

SUPREME COURT OF INDIA

Ranjana Prakash & Ors.

Vs.

The Divisional Manager & Anr.

C.A.No.6110 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

29.07.2011

ORDER

R.V.Raveendran, J.,

SLP(Civil)No.2057 /2011

1. Leave granted. Heard.

2. The claimants are the widow, two sons and mother of one Arun Prakash, aged 46 years, who died in a motor accident on 3.11.2003. At the time of his death he was working as a Bank Manager, State Bank of India and his monthly salary was Rs.23,134/-. The Motor Accident Claims Tribunal, Muzaffarnagar by its award dated 28.8.2006 awarded a compensation of Rs.24,12,936/- with interest at 9% per annum. On appeal by the insurer, the High Court, by the impugned Judgment dated 9.9.2010, while upholding the findings in regard to income and calculation of compensation, held that the Tribunal ought to have deducted 30% of the annual income towards income tax. Consequently, the High Court deducted 30% and reduced the compensation to Rs.16,89,055/- with interest at 9% per annum. The said order is challenged by the claimants in this appeal by special leave. The appellants contend that the High Court committed an error in reducing compensation from Rs.24,12,936 to Rs.16,89,055 and seek restoration of the compensation as awarded by the Tribunal.

3. Before the High Court, the insurer, relying upon the decisions of this Court in Sarla Verma vs. Delhi Transport Corporation - 2009 (6) SCC 121 and Shyamwati Sharma vs. Karam Singh - 2010 (12) SCC 378, contended that where the annual income of the deceased was in taxable range, the annual income for the purpose of computation of compensation should be the annual income less income tax; and that in the absence of any evidence as to the actual income tax paid, the Tribunal ought to have deducted 30% from the income towards income tax and calculated the loss of dependency with reference to the 'net' income.

4. The claimants, on the other hand, contended before the High Court that as the deceased was holding a permanent job under a statutory body, with assured increments and career progression and was aged between 40 to 50 years, as per the decision in Sarla Verma (supra), the income ought to have been increased by 30% keeping the future prospects in view. They further contended that if the income had been increased by 30% by taking note of the future prospects and if 30% had been deducted towards income tax, that would virtually leave the income assessed by the Tribunal undisturbed and therefore, computation of compensation by the Tribunal by taking the monthly income as Rs.23,134/- without any deductions, did not call for any interference.

5. The High Court noticed both the contentions. It held that 30% of the annual income should be deducted towards income tax as the income of the deceased was in the taxable bracket, in the absence of any evidence about the actual amount paid as income tax. It however did not take cognizance of the contention of the claimants (respondents before the High Court) that 30% should have been added to the income towards future prospects, apparently on the ground that the claimants had not challenged the award of the Tribunal on that ground, and therefore they cannot find fault with it. As a consequence, the High Court ignored the error in the award of the tribunal pointed out by the claimants but only took note of the error pointed out by the insurer and reduced the compensation by 30%.

6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability,

but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

9. In *Sarla Verma*, this Court held that where the deceased had a permanent job with a regular salary with provisions for periodic increases, 30% of the current income could be added towards future prospects if the deceased was aged between 40 to 50 years. In *Sarla Verma*, this Court also stated that income tax paid should be deducted from the annual income to arrive at the `income' which will form the basis for calculating the compensation. The Tribunal did neither of these two things. If both are done, the result would be that there would be no change in the income arrived by the Tribunal for calculating the compensation. The 30% increase on account of future prospects and the 30% deduction on account of income tax would cancel each other, resulting in the `income' remaining unchanged. As a result, the compensation awarded by the Tribunal also would remain unaltered.

10. In view of the above, we allow this appeal, set aside the order of the High Court and restore the award of the Tribunal, though for other reasons.

11. Parties to bear their respective costs.