

MANASVI JAIN

A

v.

DELHI TRANSPORT CORPORATION LTD. & ORS
(Civil Appeal No. 7642 of 2009)

APRIL 23, 2014

B

[P. SATHASIVAM, CJI, RANJAN GOGOI AND
N.V. RAMANA, JJ.]

Motor Vehicles Act, 1988: s.166 – Compensation in case of fatal accident – Assessment of income of the deceased – Held: While ascertaining the income of the deceased, any deductions shown in the salary certificate towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income – The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

C

D

The father of the appellant died in motor accident. He was aged 55 years on the date of accident and was working as Executive Engineer with the PWD and was earning salary of Rs. 26,950 p.m. The Tribunal while determining net monthly income of the deceased, excluded various deductions towards GPF, House Rent, GIS and income tax. The take home salary was determined as Rs. 15,784 p.m. Thus, taking into consideration his age and monthly salary at Rs. 15,784 p.m., the amount of compensation of Rs. 10.10 lacs was held to be payable to the appellant.

E

F

The appellant filed appeal before the High Court seeking enhancement of compensation which was dismissed. Hence the instant appeal.

G

Allowing the appeal, the Court

H

A HELD: 1. It is not in dispute that the deceased was getting an amount of Rs. 26,924/- as monthly salary and Rs. 11,140/- was being deducted under various heads such as GPF, House Rent, G.I.S. and Income Tax. After taking into account these deductions, the Tribunal arrived at a conclusion that the net salary of the deceased is Rs.15,784/- and awarded a total compensation of Rs.10,25,176/-, including Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards mental agony. The High Court did not interfere with the judgment of the Tribunal. [Para 11] [577-D-F]

D 2. It is clear from salary certificate that except an amount of Rs. 2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs. 24,450/- which can be rounded to Rs. 25,000/- Accordingly, the monthly take home salary of the deceased is determined at Rs. 25,000/-. Applying multiplier 8, the appellant is entitled to the compensation of Rs.16.15 lacs. [Paras 13 and 14] [578-D-H]

F *Shyamwati Sharma & Ors. vs. Karam Singh & Ors. (2010) 12 SCC 378: 2010 (8) SCR 417 – relied on.*

Case Law Reference:

G 2010 (8) SCR 417 Relied on Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7642 of 2009.

H From the Judgment & Order dated 26.03.2008 of the High

Court of Uttarakhand at Nainital in Appeal from Order No. 484 of 2006. A

Rajesh Tyagi, Atishi Dipankar for the Appellant.

M.K. Dua, Kishore Rawat, Avijit Bhattacharjee, Dr. Monika Gusain, Hari Om Yadav, Abhinav Jain for the Respondents. B

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. This appeal by special leave arises out of the Judgment and order dated 26th March, 2008 passed by the High Court of Uttarakhand in a Motor Accidents Claims Appeal No. 484 of 2006. C

2. The appellant-claimant is the son of deceased Suresh Chandra Jain who died in a road accident. He filed a claim petition before the Motor Accidents Claim Tribunal, Dehradun seeking compensation of an amount of Rs.36,00,000/- on the basis that the deceased who was aged 55 years on the date of accident, was working as Executive Engineer with the Public Works Department of the Government of Uttarakhand and was earning a salary of Rs.26,950/- per month. D E

3. The Tribunal, after taking into account the evidence on record and also the evidence of one eyewitness to the accident, namely, Ajay Bansal (PW 2), came to the conclusion that the accident took place due to rash and negligent driving of the bus driver—Respondent No. 2 and as such, the appellant is entitled for compensation. According to the original salary certificate of the deceased issued by the Executive Engineer, Public Works Department, Uttarakhand, the gross salary of the deceased was found to be Rs.26,950/- and after various deductions towards GPF, House Rent, GIS and Income Tax, the take home salary was determined as Rs.15,784/- p.m. The Tribunal considering the fact that the deceased was 55 years old, as evidenced by the documentary evidence, applied the multiplier 8. Thus, taking into consideration his age and monthly H

A salary at Rs.15,784/-, the Tribunal calculated the loss of dependency as Rs.10,10,176/- (2/3rd of Rs.15,784 x 12 x 8). In addition to that Rs.5,000/- was granted towards funeral expenses and Rs.10,000/- towards mental agony and finally awarded Rs.10,25,176/- as compensation with interest payable @ 5% p.a. from the date of institution of claim petition till the date of payment. The Tribunal also fastened the liability of making payment of compensation on the Delhi Transport Corporation-Respondent No. 1 as the bus which caused accident belongs to them.

