

(2013) 01 CAL CK 0009

Calcutta High Court

Case No: F.M.A. No. 983 of 2009

Renuka Sen and Another

APPELLANT

Vs

Jagdish Pandey and Another

RESPONDENT

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**Date of Decision:** Jan. 28, 2013**Citation:** (2013) 3 ACC 216 : (2013) ACJ 2670**Hon'ble Judges:** Mrinal Kanti Sinha, J; Jyotirmay Bhattacharya, J**Bench:** Division Bench**Advocate:** Jayanta Kumar Mondal, for the Appellant; Sanjoy Paul, for the Respondent**Final Decision:** Allowed

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### Judgement

Jyotirmay Bhattacharya and Mrinal Kanti Sinha, JJ.

This miscellaneous appeal is directed against the judgment and/or award dated 13.5.2008 passed by the learned Judge, 4th Court, Motor Accidents Claims Tribunal, Alipore, in M.A.C. Case No. 35 of 2007 at the instance of the claimants. Here is the case where the claimants have lost their young bachelor earning son who died on 2.12.2004 at the age of 24 years 10 months in a road accident due to rash and negligent driving of the offending motor vehicle bearing No. WBV 2617. At the time of his death he was employed as marketing trainee with a private limited company, namely, Lupid Limited. His gross monthly income at the time of his death was Rs. 14,708.22. The learned Tribunal while computing the compensation payable to the claimants held that the gross income of the deceased cannot be taken into consideration for assessment of compensation payable to the claimants. According to the Tribunal, the basic salary of the deceased should be considered as the income of the deceased and the loss of dependency of the dependants should be computed with reference to the basic salary of the deceased. The learned Tribunal, thus, held that Rs. 5,000 which was the basic salary of the deceased per month at the time of his death should be considered as the basis for computation of the annual loss of dependency of his dependants. Considering the age of the mother of the deceased at the time of the death of her son, the learned Tribunal calculated the

compensation amount payable to the dependent parents at Rs. 3,25,000. Since a sum of Rs. 50,000 was paid to the dependent parents u/s 140 of the Motor Vehicles Act, the said sum of Rs. 50,000 was deducted from their total entitlement of Rs. 3,25,000 and thus the insurance company was directed to pay a further sum of Rs. 2,75,000 to the claimants by way of compensation.

2. The legality and/or propriety of the said judgment and/or award is under challenge in this miscellaneous appeal.

3. Let us now consider as to how far the learned Tribunal was justified in passing the impugned award in the facts of the instant case.

4. At a first glance, we find that the award requires interference as the basis of calculation of compensation has not been disclosed in detail in the award.

Issue No. 1:

5. Whether the gross salary of the deceased can be accepted for computation of the loss of income of the deceased and/or the loss of dependency of the dependants?

6. It is contended by learned advocate for the appellants that the learned Tribunal was not justified in assessing the compensation payable to the claimants on the basis of the basic salary of the deceased per month. According to him, the other perks which he used to receive from his employer out of his said employment should also have been taken into consideration for calculating the loss of dependency of the dependants. By referring to the payslip, being Exh. 13 series, he submitted that apart from the basic salary of Rs. 5,000 he used to get a sum of Rs. 600 on account of conveyance allowance and a sum of Rs. 3,000 on account of management allowance. It further appears from the said payslip that a sum of Rs. 4,194 was paid to him in November 2004 on account of field expenses on reimbursement basis. He further pointed out that a sum of Rs. 600 used to be deducted on account of his provident fund contribution every month. He, thus, submits that apart from the basic salary, the other allowances which he used to receive as salary and/or perks from his employer should have been taken into consideration towards assessing the loss of dependency of his dependants. In support of his said submission, he has relied upon a decision of the Hon'ble Supreme Court in the case of [National Insurance Company Ltd. Vs. Indira Srivastava and Others](#), wherein it was held that the amounts which were required to be paid to the deceased by his employer by way of perks should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. He further submits that the provident fund contribution which was deducted from his salary should also have been considered as his income for computation of loss of dependency of his parents.

