

Employee's Income Has To Be Assessed, Without Deduction Of Allowances Based On Entitlement: SC

written by Mirza Aslam Beg | June 3, 2020



The Hon'ble Supreme Court Bench comprising of Justice Dr. Dhananjaya Y. Chandrachud and Justice Ajay Rastogi while computation of compensation related to an accident case in the matter of *Triveni Kodkany and Others Vs. Air India Limited and Others*^[1], at Mangalore Air Crash in May 2010 held that the income has to be determined based on the entitlement of the employees without deduction of allowances.

Further, the Hon'ble Court also granted compensation of INR 7,64,29,437/-. The main question of law that arose in the said case was related to the computation of income of the employee and it became more important when it was considered for deciding the accident claim of the deceased person and the other related issues which are discussed in this article.

SC on Deduction Of Allowances - SC Rules Income Be Assessed Without Deduction Of Allowances

FACTS

The ill-fated Air India flight took off from Dubai and was destined to reach Mangalore but crashed on 22nd May, 2010 at the Mangalore Airport wherein an ex-pat employed as a Regional Director for the Middle Eastern Region with GTL Overseas died. On 10th March, 2011 his spouse submitted her claim to Air India for compensation. After considering the claim, on 20th March 2012 Air India paid her an amount of INR 4,00,70,000/- against an indemnity.

Additionally, an amount of INR 40 lakhs was paid to the deceased's parents. A suit was instituted against Air India on 18th April, 2012 by the parents and brother of the deceased to claim compensation. The trial court dismissed the claims of the father and the brother but decreed the claim of the deceased's mother for an amount of INR 70 lakhs vide its judgment dated 27th September 2018.

The present appeal arose when the deceased's spouse, son, and daughter filed a complaint against Air India before National Consumer Dispute Redressal Commission (NCDRC) on 18th May, 2012 and claiming compensation of INR. 13.42 crores along with an interest of 18% p.a from the accident's date and other consequential payments.

The complaint was allowed by the NCDRC and award of compensation INR 7,35,14,187/- was taken on record and that an amount of INR 40 lakhs and INR 4.70 crores paid to the deceased's parents and the complainant respectively were to be adjusted from the awarded compensation. NCDRC was also held to be entitled to interest on the remaining balance amount of INR 2,95,14,187/- with effect from the date on which INR 4.70 crores was paid to the

complainants until the date on which the entire principal sum was paid. Further, while calculating the final compensation, NCDRC deducted the telephone allowance of AED 30,000/- from the total income and adopted the conversion rate which had been adopted in the complaint vide its *judgment dated 10th December 2018*[2].

ISSUES

1. Whether the telephone/travel allowance should be included for computation?
2. Whether the additional benefits and performance incentives should be computed in the absence of evidence?
3. Whether the deduction of personal expenses should be 1/5th based on the number of Dependent family members?
4. Whether the employment of Deceased Can be equated with a person of fixed salary?
5. Whether the exchange rate should be that which is prevalent today while calculating the computation amount?

SUBMISSION

The Counsel for complainant made four submissions:

1. The NCDRC had deleted AED 30,000 while making deduction from the total Cost to Company (CTC) of the deceased person as reflected in the records produced by the employer;
2. In view of the judgment of the Constitution Bench in National Insurance Company Limited v Pranay Sethi[3]a future prospect should be an additional thirty percent instead of twenty-five percent;
3. The Hon'ble Court should have taken the prevailing rate for conversion of AED into INR on the judgment date not the prevailing rate of INR 12.50 per AED which was at the filing of complaint before NCDRC; and
4. Only the salary of the deceased has been taken into consideration and not the income. The deceased was entitled to other benefits apart from salary including employees' stock options ("ESOP") and other financial benefits which have not been taken into consideration. This submission is sought to rely on a letter dated 21 March 2011 of the Vice President, Human Resources of the employer to the first complainant.

The Counsel on behalf of Air India had made three submissions:

1. The NCDRC has erred in making a deduction of one-fifth towards the personal expenses of the deceased. The correct deduction ought to have been one-third since the complainants before the NCDRC were the spouse and two minor children;
2. Air India has paid a total amount of Rs 10.46 crores to the complainants and the mother, inclusive of interest and this would sufficiently meet the interests of justice particularly having regard to the precarious financial position of Air India; and
3. In addition to the deduction which was made on account of the telephone allowance, the transport allowance of AED 40,957 should also be deducted from the annual salary of the deceased in making the computation.

JUDGMENT

The Hon'ble Supreme Court Bench held the following related to the issues as discussed above:

Issue No.1: Whether the telephone/travel allowance should be included for computation?

The Hon'ble Court while dealing with Issue No.1 held that the said case arose due to the death of an employee and the income of the employee has to be

assessed based on entitlement. Therefore, the employer in the salary does not provide any ground to make deductions from the total CTC bifurcation.

"The bifurcation of the salary into diverse heads may be made by the employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee. We, therefore, proceed for the purpose of computation on the basis of the annual income of AED 4,82,395."

The Consolidated amount is the amount annually borne by the employer on account of the employment of the deceased, said the court.

