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SUNIL SHARMA & ORS.

v.

BACHITAR SINGH & ORS.

(Civil Appeal No. 1440 of 2011)

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FEBRUARY 07, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

MOTOR VEHICLES ACT, 1988:

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Fatal motor accident – Claim petition – Compensation – Computation of income of deceased – Deductions – Multiplier – Compensation towards revision in pay, loss of love and affection and consortium – Held : Deduction from the income of deceased towards HRA, CCA, EPF, GIS, medical allowance should not have been made by Tribunal

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– As deceased was married, 1/3rd should be deducted from her income towards personal expenses – Annual income of deceased, thus, calculated to Rs. 1,89,640/- – Addition of 30% by way of future prospects allowed – Deceased being 41 years of age, multiplier 14 to be applied – Accordingly compensation calculated to Rs. 22,34,960/- – Further, a sum of Rs. 25,000/- awarded towards loss of love and affection and consortium – Thus, total compensation payable to claimants rounded off to Rs. 22,60,000/- with 6% interest from date of filing of claim petition – Respondents jointly and severally

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liable to make the payment.

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The legal heirs and dependants of a victim of fatal motor accident filed a claim petition before the Motor Accident Claims Tribunal, claiming Rs.40,00,000/- as compensation. The deceased was 41 years of age at the time of the accident and was employed. The Tribunal deducted House Rent Allowance, City Compensatory Allowance and Medical allowance etc and calculated her total carry home salary to be Rs.10,000/- (annual

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equivalent being Rs.1,20,000/-. It made further deduction of 40% towards personal expenses and, applying the multiplier 11, awarded Rs.7,92,000/- as compensation along with 6% interest. The High Court applied the multiplier of 14 and accordingly enhanced the compensation by a further sum of Rs.2,16,000/-

In the instant appeal filed by the claimants, it was contended for the appellants that the Tribunal should not have deducted HRA, CCA, EPF, contribution towards Group Insurance Scheme, and repayment of computer advance from the income of the deceased; that the deduction of 40% towards personal expenses was not correct; that the revision of pay scale which had come into force before the death of the victim should have been taken into consideration; and that compensation towards loss of love and affection, consortium and funeral rites should also have been allowed.

Partly allowing the appeal, the Court

HELD:

(a) Computation of Income :

1.1 The deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased. However, the computer advance should not form a part of the monthly income. The monthly income of the deceased thus amounts to Rs.15,351/-. Accordingly, the annual income of the deceased would amount to Rs. 1,84,212/-. [para 11-12] [583-B-C]

Raghuvir Singh Matolya & Ors. v. Hari Singh Malviya &

A *Ors.*, 2009 (5) SCR 379 =(2009) 15 SCC 363 and *Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Anr.*, 2009 (5) SCR 1098 =(2009) 6 SCC 121 – relied on.

(b) Deduction for Personal Expenses :

B 1.2 As the deceased was married, a deduction of 1/3rd should be made to her income by way of personal expenses. After such deduction, the income of the deceased would thus amount to Rs.1,22,808/-, which is rounded off to Rs.1,22,800/-. [para 14] [583-G-H]

C (c) Revision in Pay Scale :

D 1.3 In *Sarla Verma* this Court laid down a 'rule of thumb' with respect to addition in income due to future prospects and observed that the addition should be only 30% if the age of the deceased was 40 to 50 years. In the instant case, the deceased was aged 41 years. Thus, an addition of 30% by way of future prospects is allowed. The annual income of the deceased would thus be Rs.1,59,640/-. Considering the age of the deceased, a multiplier of 14 is to be applied. Accordingly, annual dependency comes to Rs.22,34,960/-. [para 15-16] [584-A-C]

F Compensation for Loss of Love and Affection and Consortium:

G 1.4 In cases of fatal motor accidents, some amount must always be awarded by way of compensation for loss of love and affection and consortium. It is of course impossible to compensate for the loss of a life, in the instant case, that of a wife and mother, in terms of money. However, a sum of Rs.25,000/- is awarded for loss of love and affection and consortium. [para 17] [534-D-E]

H 1.5 Thus, total compensation payable to the claimants-appellants would be Rs.22,59,960/- which is

rounded off to Rs.22,60,000/- with interest at the rate of 6% from the date of filing the claim petition. The respondents are jointly and severally liable to make the payment. [para 18 and 20] [534-F-G] A

Case Law Reference:

2009 (5) SCR 379 relied on para 9 B

2009 (5) SCR 1098 relied on para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1440 of 2011. C

From the Judgment & Order dated 07.08.2009 of the High Court of Punjab & Haryana at Chandigarh in First Appeal No. 2662 of 2008.

Ashwani Kumar, Kalyan V. for the Appellants. D

Manjeet Chawla for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted. E

2. On 2.08.2006, around 4.40 PM, one Mrs. Sunita Sharma (aged 41 years) was returning to Panchkula from Chandigarh on her scooter, when the offending vehicle (a Tata 407 bearing registration no. HR-58-5649) driven by the second respondent hit her and ran over her. She was declared dead when taken to hospital. F

3. Legal heirs of the deceased, her husband and two children, filed a claim petition before the Motor Accident Claims Tribunal (MACT) claiming Rs.40,00,000/- as compensation, along with interest @ 24% p.a. G

4. MACT awarded total compensation of Rs.7,92,000/- It calculated the same by arriving at gross salary of Rs.14,541/- H

A (based on salary certificate provided by Haryana Women
Development Corporation Ltd.), the employer of Mrs. Sunita
Sharma. From the same, Rs.1310/- was deducted on various
accounts- she was an income tax assessee, was paid HRA
amounting to Rs.885/-, CCA Rs.200/- and medical allowance
B Rs.250/-. MACT concluded that these sums could not be taken
into account in the total salary of Sunita. Thus, her total carry
home salary was taken to be Rs.10,000/- (annual equivalent
being Rs.1,20,000/-). A deduction of 40% was made for
C personal expenses, as she was a working woman and was also
maintaining a scooter. Thus, dependency was calculated at
Rs.72,000/-, to which a multiplier of 11 was applied. Hence,
compensation was calculated at Rs.7,92,000/- along with
interest at the rate of 6% p.a.

