

Sunil Sharma & Ors vs Bachitar Singh & Ors on 7 February, 2011

Equivalent citations: 2011 AIR SCW 2811, 2011 (3) AIR JHAR R 626, 2011 AAC 1732 (SC), 2011 (3) AIR KANT HCR 457, AIR 2011 SC (CIVIL) 1336, (2011) 5 MAD LW 93, (2012) 1 RAJ LW 419, (2011) 2 RECCIVR 708, (2011) 5 MAD LJ 205, (2011) 4 SCALE 383, (2011) 3 TAC 629, (2011) 3 ALL WC 2904, (2011) 3 ACJ 1441, (2011) 2 KER LT 451, (2011) 4 PUN LR 638, 2011 (11) SCC 425, (2011) 4 ANDHLD 109, (2011) 2 ACC 552, (2011) 2 CAL LJ 162, (2011) 3 CALLT 53, 2011 (3) SCC (CRI) 206

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1440 OF 2011
(Arising out of Special Leave Petition(C) No.36770/2009)

Sunil Sharma & Ors.

...Appellant(s)

VERSUS

Bachitar Singh & Ors.

...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. On 2.08.2006, around 4.40 PM, one Mrs. Sunita Sharma (aged 41 years) was returning to Panchkula from Chandigarh on her scooter, when the offending vehicle (a Tata 407 bearing registration no. HR-58-5649) driven by the second respondent hit her and ran over her. She was declared dead when taken to hospital.

3. Legal heirs of the deceased, her husband and two children, filed a claim petition before the Motor Accident Claims Tribunal (MACT) claiming Rs.40,00,000/- as compensation, along with interest @

24% p.a.

4. MACT awarded total compensation of Rs.7,92,000/-. It calculated the same by arriving at gross salary of Rs.14,541/- (based on salary certificate provided by Haryana Women Development Corporation Ltd.), the employer of Mrs. Sunita Sharma. From the same, Rs.1310/- was deducted on various accounts- she was an income tax assessee, was paid HRA amounting to Rs.885/-, CCA Rs.200/- and medical allowance Rs.250/-. MACT concluded that these sums could not be taken into account in the total salary of Sunita. Thus, her total carry home salary was taken to be Rs.10,000/- (annual equivalent being Rs.1,20,000/-). A deduction of 40% was made for personal expenses, as she was a working woman and was also maintaining a scooter. Thus, dependency was calculated at Rs.72,000/-, to which a multiplier of 11 was applied. Hence, compensation was calculated at Rs.7,92,000/- along with interest at the rate of 6% p.a.

5. Aggrieved by the award of MACT, the claimants filed an appeal before the High Court of Punjab and Haryana for enhancement of compensation. The High Court applied the multiplier of 14, instead of 11 applied by MACT. The High Court took annual dependency same as that calculated by MACT, i.e. Rs.72,000. Accordingly, High Court awarded Rs.2,16,000/- over and above what was awarded by MACT.

6. Still aggrieved, the claimants filed the present appeal before this Court. The claimants, appellants in the present appeal, contended that:

a. MACT should not have deducted HRA, CCA, EPF Group Insurance Scheme and computer advance from the income of the deceased and these deductions should not have been upheld by the High Court.

b. Deduction of 40% for personal expenses, which was upheld by the High Court, was not correct.

c. MACT and the High Court did not take into consideration the revision in pay scale of the deceased that came into force from January 2006 (before her death) while calculating her income.

d. High Court did not grant any compensation for loss of love and affection, consortium and expenses towards funeral rites of the deceased.

7. We have heard the parties and perused the evidence on record, along with the judgments of the Tribunal and High Court. We now proceed to deal with each point separately. a. Computation of Income

8. In the case of National Insurance Co. Ltd. v. Indira Srivastava & Ors. [AIR 2008 SC 845], S.B. Sinha J, has observed that "The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks

which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms." His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family. This Court clarified that by opining that 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost in view of death of the deceased. It is in the nature of compensation for future loss towards the family income" and that "the amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

9. In *Raghuvir Singh Matolya & Ors. v. Hari Singh Malviya & Ors.*, [(2009) 15 SCC 363], this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

10. In the present case, Haryana Women Development Corporation Ltd. certified that the deceased had drawn her salary for the month of July, 2006 as under:

Basic Pay	-Rs. 7,100/-
D.P	-Rs. 3,550/-
D.A.	-Rs. 2,556/-
HRA	-Rs. 885/-
CCA	-Rs. 200/-
Med. Allowance	-Rs. 250/-
Gross Total	
	-Rs. 14,541
Deduction	
EPF	-Rs. 780/-
GIS	-Rs. 30/-
Computer Advance	-Rs. 500/-

Total Deduction

-Rs. 1.310/-

Net Payable = Rs.14,541 - Rs.1,310 = Rs.13,231/-

11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

12. Thus, we calculate the income of the deceased by taking the abovementioned allowances into consideration. However, the computer advance should not form a part of the monthly income. The monthly income of the deceased thus amounts to Rs.15,351/-. Thus, the annual income of the deceased would amount to Rs. 1,84,212/-.

b. Deduction for Personal Expenses

13. The Tribunal deducted 40% from the income of the deceased by way of personal expenses and the same was upheld by the High Court. We are of the view that both courts erred in doing the same in light of the judgment in the case of Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Anr., [(2009) 6 SCC 121], wherein this Court held:

"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 (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."

14. Hence, we hold that as the deceased was married, a deduction of 1/3rd should be made to her income by way of personal expenses. After such deduction, the income of the deceased would thus amount to Rs.1,22,808/-, which we round off to Rs.1,22,800/-.

c. Revision in Pay Scale

15. In Sarla Verma (supra), this Court laid down a 'rule of thumb' with respect to addition in income due to future prospects. This Court observed that the addition should be only 30% if the age of the deceased was 40 to 50 years.

16. In the present case, the deceased was aged 41 years. Thus, we allow an addition of 30% by way of future prospects. The annual income of the deceased would thus be Rs.1,59,640/-. Considering the age of the deceased, a multiplier of 14 is to be applied. Accordingly, annual dependency comes to

Rs.22,34,960/-.

d Compensation for Loss of Love and Affection, Consortium, Funeral Rites

17. In cases of fatal motor accidents, some amount must always be awarded by way of compensation for loss of love and affection and consortium. It is of course impossible to compensate for the loss of a life, in the present case, that of a wife and mother, in terms of money. However, we can make an attempt to do so. Accordingly we award Rs.25,000/- for loss of love and affection and consortium.

18. Thus, total compensation payable to the claimants-appellants is Rs.22,59,960/- which is rounded off to Rs.22,60,000/- with interest at the rate of 6% from the date of filing the claim petition.

19. Accordingly the appeal of the claimants-appellants is allowed to the extent indicated above.

20. The respondents are jointly and severally liable to make the aforesaid payment, after adjusting payment, if any, is made. Such payment is to be made within three months. No costs.

.....J.
(G.S. SINGHVI)

New Delhi
February 07, 2011

.....J.
(ASOK KUMAR GANGULY)