The Hon'ble Court included the allowances and further observed that *"Hence, we are unable to accept the reasons which weighed with the NCDRC in making a deduction of AED 30,000 from the total CTC. Similarly and for the same reason, we are unable to accept the submission of Air India that the transport allowance should be excluded."*

Issue No.2: Whether the additional benefits and performance incentives should be computed in the absence of evidence?

The Counsel of complainant made submission regarding the entitlement of additional benefits such as ESOP and the same was rejected on the basis that the material on record does not indicate that the deceased person was entitled to a specified quantum of ESOPs as a matter of right.

The other incentives and financial benefits were based on the performance of the employee. While dealing with issue no. 2 the Hon'ble bench was found that the deceased was eligible for some benefits on an annual basis and they were not a matter of right. On that basis, the bench was not inclined to accept the submission that the incentive benefits should be added back to the income for computation.

"In the absence of cogent evidence indicating that this was a part of the salary package which was payable to the deceased as an entitlement irrespective of performance, we are not inclined to accept the submission that the incentive benefits should be added back to the income for the purposes of computation."

Issue No.3: Whether the deduction of personal expenses should be 1/5th based on the number of dependent family members?

While deciding the issue no. 3 the Hon'ble Court relied on the Constitution Bench judgment in the case of Pranay Sethi which was rendered under the Motor Vehicles in the context of determining compensation. The said judgment has further relied upon *Sarla Verma Vs. Delhi Transport Corporation*^[4] wherein the Apex Court held that *"where the deceased was married, the deduction towards personal living expenses should be one-third, where the number of dependent family members is two or three; one fourth, where the number of dependent family members is four to six; and one-fifth, where the number of dependent family members exceeds six."*

In the said case, the total number of dependant upon the deceased are four. Hence, the Court held that the personal expenses of one-fifth as determined by the NCDRC on account of the personal expenses should be one-fourth.

Issue No.4: Whether the employment of Deceased Can be equated with a person of fixed salary?

The Pranay Sethi case also speaks of addition for future prospects wherein the deceased person had a *"permanent job"*. Air India argued that in the present case since the deceased person was 45 years and two months old and on the date of the accident he did not have a permanent job, the addition

towards future prospects should not be more than 25%..

While dealing with the abovementioned issue the Hon'ble Court observed that the deceased was not self-employed and was a long-standing employee of a multi-national corporation.

"The employment of the deceased cannot be equated with that of a person on a fixed salary - within the meaning of paragraph 59.4 of Pranay Sethi. The reference to the expression "permanent job" in paragraph 59.3 is not intended to include only those individuals who are in the service of the government or industrial workmen protected by statute."

In consideration of what is mentioned above, the court found that the deceased was a permanent employee of his employer, the Court held that *"This should be entitled to adequate weightage in terms of the determination of compensation in the event of an untimely demise. We have come to the conclusion that thirty percent should be allowed on account of future prospects."*

Issue No.5: Whether the exchange rate should be that which is prevalent today while calculating the computation amount?

The counsel for Complainant had relied on the bunch of judgments *Forasol v. O.N.G.C*[5], *Renusagar Power Co. Ltd v General Co. Lt*[6], *United India Insurance Co. Ltd v Kantika Colour Lab*[7] and *Balaram Prasad v Kunal Saha*[8] and submitted that the exchange rate should be that which prevalent today but the Apex Court has rejected the same.

The Hon'ble court noted that the details of the judgments are different from the present case and although going through the issue the Hon'ble Court held that *"The money is not being repatriated abroad. The claimants are Indian residents. The complaint contains a claim for payment in Indian"*.

Finally, the Hon'ble Supreme Court based on all the issues discussed above held that:

"The total amount which is payable on account of the aforesaid heads works out to Rs 7,64,29,437. Interest at the rate of nine per cent per annum shall be paid on the same basis as has been awarded by the NCDRC. The balance, if any, that remains due and payable to the complainants, after giving due credit for the amount which has already been paid, shall be paid over within a period of two months from the date of receipt of a certified copy of this order."

In the event that the amount which has been paid by Air India is in excess of the amount payable under the present judgment in terms of our above order, we direct under Article 142 of the Constitution, that the excess, if any, shall not be recoverable from the claimants".

CONCLUSION

In the present accident claim, the Hon'ble Court while hearing the submissions of the parties on issues has covered every issue very well and provides a clear observation with justification upon the income and additional income of the deceased. Therefore, the Hon'ble Court mentioned and held that the employee's income has to be determined without deduction of allowances which is based on his entitlement. Further, the judgment of the Supreme Court has justified and done justice with the complainant and the deceased's parents and has also not put any extra burden on Air India.

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- [1] Civil Appeal No. 2914 of 2019
 - [2] CC/140/2012, NCDRC
 - [3] (2017) 16 SCC 680

- [\[4\]](#) (2009) 6 SCC 121
- [\[5\]](#) 1984 Supp SCC 263
- [\[6\]](#) 1994 Supp (1) SCC 644
- [\[7\]](#) (2010) 6 SCC 449
- [\[8\]](#) (2014) 1 SCC 384
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