C 4. Against the aforesaid order of the Tribunal, both Delhi Transport Corporation as well as the appellant herein have filed their respective appeals before the High Court. The Delhi Transport Corporation pleaded that the bus was insured with National Insurance Company, therefore, the liability of making payment of compensation lies on the Insurance Company. On the other hand, the appellant's appeal was for enhancement of compensation.

E 5. The High Court allowed the appeal of the Delhi Transport Corporation and directed the National Insurance Company to pay the compensation amount.

F 6. As far as the appeal filed by the appellant herein is concerned, the High Court was of the view that the amount awarded by the Tribunal as compensation was perfectly justified. It accordingly dismissed the appellant's appeal.

G 7. The appellant, not satisfied with the quantum of compensation and the rate of interest awarded by the Courts below, filed this appeal.

H 8. The contention of the counsel for the appellant is that in deciding the 'take home salary' of the deceased, the Tribunal as well as the High Court erroneously deducted from the salary an amount of Rs.11,140/- contributed by the deceased towards various heads such as General Provident Fund, house rent,

insurance, income tax etc. He submitted that these contributions should also be treated as the income of the deceased.

9. On the other hand, learned counsel for the respondent-Insurance Company supported both the judgments of the Tribunal and the High Court.

10. In view of the contentions raised on behalf of either side and the material placed before us, the main question that arises for consideration is whether for the purpose of deciding net monthly income of the deceased, the amount of voluntary contributions he made towards General Provident Fund etc., should be included or excluded from his salary?

11. We have heard learned counsel for the parties and perused the orders passed by the Tribunal and the High Court. It is not in dispute that the deceased was getting an amount of Rs.26,924/- as monthly salary and Rs.11,140/- was being deducted under various heads such as GPF, House Rent, G.I.S. and Income Tax. After taking into account these deductions, the tribunal arrived at a conclusion that the net salary of the deceased is Rs.15,784/- and awarded a total compensation of Rs.10,25,176/-, including Rs.5,000/- towards funeral expenses and Rs.10,000/- towards mental agony. The High Court did not interfere with the judgment of the Tribunal.

12. This Court in *Shyamwati Sharma & Ors. Vs. Karam Singh & Ors.* (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "***while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax / surcharge alone should be considered to arrive at the net income of the deceased.***"

A 13. In the present case, there is no dispute about of the salary of the deceased. As per salary certificate, his monthly income and deductions are as under:

	Monthly Income	Rs. 26,950-00
B	<u>Deductions</u>	
	Provident Fund	8,000-00
	House Rent	525-00
C	G.I.S.	120-00
	Income Tax	2,500-00

D So, from the above table, it is clear that except an amount of Rs.2,500/- towards Income Tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family. Considering the decision of this Court in *Shyamwati Sharma & Ors.*, (supra), in our opinion, except contribution towards Income Tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary. Hence, the take home salary of the deceased comes to Rs.24,450/- which can be rounded to Rs.25,000/-

F 14. Accordingly, we determine the monthly take home salary of the deceased as Rs.25,000/-. Applying multiplier 8, the appellant is entitled to the compensation as under:

	Financial Loss	Rs. 16,00,000-00
	2/3rd of 25,000 x 12 x 8	
G	Funeral Expense	Rs. 5,000-00
	Towards mental agony	Rs. 10,000-00
H	Total compensation	<u>Rs. 16,15,000-00</u>

MANASVI JAIN v. DELHI TRANSPORT
CORPORATION LTD. [N.V. RAMANA, J.]

579

The appellant is also entitled to an interest @ 6% p.a. from the date of filing of the petition before the Tribunal till the date of payment. A

15. We therefore set aside the judgments of the Courts below and allow the appeal in the above terms with no order as to costs. B

Devika Gujral

Appeal allowed.