

Sureshchandra Bagmal Doshi vs The New India Assurance Co. Ltd on 18 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2088, AIRONLINE 2018 SC 34, (2018) 188 ALLINDCAS 224 (SC), (2018) 5 ALLMR 478 (SC), (2018) 130 ALL LR 264, 2018 (15) SCC 649, (2018) 188 ALLINDCAS 224, (2018) 2 CURCC 428, (2018) 2 PUN LR 483, (2018) 2 RECCIVR 841, (2018) 2 TAC 593, (2018) 2 WLC(SC)CVL 136, (2018) 3 ACC 107, (2018) 3 BOM CR 862, (2018) 5 ALLMR 478, (2018) 5 ANDHLD 159, (2018) 5 SCALE 759, 2018 AAC 1033 (SC), (2019) 1 UC 89, 2019 (2) SCC (CRI) 899, (2019) 3 CIVLJ 649, AIR 2018 SC (CIV) 2187

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Bench: Sanjay Kishan Kaul, J. Chelameswar

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5206 of 2016

SURESHCHANDRA BAGMAL DOSHI & ANR.Appellants

versus

THE NEW INDIA ASSURANCE
COMPANY LIMITED & ORS.

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JUDGMENT

SANJAY KISHAN KAUL, J.

1. Fate can be cruel. This is a tragic case where the only daughter of a lawyer husband and a doctor wife, who got married early and unfortunately became a widow also at a young age, died in a vehicular accident, which took place on 16.8.1998. The claim of the parents (appellants herein) in respect of this unfortunate demise forms the subject matter of the present appeal.

2. It is not necessary to go into the details of the facts, as those are not really liable to be examined in view of the limited controversy before us. The claim was laid on the basis that the deceased daughter was working in the company of original respondent No.4 as an International Internal Sales Engineer

at a monthly salary of Rs.6,273. She had a B.E. (Civil) qualification. Her husband, after an early marriage, had unfortunately passed away in the year 1996 and since then she was living with her parents, the claimants. The deceased had a quick successful progression in her career from the initial post of a Secretary, and the claim was based on the prospective earning of the deceased of more than Rs.25,000 per month.

3. We may note that qua the accident, the driver of the vehicle in which the deceased daughter was travelling died, and there was apportionment of contributory negligence to the extent of 80 per cent qua the truck driver, and 20 per cent qua the Tata Sierra, the two vehicles, which met with the accident. However, this would not affect the claim qua the parents before us.

4. There is no dispute that the assessed income of the deceased at the time of the accident was Rs.6,273 per month. This is a finding of fact, both by the Tribunal and the High Court. The Tribunal, however added approximately 100 per cent towards future rise in income and considered the prospective income at Rs.12,000 per month, and after deducting 1/3rd towards personal expenses of deceased, the Tribunal assessed the loss of dependency or the future economic loss at Rs.8,000 per month and thereafter a multiplier of 16 was applied. The Tribunal, thus, awarded a sum of Rs.15,36,000 towards loss of dependency benefit; Rs.15,000 towards conventional amount under the head loss of estate; Rs.15,000 towards loss of love and affection and Rs.5,000 towards funeral expenses totaling to Rs.15,71,000 in terms of an award dated 29.3.2007. The claimants were also held entitled to interest @ 12 per cent per annum on the award amount from the date of application till realization.

5. Both the sides were aggrieved by the assessment of this claim and filed appeals before the High Court, which modified the award of the Tribunal vide impugned judgment dated 9.2.2015, which is subject matter of the present appeal.

6. The High Court declined to accept the future income rise as 100 per cent and took the same as 50 per cent in view of the judgment of this Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*¹ The High Court, considering that the claimants were the parents of the deceased, deducted 50 per cent towards personal expenses instead of 1/3rd of the amount, as per the Tribunal. In fact, a reading of the order shows that these were the only two pleas advanced on behalf of the insurance company on which the appeal of the insurance company succeeded.

7. The High Court, however, fixed the multiplier at 18 instead of 16 as fixed by the Tribunal, as the deceased was aged about 25 years, and that would have been the appropriate multiplier as per *Sarla Verma*². The High Court also examined the two other pleas made on behalf of the claimants, i.e., that the award of Rs.15,000 for loss of estate and Rs.15,000 for loss of love and affection was inadequate.