7. We have considered the aforesaid submission of the learned counsel for the appellant. On perusal of the pay certificate, we find that the basic salary of the deceased was Rs. 5,000 per month. Conveyance allowance of Rs. 600 used to be paid to him as a fixed conveyance allowance every month and a sum of Rs. 3,000 used to be paid to him every month on account of management allowance. These were all fixed allowances which he used to receive every month as perks in addition to his basic salary. These allowances were not variable amount and the payment of such allowances was not dependent on the actual expenses spent by him in connection with his employment.

8. Thus, we have no hesitation to hold that apart from the basic salary of Rs. 5,000, the sum of Rs. 600 which was paid to him on account of conveyance allowance and further a sum of Rs. 3,000 which was paid to him on account of management allowance every month should have been taken into consideration for assessing the loss of his income. The provident fund contribution of Rs. 600 which was deducted from his salary every month should also be taken as a loss of income of the deceased. However, the field expenses which were paid to him on reimbursement basis cannot be accepted as the loss of income of the deceased as the actual expenses which was spent by him on the field on account of field expenses used to be reimbursed by his employer. Thus, the deceased did not enjoy any pecuniary benefit out of such field expenses which he used to receive by way of reimbursement of the actual expenses spent by him on such account. Field expenses were not paid to him regularly. Exh. 13/1, i.e. the salary-slip for another month shows that nothing was paid to him on account of field expenses in the said month. As such, the said field expenses of Rs. 4,194 cannot be taken as his perks. That apart from Exh. 13/1, we find that a sum of Rs. 2,203 was given to him on account of sales incentive. This amount of Rs. 2,203 can be accepted as annual loss of income of the deceased as sales incentive which certainly enured to the benefit of the deceased and/or his dependants.

9. Thus, considering the submission of the learned advocates for the parties, we are of the view that the actual loss of income of the deceased should have been computed at Rs. 9,200 per month. Thus, his annual loss of income will be Rs. 9,200 x 12 = Rs. 1,10,400 + Rs. 2,203, i.e., Rs. 1,12,603 per year.

Issue No. 2:

10. Whether 50 per cent of the total income can be deducted from total income of the deceased on account of his personal and living expenses?

11. It is contended by the learned advocate appearing for the insurance company that since the deceased was a bachelor, 50 per cent of his total income should be deducted on account of his personal expenses from his total annual income. In support of his said submission, he has relied upon a decision of the Hon"ble Apex Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation](#)

[and Another, \)](#), wherein it was held that where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. It was further held therein that with regard to the bachelor, normally 50 per cent is deducted as the personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. It was further held therein that there are some exceptional circumstances, where one-third can be deducted on account of the personal expenses of the deceased. The exceptional circumstances are those where the family of the bachelor has large number of dependants on the income of the deceased, then the personal and living expenses may be restricted to one-third and the contribution of the family would be taken as two-third.

12. But here is the case where the parents and one unemployed brother only were dependent upon the income of the deceased. Thus, we find that the family of the deceased was not a large one. As such, we are of the view that this case does not come within the purview of the exceptional circumstances as referred to by the Hon"ble Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#)

13. Thus, we hold that 50 per cent of the total income of the deceased should be deducted from his total income on account of his personal and living expenses. Thus, if 50 per cent of the total income is deducted from the total income of the deceased, then the actual loss of contribution to the dependants will be Rs. 56,300 per annum.

Issue No. 3:

14. How far the future prospects of the deceased can be taken into consideration for assessment of his income?

15. Learned advocate appearing for the appellants has drawn our attention to para 24 of the said decision in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#) wherein it was held that an addition of 50 per cent of actual salary to the annual income of the deceased towards future prospects should be allowed where the deceased had a permanent job and was below 40 years.

