nine Thousand and Five Hundred Only). In addition, the Appellants are also held entitled to receive a sum of Rs. 15,000/- towards the loss of consortium, a sum of Rs. 15,000/- towards the loss of love and affection, and Rs. 10,000/- towards funeral expenses of the deceased as awarded by the learned Tribunal. A further sum of Rs. 10,000/- is awarded to the Appellants towards the loss of estate of the deceased, that is, in all a sum of Rs. 16,29,500/-, which may be rounded off to Rs. 16,30,000/-, is awarded to the Appellants. The award amount is accordingly enhanced by a sum of Rs. 7,80,000/- (that is, Rs. 16,30,000/- - Rs. 8,50,000/-). Interest at the rate of 7.5% per annum shall be payable on the enhanced amount of the award from the date of filing of the petition till the date of realisation.

12. The award is modified to the aforesaid extent. The Respondent No. 3-Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest thereon 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. Sixty percent of the amount shall enure to the benefit of the Appellant No. 1, the widow of the deceased and the remaining shall be equally apportioned between the Appellants No. 2 to 5.

13. The appeal stands disposed of accordingly. There shall be no order as to costs.

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