

KALPANARAJ

v.

TAMIL NADU STATE TRANSPORT CORPORATION
(Civil Appeal No.3461 of 2003)

APRIL 22, 2014

[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

Motor Vehicles Act, 1988 – s.166 – Fatal Accident – Compensation – Determination of – Deceased aged 46 years – Claimants-wife and two minor children – Tribunal awarded compensation of Rs.20.90 lacs while High Court reduced it to Rs.5.76 lacs by determining monthly income on the basis of income tax return of the deceased – Appeal for enhancement of compensation – Held: High Court was correct in determining the monthly income on the basis of the income tax return, however, erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased – Moreover, since deceased was 46 years of age at the time of death, compensation ought to have been determined by taking 30% increase in the future prospects of income and by adopting a multiplier of 13 – Award of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- each towards loss of love and affection by the minor children awarded by High Court was on the lower side – Accordingly, compensation of Rs. 1 lakh each awarded towards loss of consortium and towards loss of love and affection – Apart from this, Rs. 1 lakh awarded towards loss of estate and Rs.1 lakh towards loss of expectation of the life of the deceased – Further, Rs. 50,000/- also awarded for funeral expenses and cost of litigation – Thus, total sum of Rs. 14.51 lakh awarded to appellants-claimants as compensation alongwith interest @ 9% p.a..

A 46 year old person died when the motor cycle

A driven by him collided with the bus of respondent-Corporation. His wife and two minor children filed claim petition before the MACT. The MACT held that the accident occurred due to rash and negligent driving of the driver of the bus of the respondent-corporation. It
B further determined monthly income of the deceased at Rs.15,000 and adopting a multiplier of 18, assessed compensation at Rs.32.40 lacs, however awarded Rs.20.90 lacs since that was the amount claimed by appellants.

C On appeal by respondent-corporation, the High Court held that the Tribunal erred in determining monthly income of the deceased at Rs.15,000 instead of taking the income shown in income tax return and further erred in
D not deducting 1/3rd towards personal expenses of the deceased. Accordingly, the High Court took monthly income of the deceased as Rs.3,115 on the basis of net average income of the deceased calculated as per
E income tax return and reduced the compensation under the head of loss of income, funeral expenses, loss of love and affection by the children, loss of income and loss of consortium by wife. The High Court awarded a total amount of Rs.5.76 lacs as compensation to the appellants. Hence the present appeal for enhancement of compensation.

F Allowing the appeal, the Court

HELD:1. The only available documentary evidence on record of the monthly income of the deceased was the income tax return filed by him with the Income Tax
G Department. The High Court was correct, therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation. In
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the light of the principle of law laid down in **Indira Srivastava* case, the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant financial year 1994-1995. [Paras 7, 8] [583-G-H; 584-A; 586-D]

**National Insurance Company Ltd. v. Indira Srivastava and Ors.* (2008) 2 SCC 763 – relied on.

2. As per the Income Tax return of the financial year 1994-1995 produced on record, the deceased was earning Rs. 88,660/- per annum or Rs. 7330/- per month. Further, the deceased being 46 years of age at the time of death, he is entitled to 30% increase in the future prospects of income as per the legal principle laid down in ***Santosh Devi*. Also, since the deceased was 46 years of age at the time of the accident, a multiplier of 13 is appropriate for determining the quantum of compensation as per the principle laid down in the case of ****Sarla Verma*. Therefore, the total amount of compensation the appellants- claimants are entitled to under the head of loss of income is: [Rs.7330+30/100 x rs. 7330) x 12 x 13] = Rs.14,86,524/-.] Further, since the deceased left behind his wife and two children, the amount to be deducted under the head of personal expenses is 1/3rd of the total income in the light of the principle laid down in ****Sarla Verma*. Therefore, the amount to be awarded as compensation to the appellant is = (Rs. 14,86,524/- - 1/3 x Rs. 14,86,524/-) = Rs. 9,91,016/- . [Paras 9 to 12] [586-F-H; 587-A-D]

Santosh Devi v. National Insurance Company Ltd. and Ors.* (2012) 6 SCC 421; *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr* (2009) 6 SCC 121: 2009 (5) SCR 1098 – relied on.

