



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

**DATED : 23-08-2013**

CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**MAC App. No.04 of 2013**

The Branch Manager,  
The New India Assurance Company Ltd.,  
Branch Office : M. G. Marg,  
P.O. & P.S. Gangtok,  
East Sikkim. **... Appellant**

**Versus**

1. Smt. Nirlata Sharma,  
W/o Late Mahadeo Sharma

2. Shri Anil Sharma,  
S/o Late Mahadeo Sharma

3. Shri Amit Sharma,  
S/o Late Mahadeo Sharma

All residents of Temi Tarku,  
P.O. + P.S. Temi,  
South Sikkim.

4. Shri Milan Pradhan,  
S/o Shri Y. N. Pradhan,  
C/o 'Bhansari Cottage,  
Church Road,  
P.O. & P.S. Gangtok,  
East Sikkim. **... Respondents**

For Appellant : Mr. Sudesh Joshi, Advocate.

For Respondents No.1 to 3 : Ms. Sunita Pradhan and Mr.  
Thinlay Dorjee Bhutia,  
Advocates.

For Respondent No.4 : Mr. B. N. Sharma, Advocate.



## **J U D G M E N T ( O R A L )**

**Wangdi, J.**

The limited question involved in this Appeal is that whether the Learned Claims Tribunal granting compensation against future prospects in the impugned judgment was sustainable in view of the decision of the Hon'ble Supreme Court in ***Reshma Kumari and Others vs. Mandan Mohan and Another : 2013 (5) Scale 160*** wherein it has been held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years as held in ***Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121***. For convenience, the relevant portion of the judgment is set out below:-

“35. With regard to the addition to income for future prospects, in *Sarla Verma* [2009 (6) SCC 121], this Court has noted earlier decisions in *Susamma Thomas* [1994 (2) SCC 176], *Sarla Dixit* [1996 (3) SCC 179] and *Abati Bezbaruah* [2003 (3) SCC 148] and in paragraph 24 of the Report held as under:

“24. .... 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.”

2. It is undisputed that in the present case the deceased was more than 50 years of age, i.e., 53 years to be precise. Of course, Ms. Sunita Pradhan, Learned Counsel, appearing on behalf of the Respondents No.1 to 3, submits that the amount of Rs.2 lakhs (Rupees two lakhs) only against future prospects was granted by the Learned Claims Tribunal in consideration of the fact that the deceased was a Government servant and had at least 5 years of service left before his superannuation when he died and further that this issue was not raised in the proceedings before the Learned Claims Tribunal. Although there appears to be substance in this submission but considering the fact that this is purely a question of law there is no impediment for this Court to take notice of this at this stage. Mr. Sudesh Joshi, Learned Advocate, appearing on behalf of the Appellant, submits that as the Learned Claims Tribunal lacked the very jurisdiction to award such compensation it was liable to be set aside.



3. It is no doubt true that ideally the Appellant ought to have brought this position of law before the Learned Claims Tribunal but, that by itself does not absolve this Court of its responsibility to follow the ratio once it is brought to its notice. Thus, upon consideration of the ratio laid down in **Sarla Verma (supra)** which has been adopted in **Reshma Kumari (supra)**, the compensation awarded against future prospects in the impugned judgment undoubtedly appears to be unsustainable and, therefore, naturally requires to be set aside.

4. In view of the above, the compensation of Rs.2 lakhs (Rupees two lakhs) only awarded by the Learned Claims Tribunal against future prospects is set aside.

5. Since the payment of the compensation remaining undisputed between the parties having been paid to the Respondents No.1 to 3, nothing further remains for determination in this Appeal.

6. In the result, the Appeal is allowed.

7. The judgment passed by the Learned Member, Motor Accident Claims Tribunal, East and North



Sikkim at Gangtok, stands modified to the extent alluded to earlier.

**8.** No order as to costs.

**9.** Let a copy of this judgment and the Original records be transmitted forthwith to the Learned Claims Tribunal for compliance.

Sd/-  
**( S. P. Wangdi )**  
**Judge**  
23-08-2013

Approved for reporting : Yes

Internet : Yes