

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.601/2007

Date of Decision : 15th January, 2010

KEITH ROWE

..... Appellant

Through : Mr. Rajesh Yadav and
Ms. Ruchira V. Arora, Advs.

versus

PRASHANT SAGAR & ORS.

..... Respondent

Through : Mr. Atul Nanda and
Mr. Sanjay Bhardwaj, Advs. for
R-2.

CORAM :-

THE HON'BLE MR. JUSTICE J.R. MIDHA

- | | | |
|----|---|-----|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.4,93,000/- has been awarded to the appellant. The appellants seek enhancement of the award amount.

2. The accident dated 11th February, 2001 resulted in the death of Parminder Kaur Rowe. The deceased was survived by her husband who filed the claim petition before the learned Tribunal.

3. The deceased was aged 31 years at the time of the accident.

Executive Assistant with M/s. Invensys India Private Ltd. at a monthly salary of Rs.20,000/-. The employment of the deceased was proved by appointment letter dated 9th May, 2000 - Ex.PW-1/13. Form-16 dated 30th April, 2001 relating to the Income Tax deducted by the employer was proved as Ex.PW-1/14. The appellant claimed that the deceased was also Director in the Private Limited Company of the appellant named H.R. Solutions Pvt. Ltd. The Income Tax returns of M/s. H.R. Solutions Pvt. Ltd. were proved as Ex.PW-1/16 to Ex.PW-1/18. However, no proof of the income of the deceased from M/s. H.R. Solutions Pvt. Ltd. was placed before the learned Tribunal. The learned Tribunal, therefore, took the income of the deceased after deductions to be Rs.13,000/- on the basis of the appointment letter Ex.PW-1/13. The appellant was not dependent upon the deceased and the learned Tribunal took the loss of estate of the appellant as 1/4 of the income of the deceased and applied the multiplier of 12 to compute the loss of dependency at Rs.4,68,000/-. Rs.15,000/- have been awarded towards loss of consortium and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.4,93,000/-.

4. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal:-

(i) The income of the deceased be taken to be Rs.35,000/- per month.

(ii) The future prospects of the deceased be taken into

- (iv) The multiplier be enhanced from 12 to 16.
- (v) The compensation be awarded for loss of love and affection.
- (vi) The rate of interest be enhanced from 7% to 7.5%.

5. The learned Tribunal has taken the income of the deceased to be Rs.13,000/- on the basis of the appointment letter, Ex.PW-1/13. As per Ex.PW-1/13, the deceased was getting following emoluments:-

- (i) Basic Salary - Rs.9,000/- per month
- (ii) H.R.A - Rs.4,000/- per month
- (iii) LTC - Rs.10,000/- per month
- (iv) Reimbursement of actual medical expenses - Rs.15,000/- per annum.
- (v) Reimbursement of petrol and vehicle maintenance - up to Rs.30,000/- per annum.

6. The learned Tribunal has taken the basic salary and H.R.A into consideration. The finding of the learned Tribunal as to the income of the deceased to be Rs.13,000/- per month is correct and is upheld.

7. The learned counsel for the appellant submits that the deceased was also assisting her husband in H.R. Solutions Pvt. Ltd. in which the deceased was a Director. However, no proof of income in this regard has been filed by the appellant and, therefore, the learned Tribunal has rightly rejected the claim of the income of the

employed with M/s. Invensys India Private Ltd. as Executive Assistant since 9th May, 2000 and she continued in the employment till the date of her death on 10th/11th February, 2001. As per the appointment letter, the probation period of the deceased was six months which was completed on 9th November, 2000 and, therefore, the employment of the deceased was permanent and 50% of her income is added as future prospects following the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**. The income of the deceased for computation of compensation is taken to be Rs.19,500/- (Rs.13,000 + 6,500).

9. The appellant was not financially dependent upon the deceased and, therefore, the appellant is not entitled to the compensation for loss of dependency. However, the appellant is entitled to the loss of estate. The law in this regard is well settled by the judgment of the Karnataka High Court in the case of **A. Manavalagan Vs. A. Krishnamurthy and Ors., I(2005) ACC 304/ 2005 ACJ 1992**, wherein it was held as under:-

“8. On the contentions urged, the following questions arise for consideration:

(i) What are the principles for determining compensation, where the claimant is not a dependant?”