A 3. The appellant-claimants sought an amount of Rs. 10,000/- towards damage to the motorcycle. Since, the claim was not rebutted with evidence by the respondent, compensation of Rs. 10,000/- is granted towards the damage caused to the bike. Further, the High Court
B awarded a sum of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- each towards loss of love and affection by the minor children. This amount awarded by the High Court was on the lower side in the light of the principle laid down in *****Rajesh* case wherein the
C Court awarded Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of care and guidance to the minor children. Accordingly, a compensation of Rs. 1,00,000/- each is awarded towards loss of consortium and towards loss of love and affection. Apart from this,
D Rs. 1,00,000/- is awarded towards loss of estate and Rs.1,00,000/- towards loss of expectation of the life of the deceased. A sum of Rs. 50,000/- is also awarded for funeral expenses and cost of litigation. Therefore, a total sum of Rs. 14,51,016/- which is rounded off at Rs. 14,51,000/- is awarded to the appellants-claimants. [para
E 13, 15] [587-D-H; 588-A]

*****Rajesh and Ors. v. Rajbir Singh and Ors.* (2013) 9 SCC 54: 2013 (5) SCR 961 – relied on.

F 4. An interest @ 9% per annum on the compensation as awarded by High Court is upheld. The compensation awarded shall be apportioned between the appellants equally with proportionate interest. The Insurance Company is directed to deposit 50% of the awarded
G amount with proportionate interest in any of the Nationalized Bank of the choice of the appellants for a period of 3 years. The rest of 50% amount awarded with proportionate interest shall be paid to the appellants by way of a demand draft within six weeks from the date of

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receipt of a copy of this order after deducting the amount
if already paid. [Para 16] [588-C-E] A

*Municipal Corporation of Delhi vs. Uphaar Tragedy
Victim Association (2011) 14 SCC 481 – relied on.*

Case Law Reference : B

(2008) 2 SCC 763	relied on	Para 7, 8	
(2012) 6 SCC 421	relied on	Paras 9, 12	
2009 (5) SCR 1098	relied on	Paras 10, 12	C
2013 (5) SCR 961	relied on	Para 14	
(2011) 14 SCC 481	relied on	Para 16	

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3461 of 2003. D

From the Judgment and Order dated 30.01.2002 of the
High Court of Judicature at Madras in Civil Miscellaneous
Appeal No. 1487 of 1999.

Sriram, Aditya Verma (for Hari Shankar K.) for the
Appellants. E

B. Balaji, A. Selvin Raja (for T. Harish Kumar) for the
Respondent.

The Judgment of the Court was delivered by F

V.GOPALA GOWDA, J. 1. This appeal is filed by the
appellants questioning the correctness of the judgment and final
Order dated 30.01.2002 passed by the High Court of
Judicature at Madras in Civil Misc. Appeal No. 1487 of 1999,
urging various facts and legal contentions in justification of their
claim. G

2. Necessary relevant facts are stated hereunder to
appreciate the case of the appellants and also to find out H

A whether the appellants are entitled for the relief as prayed in
this appeal.