16. Since in the present case the deceased was aged about 24 years 10 months at the time of his death and he was in permanent job, the learned advocate for the appellants invited us to add 50 per cent of the actual salary of the deceased to his annual income towards his future prospects. He further contended that considering his educational qualification, his future prospects should not have been ignored altogether while computing his loss of income.

17. In this context, we have considered the said judgment of the Hon"ble Supreme Court wherein it was held that where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take into account only the actual income of deceased at the time of death. It was

further held therein that departure therefrom should be made only in rare and exceptional cases, involving special circumstances.

18. In the present case, we find that no evidence has been adduced by claimants that the deceased at the time of his death had a fixed salary with provision for annual increment. He was not even in a permanent job. He was employed in a private limited company as a trainee. Since the appellants have failed to prove that he was in a permanent job and there was provision for annual increment for the deceased in his employment, we are of the view that the future prospects of the deceased cannot be taken into consideration for ascertaining his actual loss of annual income.

Issue No. 4:

19. Let us now consider the other part of the submission of the respective parties with regard to the application of the multiplier in the facts of the instant case.

20. The learned advocate appearing for the appellants has cited the following decisions of the Hon"ble Supreme Court to show that the multiplier should be selected with reference to the age of the deceased:

- (i) [P.S. Somanathan and Others Vs. District Insurance Officer and Another,](#)
- (ii) [Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others,](#)

21. Thus, if the age of the deceased at the time of death is considered, then 17 will be the appropriate multiplier as at the time of death the deceased was aged about 24 years 10 months.

22. To contradict such submission of the learned advocate for the appellants, learned advocate appearing for the insurance company cited the following decisions of the Hon"ble Supreme Court:

- (i) [U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,](#)
- (ii) [New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others,](#)

23. These two decisions were delivered by the Bench of three Hon"ble Judges of the Hon"ble Supreme Court.

24. In those two decisions it was held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. It was further held in one of such decisions that if the deceased, a bachelor, dies at the age of 45 years and the dependants are the parents, the age of the parents should also be relevant in the choice of multiplier. Identical view was expressed in the other decision of the Hon"ble Supreme Court regarding selection of multiplier with reference to the age of parents of the deceased if the deceased dies as a bachelor. From the decisions of the Hon"ble Apex Court which were cited by the learned counsel for the appellant, we find that the aforesaid two larger Bench decisions of the Hon"ble Apex Court

were neither cited, nor considered by the Division Bench of the Hon"ble Supreme Court comprising two Hon"ble Judges.

25. As such, we are of the view that the ratio which was laid down in those two decisions of the Hon"ble Supreme Court cited by the learned counsel appearing for the insurance company with regard to the choice of multiplier is the law of the land.

26. As such, we are of the view that the age of the dependants should be considered for selecting the multiplier.

27. Here, the father is a retired person. His actual age is not on record. However, the mother is aged about 51 years.

28. Considering the age of the mother of the deceased, we are of the view that the appropriate multiplier should be 11.

29. Thus, if the multiplier 11 is applied in the instant case, then the actual loss of annual income of the dependants of the deceased will be Rs. 6,19,300. In addition to that, the statutory compensation of Rs. 4,500 should be added to the actual loss of income of the deceased. Accordingly, we find that a sum of Rs. 6,23,800 should be paid to the claimants on account of compensation. The claimants are also entitled to get simple interest at the rate of 8 per cent per annum on the entire compensation amount u/s 171 of the Motor Vehicles Act from the date of filing of the claim petition to the date of actual payment thereof.

30. Since a sum of Rs. 3,25,000 has admittedly been paid to the claimants by the insurance company in pursuance of the award under challenge in this appeal, the insurance company is, thus, directed to pay the balance amount of Rs. 2,98,800 together with interest on the entire compensation amount as mentioned above from the date of filing the claim petition to the date of actual payment thereof. Such payment should be made within 30 days from the date of communication of this order, by following the mode of payment as prescribed under the award which is under challenge in this appeal.

31. The appeal is, thus, disposed of.

32. Let the lower court record be sent down to the Tribunal immediately. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.