

## **K.R.Madhusudan & Ors vs Administrative Officer & Anr on 18 February, 2011**

**Equivalent citations: AIR 2011 SUPREME COURT 979, 2011 AIR SCW 1390, 2011 AAC 744 (SC), 2011 (2) AIR KANT HCR 287, AIR 2011 SC (CIVIL) 638, (2011) 1 UC 565, (2011) 2 PUN LR 487, (2011) 1 WLC(SC)CVL 390, (2011) 2 JCR 68 (SC), (2011) 2 ACJ 743, (2011) 112 CUT LT 345, (2011) 4 MAH LJ 520, 2011 (4) SCC 689, (2011) 1 TAC 874, (2011) 85 ALL LR 476, (2011) 2 SCALE 511, (2011) 1 CLR 587 (SC), (2011) 2 ALL WC 1820, (2011) 3 MAD LW 227, (2011) 3 MPLJ 486, (2011) 2 RECCIVR 207, (2011) 99 ALLINDCAS 6 (SC), (2011) 3 CIVLJ 658, (2011) 1 CURCC 193(2), (2011) 1 ACC 700, 2011 (2) SCC (CRI) 706**

**Bench: Asok Kumar Ganguly, G.S. Singhvi**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1923-1924 OF 2011

(Arising out of SLP (Civil) No.16406-16407 of 2010)

Sri. K.R. Madhusudhan & Ors.

...Appellant(s)

Versus

The Administrative Officer & Anr.

...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Delay condoned.

2. Leave granted.

3. On 4.10.1998, at about 8.55 a.m., V. Rajagopalaiah was crossing the road near Ashraya Hotel, B.M. Road, Channapatna, when a Maruti Van (owned by the first respondent) bearing registration No. KA-05-A-2535 came at a high speed and dashed against the deceased, causing severe injuries. He was taken to hospital, but he succumbed to his injuries.

4. The deceased was of 53 years of age and was survived by his wife and three sons, the present appellants. They filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming Rs.20,00,000/- as compensation. It was contested by the respondents.

5. Motor Accident Claims Tribunal (hereinafter "MACT") found that the death of V. Rajagopalaiah was due to the rash and negligent driving of the van driver (the second respondent). The deceased was working as Senior Assistant in Karnataka Electricity Board (hereinafter "KEB") and his last drawn gross monthly salary was Rs.15,642/-

i.e. Rs.1,87,704/- annually. 1/3rd was deducted for personal expenses, after which the amount came to Rs.1,25,136/-. As deceased was 53 years of age, a multiplier of 11 was applied. The Tribunal also awarded funeral and transport expenses amounting to Rs.10,000/-, medical expenses prior to death was Rs.6,000 and compensation for loss and affection at Rs.25,000/-. Accordingly, total compensation awarded was Rs.14,27,496/- along with interest of 9% p.a.

6. The appellants and the respondents both appealed against the award of the Tribunal to the High Court of Karnataka. The appellants appeared for enhancement and the respondents for reduction of the amount awarded. The High Court, in its impugned judgment, reduced the compensation awarded by the Tribunal to the appellants to Rs.11,82,000/-. The relevant portion of High Court order reads as follows:

"The deceased was working as Senior Assistant in KEB getting a salary of Rs.15,642/-. After effecting deductions towards income tax, the net salary of the deceased would be Rs.14,000/-. The mother and sons of the deceased have filed claim petition. 1/5 is to be deducted towards personal expenses. Rs.11,200/- would

enure to the benefit of the dependants. The deceased was aged about 52 years. The deceased would have retired by 58 years. After superannuation, the deceased would get pensionary income in a sum of Rs.6000/-. 1/5 is to be deducted towards personal expenses. Rs.4800/- would enure to the benefit of the dependants. Split multiplier would apply. After superannuation, multiplier 6 would apply. Therefore, the total loss of dependency before superannuation would be Rs.8,06,400/- (Rs.11200 (income) X 12 (months) X 6 (multiplier). The total loss of dependency from the pensionary income would be Rs.3,45,600/- (Rs.4800/- (multiplier). The total loss of dependency would be Rs.11,52,000/- The petitioners are entitled for a sum of Rs.25,000/- towards loss of expectancy and Rs.10,000/- towards funeral expenses. In all the petitioners are entitled for a total sum of Rs.11,82,000/- as against Rs.14,27,496/- awarded by the Tribunal. The petitioners are entitled for interest at 6% p.a."

7. Assailing the same, the appellants contend that the future prospects of the deceased and revision in salary were not taken into consideration by the High Court and a split multiplier should not have been adopted.

8. The law regarding addition in income for future prospects has been clearly laid down in *Sarla Varma (Smt.) & Others v. Delhi Transport Corporation & Another* [(2009) 6 SCC 121] and the relevant portion reads as follows:

"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 deceased is more than 50 years.

Though the evidence may indicate a different percentage of increase, it is necessary to standardize 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."

9. In the *Sarla Verma* (supra) judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the opinion that the rule of thumb evolved in *Sarla Verma* (supra) is to be applied to those cases where there was no concrete evidence on record of

definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the 'exceptional circumstances' and not within the purview of rule of thumb laid down by the Sarla Verma (supra) judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects.

11. We base our conclusion on our findings from the records of the case. The evidence of PW.1, the son of the deceased, is that there are four claimants, three of them are the sons of the deceased and the other claimant is paternal grand-mother. Therein, he stated that the deceased was the only bread earner of the family. It was stated by PW.1 that if his father, the deceased, would have been alive he could have got promotion and could have received the salary of Rs.20,000/- per month.

12. PW.3, who was the Senior Assistant in KEB, in his evidence also stated that the deceased was 52 years of age at the time of his death and he was having six years of service left. The annual increment is Rs.350/-. In the year 2003 (which would have been year of retirement), the basic pay of the deceased would have been around Rs.16,000/- and in all he would have obtained gross salary of Rs.20,000/- per month. PW.3 deposed that as per the Board Agreement for every five years their pay revision is compulsory. Both the witnesses were cross-

examined before the Tribunal but the evidence leading to pay revision was not assailed.

13. Therefore, the consistent evidence before the Tribunal was that if the deceased would have been alive he would have reached the gross salary of Rs.20,000/- per month.

14. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method.

16. The income of the deceased will be taken to be Rs.20,000/- p.m. which amounts to Rs.2,40,000/-

p.a. After deduction of 1/3rd amount for personal expenses, the loss of notional income will be Rs.1,60,000/-. The multiplier of 11 will be applied, from which the loss of dependency will amount to Rs.17,60,000/-. We also award Rs.10,000/- for funeral and transport expenses, Rs.6,000/- for medical expenses prior to death and Rs.25,000/- for loss of love and affection.

Thus, the total compensation awarded amounts to Rs.18,01,000/- which we round off to Rs.18,00,000/-.

17. The amount of compensation would thus be Rs.18,00,000/- with the rate of interest as granted by the Tribunal. The amount is to be deposited with the Tribunal within six weeks from date after deducting any amount, if already deposited.

18. The appeals are, thus, allowed. No costs.

.....J. (G.S. SINGHVI) .....J. (ASOK KUMAR GANGULY) New Delhi February 18, 2011