B 3. The deceased, while going on his motorcycle from
Vellore to Kannamangalam, collided with the bus of the
respondent-Corporation as a result of which he sustained fatal
injuries and died on the spot. The legal representatives of the
deceased viz, his wife and two minor children filed M.C.O.P.
No. 539 of 1994 contending that the accident occurred solely
because of the rash and negligent driving of the bus of the
respondent-Corporation. If the driver of the bus had driven the
C bus with carefulness, there might have been no possibility of
dragging the deceased along with the motorcycle for a distant
of 120 feet. The appellants-claimants claimed an amount of Rs.
20 lakhs compensation "for the death caused by the
respondent. The Tribunal, after considering the material
D evidence on record of P.W.1 and P.W. 2 and R.W.1 and the
ten exhibits filed on behalf of the appellant-claimants, found that
the accident has occurred only due to rash and negligent driving
of the driver of the bus of the respondent-Corporation.
Therefore, the learned judge, holding the monthly income at
E 15,000/- and adopting the multiplier of 18, determined a sum
of Rs.32,40,000/- as compensation. However, he restricted the
sum of compensation to Rs. 20,90,000/-, since that was the
amount claimed by the appellants-claimants. The Tribunal
further awarded interest @12% per annum on the said amount.

F 4. Aggrieved by the Award of the Tribunal, the respondent-
Corporation filed an appeal challenging the Order of the
Tribunal. The High Court, however, only restricted itself to
ascertain as to whether the compensation awarded by the
Tribunal was excessive. And if so, then what is the amount to
G which the appellants-claimants are entitled to.

H 5. The High Court opined that the Tribunal erred in relying
upon the statement of evidence of the wife of the deceased to
determine the monthly income of the deceased at 15,000/-
instead of relying upon the income shown in the Income Tax

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return. Further, the High Court opined that the Tribunal erred in not deducting 1/3rd for personal expenses of the deceased. Further, according to the High Court, the Tribunal erred in determining the multiplier of 18 instead of 13 considering the age of the deceased which was 46 at the time of the accident.

6. Accordingly, the High Court held that the unsubstantiated oral evidence alone of P.W.1 cannot be taken into consideration in the light of Exhs. A.8, A.9 and A.10. The monthly income of the deceased is therefore taken as 3,115/- per month for computation of the multiplicand on the basis of net average income of the deceased calculated as per the income tax return produced as evidence on record. Therefore, the compensation determined under the head of loss of income under the head of loss of income' of the deceased was determined by the High Court at Rs. 4,86,000/-. Further, the High Court has reduced compensation under the head of funeral expenses from Rs. 25,000/- to Rs.10,000/-. The Tribunal awarded a consolidated amount for loss of love and affection by the children, loss of income and loss of consortium by the wife at Rs.19,55,000/-. The High Court reduced the compensation under the head of 'loss of love and affection' by the minor children at Rs. 20,000/- each. "Also, the amount awarded towards loss of consortium to the wife was reduced by the High Court to Rs. Rs. 30,000/-. Therefore, in total, the High Court awarded a total amount of Rs. 5,76,000/- as compensation to the appellants-claimants. The interest rate was also reduced to 9% per annum by the High Court from 12% awarded by the Tribunal.

7. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid

A down by this Court in the case of *National Insurance Company Ltd. v. Indira Srivastava and Ors.*¹ The relevant paragraphs of the case read as under:“

B “14. The question came for consideration before a learned Single Judge of the Madras High Court in *National Insurance Co. Ltd. v. Padmavathy and Ors.* wherein it was held:

C ‘7.....Income tax, Professional tax which are deducted from the salaried person goes to the
D coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution
E are amounts paid specific heads and the contribution is always repayable to an employee at
F the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they
G are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory
and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory
compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee
which are other wise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency
compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I
am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax

H 1. (2008) 2 SCC 763.

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and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing "the dependency compensation."

15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in *S. Narayanamma and Ors. v. Secretary to Government of India, Ministry of Telecommunications and Ors.* holding:

13...In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to "his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of, housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased

A was getting Rs.1,401/-as net income every month is
unsustainable as the deductions made towards vehicle
loan and other deductions were also taken into
consideration while fixing the monthly income of the
deceased. The above finding of the tribunal is contrary to
B the principle of 'just compensation' enunciated by the
Supreme Court in the judgment in Helen's case (1 supra).
The Supreme Court in *Concord of India Insurance Co. v.*
Nirmala devi and Ors. 1980 ACJ 55(SC) held that
C determination of quantum must be liberal and not niggardly
since law values life and limb in a free country 'ingenuous
scales'."

