

Before M. Jeyapaul, J.

NEW INDIA ASSURANCE COMPANY LTD.—Appellant

versus

SUSHMA AND OTHERS—Respondents

FAO No. 124 of 2013

January 11, 2013

Motor Vehicles Act, 1988 - S.166 - Appeal against quantum of compensation - Widow as only dependent-1/3 of his income deducted - Contended that 1/2 of the income should have been deducted - Held, deceased married person can't be equated with a deceased bachelor - Married person has a tendency to save more for his family even though not blessed with children - Appeal dismissed.

Held, that it is obvious that the above ratio did not deal with the situation where the deceased had left behind only his widow as dependent - claimant but the above ratio in fact supplies a clue that if the deceased was a bachelor and the dependents were his parents alone, there would be some tendency on the part of the bachelor to spend much part of his earnings towards his personal expenses. Therefore, the Hon'ble Supreme Court has held that if at all a bachelor had died leaving behind his parents alone, it would be ideal to deduct 50% of the income of the deceased bachelor towards his personal expenses. But in my considered view, a married person becomes more responsible in the family even though he was not blessed with any children. A deceased married person cannot be equated with a deceased bachelor. If a person has married he has a tendency to save his sizeable income to take care of his children who would be born at a later stage. Further, he has to save for the medical expenses of his wife who may become pregnant in a short time. Therefore, in my considered view, it would be just and fair to deduct only 1/3rd of the income of the deceased, in case he has left behind only his widow.

(Para 4)

Further held, that in view of the above, I find that the Tribunal has rightly deducted 1/3rd income of the deceased towards his personal expenses. I do not find any error in the judgment passed by the Tribunal. The appeal fails and it stands dismissed in limine.

(Para 5)

Mr. Ashwani Talwar, Advocate, *for the appellant.*

M. JEYAPPAUL, J.

(1) Aggrieved by the quantum of compensation fixed by the tribunal, 3rd respondent—New India Assurance Company Ltd. has come forward with the present appeal.

(2) Yashwant Khas met with motor accident and died leaving behind his wife Sushma as the only dependant.

(3) The trial court deducted 1/3rd from the income of the deceased toward his personal expenses to arrive finally the loss of dependency. The only short submission made by learned counsel appearing for the appellant—New India Assurance Company Ltd was that as per the decision of the Hon'ble Supreme Court in *Smt. Sarla Verma and others* versus *Delhi Transport Corporation and another (1)*; 1/2 of the income of the deceased should have been deducted towards his personal expenses as he had left behind only one dependent namely his widow.

The Hon'ble Supreme Court in Sarla Verma's case (Supra) has held as follows :—

“.....

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

15. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living*

expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

(4) It is obvious that the above ratio did not deal with the situation where the deceased had left behind only his widow as dependent—claimant but the above ratio in fact supplies a clue that if the deceased was a bachelor and the dependents were his parents alone, there would be some tendency on the part of the bachelor to spend much part of his earnings towards his personal expenses. Therefore, the Hon'ble Supreme Court has held that if at all a bachelor had died leaving behind his parents alone, it would be ideal to deduct 50% of the income of the deceased bachelor towards his personal expenses. But in my considered view, a married person becomes more responsible in the family even though he was not blessed with any children. A deceased married person cannot be equated with a deceased bachelor. If a person has married he has a tendency to save his sizeable income to take care of his children who would be born at a later stage. Further, he has to save for the medical expenses of his wife who may become pregnant in a short time. Therefore, in my considered view, it would be just and fair to deduct only 1/3rd of the income of the deceased, in case he has left behind only his widow.

(5) In view of the above, I find that the Tribunal has rightly deducted 1/3rd income of the deceased towards his personal expenses. I do not find any error in the judgment passed by the Tribunal. The appeal fails and it stands dismissed in limine.