D 5. Aggrieved by the award of MACT, the claimants filed
an appeal before the High Court of Punjab and Haryana for
enhancement of compensation. The High Court applied the
multiplier of 14, instead of 11 applied by MACT. The High Court
took annual dependency same as that calculated by MACT, i.e.
Rs.72,000. Accordingly, High Court awarded Rs.2,16,000/-
E over and above what was awarded by MACT.

6. Still aggrieved, the claimants filed the present appeal
before this Court. The claimants, appellants in the present
appeal, contended that:

- F a. MACT should not have deducted HRA, CCA, EPF
Group Insurance Scheme and computer advance
from the income of the deceased and these
deductions should not have been upheld by the
High Court.
- G b. Deduction of 40% for personal expenses, which
was upheld by the High Court, was not correct.
- H c. MACT and the High Court did not take into
consideration the revision in pay scale of the

deceased that came into force from January 2006 (before her death) while calculating her income. A

- d. High Court did not grant any compensation for loss of love and affection, consortium and expenses towards funeral rites of the deceased. B

7. We have heard the parties and perused the evidence on record, along with the judgments of the Tribunal and High Court. We now proceed to deal with each point separately.

a. Computation of Income C

8. In the case of *National Insurance Co. Ltd. v. Indira Srivastava & Ors.* [AIR 2008 SC 845], S.B. Sinha J, has observed that "The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms." His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family. This Court clarified that by opining that 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost in view of death of the deceased. It is in the nature of compensation for future loss towards the family income" and that "the amounts, therefore, which were required to be paid to the deceased by his H

A 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. We may, however, hasten to add that from the said amount of
 B income, the statutory amount of tax payable thereupon must be deducted.”

C 9. In *Raghuvir Singh Matolya & Ors. v. Hari Singh Malviya & Ors.*, [(2009) 15 SCC 363], this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

10. In the present case, Haryana Women Development Corporation Ltd. certified that the deceased had drawn her salary for the month of July, 2006 as under:

D	Basic Pay	-Rs.7,100/-
	D.P	-Rs.3,550/-
	D.A.	-Rs.2,556/-
E	HRA	-Rs.885/-
	CCA	-Rs.200/-
	Med. Allowance	-Rs.250/-
F	Gross Total	-Rs.14,541
	Deduction	
	EPF	-Rs.780/-
G	GIS	-Rs.30/-
	Computer Advance	-Rs.500/-
H	Total Deduction	-Rs.1.310/-

Net Payable= Rs.14,541 - Rs.1,310 = Rs.13,231/-

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11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

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12. Thus, we calculate the income of the deceased by taking the abovementioned allowances into consideration. However, the computer advance should not form a part of the monthly income. The monthly income of the deceased thus amounts to Rs.15,351/-. Thus, the annual income of the deceased would amount to Rs. 1,84,212/-.

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b. Deduction for Personal Expenses

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13. The Tribunal deducted 40% from the income of the deceased by way of personal expenses and the same was upheld by the High Court. We are of the view that both courts erred in doing the same in light of the judgment in the case of *Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Anr.*, [(2009) 6 SCC 121], wherein this Court held:

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“we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.”

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14. Hence, we hold that as the deceased was married, a deduction of 1/3rd should be made to her income by way of personal expenses. After such deduction, the income of the deceased would thus amount to Rs.1,22,808/-, which we round off to Rs.1,22,800/-.

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A c. Revision in Pay Scale

15. In *Sarla Verma* (supra), this Court laid down a 'rule of thumb' with respect to addition in income due to future prospects. This Court observed that the addition should be only 30% if the age of the deceased was 40 to 50 years.

B 16. In the present case, the deceased was aged 41 years. Thus, we allow an addition of 30% by way of future prospects. The annual income of the deceased would thus be Rs.1,59,640/-. Considering the age of the deceased, a multiplier of 14 is to be applied. Accordingly, annual dependency comes to Rs.22,34,960/-.

C d. Compensation for Loss of Love and Affection, Consortium, Funeral Rites

D 17. In cases of fatal motor accidents, some amount must always be awarded by way of compensation for loss of love and affection and consortium. It is of course impossible to compensate for the loss of a life, in the present case, that of a wife and mother, in terms of money. However, we can make an attempt to do so. Accordingly we award Rs.25,000/- for loss of love and affection and consortium.

E 18. Thus, total compensation payable to the claimants-appellants is Rs.22,59,960/- which is rounded off to Rs.22,60,000/- with interest at the rate of 6% from the date of filing the claim petition.

19. Accordingly the appeal of the claimants-appellants is allowed to the extent indicated above.

G 20. The respondents are jointly and severally liable to make the aforesaid payment, after adjusting payment, if any, is made. Such payment is to be made within three months. No costs.

R.P.

Appeal partly allowed.

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