Shyamvati Sharma & Ors vs Karam Singh & Ors on 13 July, 2010

Equivalent citations: 2010 AIR SCW 4391, 2011 (2) AIR JHAR R 248, (2010) 4 PUN LR 285, (2010) 3 RAJ LW 2596, (2010) 4 TAC 29, (2010) 5 ANDHLD 142, (2010) 3 RECCIVR 741, (2010) 2 WLC(SC)CVL 497, (2010) 3 ACJ 1968, (2010) 3 CIVILCOURTC 932, 2010 (12) SCC 378, (2010) 6 SCALE 763, (2010) 4 JCR 7 (SC), (2011) 4 MPHT 416, (2010) 92 ALLINDCAS 80 (SC), (2010) 81 ALL LR 778, (2010) 5 ALL WC 5429, (2010) 3 ACC 166, 2011 (1) SCC (CRI) 288

Bench: H. L. Gokhale, R. V. Raveendran

IN THE SUPREME COURT OF INDIA Reportable

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5316 OF 2010
(Arising out of SLP (C) No.668/2008)

Shyamwati Sharma & Ors. ... Appellants

Vs.

Karam Singh & Ors. ... Respondents

JUDGMENT

R. V. RAVEENDRAN J., Leave granted.

2. This is an appeal for enhancement of compensation, by the mother, widow, three children and father of Kuldeep Sharma, a Sub-Inspector of Police, aged 36 years, who died in a motor accident on 25.12.1990. According to the salary certificate, his basic pay was Rs.7425/-, the gross salary (pay and allowances) was Rs.13,794/-, the deductions aggregated to Rs.4,305/- and the net take home salary was Rs.9,489/- per month.

3. The Tribunal by its award dated 17.1.2003 held the respondents liable and directed the insurer to pay to the appellants, Rs.14,44,600/- as compensation, with simple interest at 9% per annum from the date of filing of the claim petition (21.2.2002) till realization. The Tribunal arrived at the said compensation in the following manner : It deducted one third from the gross monthly salary of Rs.13,794/- towards the personal and living expenses of the deceased and determined the contribution to the family as Rs.9,196/- per month or Rs.1,10,352/- per annum. It applied the multiplier `13' and arrived at the loss of dependency as Rs.14,34,576/- rounded off to

Rs.14,34,600/-.

4. Feeling aggrieved the claimants filed an appeal. The High Court started with the gross salary as Rs.13,794/- per month. Drawing an assumption that the deceased would have at least got one promotion or gone to the next higher grade if he had completed the remaining 24 years of service, and taking note of the recommendations of the Fifth Pay Commission and the annual increments, it inferred that by the time the deceased would have retired, he would have been earning a minimum gross income of Rs.22,000/- per month. The average of the actual monthly income (Rs.13794/-) and the projected monthly income at the time of retirement (Rs.22000), that is Rs.17,897/-, was taken as the monthly income. The High Court deducted 30% thereof towards `deductions from salary' (income-tax etc.) and arrived at the net monthly income as Rs.12,528/-. It further deducted one fourth thereof towards the personal and living expenses of the deceased and arrived at the contribution to the family as Rs.9,396/- per month or Rs.1,12,752/- per annum. By applying the multiplier of 13, it calculated the loss of dependency as Rs.14,65,776/-. As a consequence, it increased the compensation awarded by the Tribunal by Rs.32,000/- with interest at the rate of 6% per annum from the date of claim petition till the date of payment.

5. The said judgment of the High Court is challenged in this appeal. The appellants urged the following two contentions :

> (i) The High Court ought not to have made a `deduction' of 30% from the salary towards taxes etc.; and
>
> (ii) The High Court ought to have applied the multiplier `16' instead of `13', having regard to the age of the deceased.

6. This Court in Sarla Verma vs. Delhi Transport Corporation - 2009 (6) SCC 121, has stated the principles relating to `addition to income' towards future prospects. This Court held that wherever the deceased was below 40 years of age and had a permanent job, the actual salary (less tax) should be increased by 50% towards future prospects, to arrive at the monthly income. It also held that where the number of dependants of a deceased are in the range of 4 to 6, the deduction towards personal and living expenses of the deceased should be 25%. It further held that in regard to persons aged 36 to 40 years, the appropriate multiplier should be 15. We will re-calculate the compensation by applying the said principles.

7. As noticed above, the gross salary was Rs.13,794/- per month or Rs.1,65,528/- per annum. By adding 50% towards future prospects (as the deceased was less than 40 years of age), the deemed gross income would have been Rs.20,691/- per month or Rs.2,48,292/- per annum. The percentage of deduction towards income-tax and surcharge, taken as 30% by the High Court, does not require to be disturbed, having regard to the income. On such deduction, the net annual income of the deceased would have been Rs.1,73,800/-. From the said sum, one-fourth (25%) had to be deducted towards the personal and living expenses of the deceased. Thus the contribution of the deceased to his family would have been Rs.1,30,350/- per annum. By applying the multiplier of 15, the total loss of dependency will be Rs.19,55,250/-. By adding a sum of Rs.5,000/- each under the heads of loss of

consortium, loss of estate and funeral expenses, the total compensation is determined as Rs.19,70,250/-.

8. The submission of the respondents that the deduction of 30% from the salary is not warranted in view of the decision in Sarla Verma, is not sound. In Sarla Verma, the monthly salary of the deceased was only Rs.4004/- and the annual income even after taking note of future prospects was Rs.72072/-. The income was in a range which was exempt from tax, if the permissible deductions were applied. Therefore, this Court did not make any deduction towards income-tax. But this Court made it clear that where the annual income is in the taxable range, appropriate deduction should be made towards tax. In this case as the annual income has been worked out as Rs.2,48,292/-, appropriate deduction has to be made towards income-tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear 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.

9. We accordingly allow the appeal and increase the compensation from Rs.14,66,600/- to Rs.19,70,250/-. The increased amount shall carry interest at the rate of 6% per annum from the date of claim petition to the date of payment. The parties to bear their respective costs.

____________________J.

(R. V. Raveendran) ____________________J.

(H. L. Gokhale) New Delhi;

July 13, 2010.