(Emphasis laid down by this Court)

D 8. In the light of the principle of law laid down by" this Court
in the Indira Srivastava case mentioned supra, we are of the
opinion that the High Court erred in making deductions under
various heads to arrive at the net income instead of
ascertaining the gross income of the deceased out of the
annual income earned from his occupation mentioned in the
E income tax return submitted for the relevant financial year 1994-
1995.

F 9. As per the Income Tax return of the financial year 1994-
1995 produced on record, the deceased was earning Rs.
88,660/-per annum or Rs. 7330/-per month. Further, the
deceased being 46 years of age at the time of death, he is
entitled to 30% increase in the future prospects of income as
per the legal principle laid down by this Court in *Santosh Devi*
*v. National Insurance Company Ltd. and Ors.*²

G 10. Also, since the deceased was 46 years of age at the
time of the accident, a multiplier of 13 seems appropriate for
determining the quantum of compensation as per the principle

H 2. (2012) 6 SCC 421.

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laid down by this Court in the case of *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.*³ A

11. Therefore, the total amount of compensation the appellants-claimants are entitled to under the head of loss of income is: B

$$[(Rs.7330+30/100 \times Rs.7330) \times 12 \times 13] = Rs.14,86,524/-]$$

12. Further, since the deceased has left behind his wife and two children, the amount to be deducted under the head of personal expenses is 1/3rd of the total income in the light of the principle laid down in *Sarla Verma* case (supra) which was reiterated in *Santosh Devi* case (supra). Therefore, the amount to be awarded as compensation to the appellant is = (Rs. 14,86,524/- - 1/3 x Rs.14,86,524/-) = 9,91,016/-. C

13. The appellant-claimants sought an amount of Rs.10,000/- towards damage to the motorcycle. Since, the claim has neither been rebutted with evidence by the respondent, we grant compensation of Rs.10,000/- towards "the damage caused to the bike." D

14. Further, the High Court awarded a sum of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- each towards loss of love and affection by the minor children. This amount awarded by the High Court is on the lower side in the light of the principle laid down in *Rajesh and Ors. v. Rajbir Singh and Ors.*⁴ wherein the Court awarded Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of care and guidance to the minor children. Accordingly, we award a compensation of Rs.1,00,000/- each towards loss of consortium and towards loss of love and affection. E

15. Apart from this, we award Rs.1,00,000/- towards loss "of estate and Rs. 1,00,000/- towards loss of expectation of the F

3. (2009) 6 SCC 121.

4. (2013) 9 SCC 54. G

A life of the deceased. We also award a sum of Rs. 50,000/- for funeral expenses and cost of litigation. Therefore, a total sum of Rs.14,51,016/- which is rounded off at Rs. 14,51,000/- is awarded to the appellants-“claimants. “

B 16. Further, the High Court has awarded the compensation with interest @9% per annum. We concur with this holding of the High Court in the light of the decision of this Court in *Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors.*⁵ Accordingly, we award an interest
 C @ 9% per annum on the compensation to be awarded to the appellants-claimants. The compensation awarded shall be apportioned between the appellants equally with proportionate interest. We direct the Insurance Company to deposit 50% of the awarded amount with proportionate interest in any of the
 D Nationalized Bank of the choice of the appellants for a period of 3 years. The rest of 50% amount awarded with proportionate interest shall be paid to the appellants by way of a demand draft within six weeks from the date of receipt of a copy of this order after deducting the amount if already paid. During the said
 E period, if they want to withdraw aportion or entire deposited amount for their personal or any other expenses, including development of their asset, then they are at liberty to file application before the Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard. We set aside the impugned judgment and
 F order of the High Court and modify the judgment in the aforesaid terms by allowing this appeal. In the facts and circumstances of the case, no order as to costs.