

Santosh Devi vs National Insurance Co.Ltd.& Ors on 23 April, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2185, 2012 (6) SCC 421, 2012 AIR SCW 2892, 2012 AAC 1713 (SC), 2012 (3) AIR JHAR R 287, 2012 (4) SCALE 559, (2012) 3 JCR 81 (SC), (2012) ACJ 1428, (2013) 3 CIVLJ 335, (2013) 2 KANT LJ 673, (2013) 4 CURCC 305, 2012 (4) PUN LR 803, (2014) 1 CPR 293, 2012 (3) SCC(CRI) 160, (2012) 114 ALLINDCAS 197 (SC), (2012) 3 PUN LR 803, AIR 2012 SC (CIVIL) 1519, 2012 (2) KER LT 100 SN, (2012) 3 TAC 1, (2012) 2 ACC 377, (2012) 4 ALL WC 3636, (2012) 3 RAJ LW 2023, (2012) 1 WLC(SC)CVL 667, (2012) 3 MAD LW 320, (2012) 2 HINDULR 766, (2015) 1 MARRILJ 655, (2012) 2 ALD(CRL) 284, (2013) 1 ALLCRILR 379, (2012) 6 MAD LJ 395, (2012) 5 MAH LJ 527, (2012) 4 MPLJ 79, (2012) 52 OCR 241, (2012) 5 ANDHLD 35, (2012) 4 SCALE 559, (2012) 92 ALL LR 717, (2012) 2 CURCC 95, 2012 (3) CRIMES 406 SN, (2012) 3 BOM CR 698

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Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3723 OF 2012
(arising out of SLP (C) No. 24489 of 2010)

Santosh Devi

... Appellant

Versus

National Insurance Company Ltd. and others

... Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.

2. Feeling dissatisfied with the enhancement granted by the Punjab and Haryana High Court in the amount of compensation determined by Motor Accident Claims Tribunal, Gurdaspur (for short, 'the Tribunal') in MACT Case No. 97 of 1995, the appellant has filed this appeal.

3. Shri Swaran Singh (the appellant's husband) died in a road accident when the Maruti car in which

he was travelling with Varinder Singh (husband of respondent No. 2 and the father of respondent Nos. 3 and 4) went out of control. Varinder Singh, who was driving the vehicle also suffered multiple injuries and died on the spot.

4. The appellant and other legal representatives of Swaran Singh filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation to the tune of Rs. 4 lacs. They pleaded that the accident was caused due to rash and negligent driving of the Maruti car by Varinder Singh; that at the time of his death, the age of the deceased was about 45 years and that he was earning Rs. 5,000/- per month by running a milk dairy and doing agriculture. The legal representatives of Varinder Singh denied that the accident had occurred due to rash and negligent driving of the Maruti car. In the written statement filed on behalf of respondent No. 1, it was pleaded that the claim petition was not maintainable because the deceased, who was travelling in the car cannot be treated as a third party and that the person driving the vehicle did not have valid driving licence. Respondent No.1 also controverted the claimant's assertion about the income of Swaran Singh.

5. On the pleadings of the parties the Tribunal framed the following issues:

"1) Whether the death of Swaran Singh not amounting to culpable homicide took place on account of the rash and negligent driving of Maruti Car No. PB-035A-0090 driven by Varinder Singh?

2) To what amount of compensation the applicants are entitled? If so, from whom?

3) Relief."

6. In support of the claim petition, the appellant examined herself and two other witnesses, namely, Bakhshish Singh and Surain Singh. Respondent No.1 examined Milap Chand, Clerk, in the office of the District Transport Officer, Gurdaspur. On behalf of the legal representatives of Varinder Singh copies of driving licence, insurance policy and registration certificate were produced and marked as Exhibits R1 to R3.

7. After analysing the evidence produced by the parties, the Tribunal decided issue No.1 in the affirmative and held that the accident was caused due to rash and negligent driving of Maruti car by Varinder Singh. While dealing with issue No.2, the Tribunal adverted to the statement made by the appellant in her cross-examination that the deceased did not own any agricultural land and that he was cultivating land on lease basis and proceeded to determine the amount of compensation by assuming his income as Rs. 1,500/- per month. The Tribunal was also of the view that two sons of the appellant, namely, Sulakhan Singh and Surjit Singh cannot be treated as dependants of the deceased because their age was 26 years and 23 years respectively. The Tribunal deducted Rs. 500/- towards personal expenses of the deceased and held that dependency of the appellant and other family members would Rs.1,000/- per

month. The Tribunal then applied the multiplier of 11 and declared that the claimants are entitled to compensation of Rs. 1,32,000/- with interest at the rate of 12 per cent per annum from the date of application.