“12. In **GOBALD MOTOR SERVICE v. R.M.K. VELUSWAMI**, MANU/SC/0016/1961 : [1962]1SCR929 referring to Sections 1 and 2 of

the benefit of the persons mentioned therein, under Section 2, compensation goes to the benefit of the estate; whereas under Section 1, damages are payable in respect of loss sustained by the persons mentioned therein, under Section 2 damages can be claimed inter alia for loss of expectation of life and loss to the estate. The Supreme Court held that persons who claim benefit under Section 1 and 2 need not be the same as the claims under the said two Sections are based upon different causes of action. The Supreme Court held:

"The principle in its application to the Indian Act has been clearly and succinctly stated by a division bench of the Lahore High Court in SECRETARY OF STATE v. GOKAL CHAND (AIR 1925 Lah 636). In that case, Sri SHADILAL CJ observed thus:

"The law contemplates two sorts of damages: the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate are claimed on behalf of the estate and when recovered from part of the assets of the estate.

An illustration may clarify the position X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependants (we will ignore the other expenditure incurred by him). $X - Y$, i.e., Z is the amount he saves every year. The capitalised value of the income spend on the dependants, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the

would have spent on them, if alive, to that extent there should be deduction in their claim under Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently, if under Section 1 they got capitalised value of Y; under Section 2 they could get only the capitalised value of Z, for the capitalised value of Y+Z, i.e., X, would be the capitalised value of his entire income."

"The rights of action under Section 1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the Sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of personal loss under Section 1 of the Act, the portion shall be excluded in giving compensation under Section 2 and vice versa."...

"15. Where a breadwinner dies and his wife, children and parents, who are normally depending on the deceased, claim compensation, the method of computation is now standardized. The Court first finds out the income of the deceased, then estimates how much he would have spent for himself (for his personal and living expenses). The balance is taken as the contribution to the dependents (family). The said estimate of the amount contributed to the family per year, which is the annual dependency, becomes the basis for arriving at the compensation. It is converted into a lump sum by multiplying it by the number of years during which he would have contributed to the family (duly scaled down to take several uncertainties into account). Thus, the annual dependency becomes the multiplicand and the number of years' purchase becomes the multiplier. As it is well settled that there cannot be a duplication of award under Sections 1A and 2 of the FA Act, where the main head for award of compensation is loss of dependency, the

16. But, what would be the position if the claimant, though a legal heir is not a dependant of the deceased? Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the 'house hold' as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate under Section 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently what is to be awarded under the head of loss of dependency under Section 1A would be nil, as there is no real pecuniary loss to the members of the family.

17. In *GAMMELL v. WILSON*, 1981(1) ALL ER. 578 the House of Lords held that in addition to the conventional and moderate damages for loss of expectation of life, damages for loss to the estate should include damages for loss of earnings of the lost years. The annual loss to the estate was computed to be the amount that the deceased would have been able to save after meeting the cost of his living and damages for loss to the estate were computed after applying a suitable multiplier to the annual loss. *GAMMEL* was relied on in *SUSAMMA THOMAS* (Supra) and by the Madhya Pradesh High Court in *RAMESH CHANDRA v. M.P.STATE ROAD TRANSPORT CORPORATION*, 1983 ACC. C.J 221".

18. In *MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION v. SUDHAKAR*, 1977 ACJ 290 the Supreme Court considered a case where an employed husband claimed compensation in regard to the death of his wife who was employed on a monthly salary of Rs. 200/- to Rs. 250/-. The Supreme Court observed:

"We find it difficult to agree that only half of that amount would have been sufficient for her

employed at slightly higher salary would have contributed his share to the common pool which would have been utilised for the lodging and boarding of both of them. We do not therefore think it is correct to assume that the husband's loss amounted to half the monthly salary the deceased was likely to draw until she retired. If on an average she contributed Rs. 100/- every month to the common pool, then his loss would be roughly not more than Rs. 50/-per month."

19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

expectation of life, under the head of loss to estate.

(iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased.

A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

20. The following illustrations with reference to the case of a deceased who was aged 40 years with a monthly income of Rs. 9000/ will bring out the difference between cases where claimants are dependents and cases where claimants are not dependents.

(i) If the family of the deceased consists of a dependant wife and child, normally one-third will be deducted towards the personal and living expenses of the deceased. The balance of Rs. 6000/- per month (or Rs. 72000/- per annum) will be treated as contribution to the dependent family. The loss of dependency will be arrived by applying a multiplier of 14. The loss of dependency will be Rs. 10,08,000/- plus Rs. 10,000/- under the head of loss of Estate.

(Note: In *Gulam Khader v. United India Insurance Co., Ltd.*, - ILR 2000 Kar 4416 details of this illustration have been given). Therefore the deduction toward personal and living expense would be Rs. 1800/- per month (one-fifth of Rs. 9000/-) and contribution to the family would be Rs. 7200/- per month or Rs. 86,400/- per annum. Thus loss of dependency will be Rs. 12,09,600/- (by applying the multiplier of 14). The award under the head of loss of estate would be Rs. 10000/-.