8. In view of what the High Court held as aforesaid, the amount was computed at Rs.10,72,360 with a sum of Rs.50,000 being awarded under the head of loss of estate as well as loss of love and affection instead of Rs.30,000 as awarded by the Tribunal and Rs.5,000 towards funeral expenses. The interest awarded was also upheld. 1 (2009) 6 SCC 121 2 supra

9. The claimants alone are the appellants before us.

10. On having heard the learned counsel for the parties and having examined the record, we may note that the parties are ad idem on the assessment of the income of the deceased at Rs.6,273 per month. The question, thus, is whether the Tribunal was right in increasing the amount for future rise in income by 100 per cent, or the High Court was within its right to reduce the said amount to 50 per cent.

11. We have the benefit of the Constitution Bench judgment of this Court in National Insurance Company Limited v. Pranay Sethi & Ors.³ While examining the observations in Sarla Verma⁴, the Constitution Bench gave its imprimatur to the addition of 50 per cent to actual salary of the deceased towards future prospects where the deceased had a permanent job and was below the age of 40 years, as in the present case. However, learned counsel for the appellant has brought to our notice a recent order passed by this Court in SLP (C) No.22134/2016 and other connected matters dated 22.11.2017 wherein 3 AIR 2017 SC 5157 4 supra while taking note of the views expressed by National Insurance Company Limited⁵, it has been observed that the percentage for calculating future rise in income is no bar to future prospects being taken at a higher level where the assessment is based on actual evidence led to the satisfaction of the Tribunal/the Court that the future prospects were higher than the standard percentage. Learned counsel, thus, submitted in the context of the evidence led in the present case that the two certificates dated 16.10.1998 and 8.7.2005 were proved in terms whereof the deceased's future prospects would have entitled her to a gross salary in the range of Rs.14,000 to Rs. 17,000 per month. No doubt the second certificate is dated 8.7.2005, after a lapse of 7 years from the first certificate, but then that would be a more realistic estimate of what a person holding that post would be earning at that stage of time. There is no rebuttal evidence led by the insurance company and we see no reason to doubt these certificates. Thus, the assessment of the Tribunal is based on the evidence led in the present case. As noticed above, the standardized percentage is capable of being varied if the evidence is so led.

12. We are, thus, of the view that looking into the conspectus of the 5 supra aforesaid facts and the legal position, the Tribunal was justified in giving a 100 per cent increase and taking the future prospects at Rs.12,000 per month.

13. The second aspect relates to the percentage of deduction. It really could not be seriously disputed before us that considering that the deceased is survived by the two parents, 50 per cent amount be deducted as personal and living expenses of the deceased when the deceased is unmarried or widowed, as in the present case in view of the judgment in National Insurance Company Limited⁶, which has affirmed the position in Sarla Verma⁷. Thus, the High Court was justified in increasing the percentage of personal expenses to the extent of 50 per cent and not 1/3rd as held by the Tribunal.

14. Now coming to the last aspect, i.e., the conventional heads, in National Insurance Company Limited⁸, it has been standardized at Rs.15,000 for loss of estate; Rs.40,000 towards loss of consortium (in the present case loss of love and affection) and Rs.15,000 towards funeral expenses. The total amount, thus, would be Rs.70,000, which 6 supra 7 supra 8 supra as per the said judgment

is capable of being enhanced @ 10 per cent in the span of every three years. However, we are still within the window of three years.

15. The result of the aforesaid is that after deducting 50 per cent of the amount towards personal expenses and adding 100 per cent towards future rise in income, we would be back at the figure of Rs.6,273 per month to which a multiplier of 18 has to be applied. The amount would come to Rs.13,54,968. The amount under the conventional heads would be Rs.70,000, i.e., totaling to Rs.14,24,968 rounded off at Rs.14,25,000. The award of interest would continue @ 12 per cent as awarded by the Tribunal.

16. We may also notice the litigation of two decades, which the appellants have had to go through before different forums to claim the amounts due to them and we are of the view that they should be held entitled to costs throughout, which we assess at Rs.25,000.

17. We, thus, allow the appeal in the aforesaid terms with costs assessed as aforesaid.

.....J. (J. Chelameswar)J. (Sanjay Kishan Kaul) New Delhi.

April 18, 2018.