8. The High Court relied upon the judgment of this Court in *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, applied the multiplier of 14 and held that the claimants are entitled to total compensation of Rs.1,77,500/- with interest at the rate of 7 per cent per annum on the enhanced amount from the date of appeal till realisation.

9. Learned counsel for the appellant relied upon the judgment in *Sarla Verma's* case and argued that the Tribunal and the High Court committed serious error by not giving the benefit of 30 per cent increase in the income of the deceased which he would have earned for the next 25 years. Learned counsel further argued that the deduction of Rs.500/- towards personal expenses of the deceased was totally disproportionate to size of his family and the Tribunal and the High Court overlooked stark reality that it is impossible for a person having meagre earning of Rs. 1,500/- per month to spend 1/3rd on himself and leave 2/3rd of his income for five dependants including three children. He criticised the observations made by the Tribunal that Sulakhan Singh and Surjit Singh could not be treated as dependant of the deceased because they were major and argued that in the absence of any evidence to the contrary, there was no reason to discard the testimony of the appellant that in all five family members were dependant on the deceased.

10. Learned counsel for respondent No.1 submitted that the rule of 30 per cent addition in the income of the deceased as laid down in *Sarla Verma's* case cannot be applied to a case like the present one because the deceased was neither in Government service nor he was a permanent employee of a corporation or company which may have ensured increase in his income from time to time. He argued that those employed in unorganized sectors cannot be placed at par with Government employees and those employed in agencies/instrumentalities of the State or private corporations/companies.

11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.

12. In *R.K. Malik v. Kiran Pal* (2009) 14 SCC 1, the two Judge Bench while dealing with the case involving claim of compensation under Section 163-A of the Act, noticed the judgments in *M.S. Grewal v. Deep Chand Sood* (2001) 8 SCC 151, *Lata Wadhwa v. State of Bihar* (2001) 8 SCC 197, *Kerala SRTC v. Susamma Thomas* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav* (1996) 3 SCC 179 and made some of the following observations, which are largely reflective of the philosophy that victims of the road accidents and/or their family members should be awarded just compensation:

“In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

To put it simply—pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of “just compensation” vide Sections 166 and 168. It is left to the courts to decide what would be “just compensation” in the facts of a case.”

13. In Sarla Verma’s case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Nance v. British Columbia Electric Railway Co. Ltd. 1951 AC 601, Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straightjacket formula under different headings, some of which are enumerated below:

“(i) Addition to income for future prospects In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional

cases involving special circumstances.

(ii) Deduction for personal and living expenses Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six.

(iii) Selection of multiplier We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma’s case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor.

As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors

but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

15. It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs.1,500/- to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family.

16. The Tribunal's observation that the two sons of the appellant cannot be treated dependant on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons. Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependant on the deceased.

17. In the result, the appeal is allowed, the impugned judgment as also the award of the Tribunal are set aside and it is declared that the claimants shall be entitled to compensation of Rs.2,94,840 [Rs.1,500 + 30% of Rs.1,500 = Rs.1,950 less 1/10th towards personal expenses = Rs.1,755 x 12 x 14 = Rs.2,94,840]. The claimants shall also be entitled to Rs.5,000/- for transportation of the body, Rs.10,000/- as funeral expenses and Rs.10,000/- in lieu of loss of consortium. Thus, the total amount payable to the claimants will be Rs.3,19,840/-. The enhanced amount of compensation i.e. Rs.1,42,340/- (Rs.3,19,840 - Rs.1,77,500) shall carry interest of 7 per cent from the date of application till realisation.

18. Respondent No.1 – Insurance Company is directed to pay to the appellant the total amount of compensation within a period of three months by getting prepared a demand draft in her name which shall be delivered to her at the address given in the claim petition filed before the Tribunal. While doing so, respondent No.1 shall be free to deduct the amount already paid to the appellant.

.....J. [G.S. SINGHVI]J.
[SUDHANSU JYOTI MUKHOPADHAYA] New Delhi, April 23, 2012.