(iii) If the deceased was a bachelor with dependent parents aged 65 and 60 years, normally 50% will be deducted towards personal and living expenses of the deceased. This is because a bachelor will be more care free as he had not yet acquired a wife or child and therefore would tend to spend more on himself. There was also a possibility of the bachelor getting married in which event the contribution to parents will get reduced. Therefore the contribution to the family (parents) will be Rs. 4500/- per month or Rs. 54000/- per annum. As the multiplier will be 10 with reference to age of the mother, the loss of dependency will be Rs. 5,40,000/-. Loss of Estate would be a conventional sum of Rs. 10,000/-.

Note: The above three illustrations relate to cases where the claimants are dependants. The said illustration demonstrate that even though the income of the deceased and age of the deceased are the same, the 'loss of dependency' will vary, having regard to the number of dependants, age of the dependants and nature of dependency. The ensuing illustrations relate to cases where the legal heirs of the deceased are not dependants.

(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of 'loss of dependency' may not arise. Each will be spending from his/her earning towards his living and personal expenses. Even if

Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27000/- per annum, By adopting the multiplier of 14, the loss to estate will be Rs. 3,78,000/-.

Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing the expenses. As stated in *BURGESS v. FLORENCE NIGHTINGALE HOSPITAL* (1955(1) Q.B. 349), 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be $12000 \times 14 = 168,000/-$ and loss to estate would be $36000 \times 14 = 504,000/-$. In all Rs. 6,72,000/- will be the compensation.

(v) If the deceased was a bachelor and the claimants are two non-dependent brothers/sisters aged 47 years and 45 years with independent income, the position would be different. As the deceased did not have a 'family', the tendency would be to spend more on oneself and the savings would be hardly 15%. If the saving is taken as 15% (Rs. 1350/- per month), the annual savings would be Rs. 16,200/- which would be the multiplicand. The multiplier will be 13 with reference to the age of

to estate (where the claimants are not dependants) in the absence of specific evidence to the contrary. The quantum of savings can be taken as one-third of the income of the deceased where the spouses are having a common establishment and one-fourth where the spouses are having independent establishments. The above will apply where the family consists of non-dependant spouse/children/parents. Where the claimants are non-dependant brothers/sisters claiming on behalf of the estate, the savings can be taken as 15 % of the income. The above percentages, one of course, subject to any specific evidence to the contrary led by the claimants.”

10. The learned Tribunal awarded 1/4th of the income of the deceased as loss of estate to the appellant. However, as per the judgment of Karnataka High Court in the case of **A.Manavalagan Vs. A. Krishnamurthy** (supra), the loss of estate is to be taken as 1/3rd of the income of the deceased where the husband and wife are living together. The appellant and the deceased were living together and, therefore, the loss of estate is taken to be 1/3rd of the income of the deceased.

11. The learned Tribunal has applied the multiplier of 12. The deceased was aged 31 years at the time of the accident whereas the appellant was aged 38 years at the time of the accident. The appropriate multiplier according to the age of the appellant is 15 according to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). The multiplier is, therefore, enhanced from 12 to 15.

12. Taking the income of the deceased as Rs.13,000/- per month,

X 1/3 X 15 X 12].

13. The learned Tribunal has awarded Rs.15,000/- towards the loss of consortium and Rs.10,000/- towards funeral expenses. However, no compensation is awarded towards loss of love and affection. Rs.10,000/- is awarded to the appellant for loss of love and affection. The appellant is entitled to total compensation of Rs.12,05,000/- (Rs.11,70,000/- towards loss to the estate, Rs.15,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses).

14. The learned Tribunal has awarded interest @ 7% per annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal Vs. UP State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 7% to 7.5% per annum from the date of filing of the petition till realization.

15. The appeal is allowed and the award amount is enhanced from Rs.4,93,000/- to Rs.12,05,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

16. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Keith Rowe by means of a cheque through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

17. Upon the enhanced award amount being deposited, UCO Bank is directed to release 25% of the award amount to the appellant by

18. The interest on the aforesaid fixed deposit shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

19. Withdrawal from the aforesaid account shall be permitted to the appellant after due verification and the Bank shall issue photo Identity Card to the appellant to facilitate identity.

20. The original fixed deposit receipt shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the appellant along with the photocopy of the FDR.

21. The original fixed deposit receipt shall be handed over to the appellants on the expiry of the period of the FDR.

22. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipt without the permission of this Court.

23. Half yearly statement of account be filed by the Bank in this Court.

24. On the request of the appellant, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to his convenience.

25. The appellant shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

26. Copy of the order be given dasti to counsel for both the parties under the signature of the Court Master.

the signature of Court Master.

JANUARY 15, 2010

J.R. MIDHA, J