**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1148 OF 2012

1. Sakharam s/o Tukaram Thorat,
Age: 56 years,

2. Kamalbai w/o Sakharam Thorat,
Age: 51 years,
Both Occ: Labourer, R/o. Rotegaon,
Tq. Vaijapur, Dist. Aurangabad. ...Appellants

versus

Shivram s/o Savlaram More,
deceased per L.Rs.

1A. Suresh Shivram More,
Age: 45 years, Occ: Agri.,

1B. Ravi Shivram More,
Age: 40 years, Occ: Agri.,

1C. Ramesh Shivram More,
Age: 35 years, Occ: Agri.,

All R/o. Durgawadi (Durganagar),
Behind Hotel Lalaji, 3rd Lane,
In front of Lokhande's Bungalow,
Tal. Vaijapur, Dist. Aurangabad.

2. Ravindra s/o Shivram More,
Age: about 30 years, Occ: Agri.,
R/o. As above.

3. Manager, United India Insurance Co. Ltd.,
Seven Hill Colony, Jalna Road,
Aurangabad.

4. Kishor Balkrishna Zond,
Age: about 50 years, Occ: Business,
R/o. M.G. Road, Indor (M.P.)

5. Bhagwan s/o Karbhari Jadhav,
Age about 50 years, Occ: Driver,
R/o. Tamboli Galli, Vaijapur,
Dist. Aurangabad.

6. Oriental Insurance Co.
Adalat Road, Aurangabad. ...Respondents

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Mr. R.B. Deshpande, Advocate for appellants
Mr. R.F. Totla, Advocate for respondent No. 3
Mr. A.A. Joshi, Advocate for respondent No. 6

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CORAM : N.W. SAMBRE, J.

RESERVED ON : 21/07/2015
PRONOUNCED ON:29/07/2015

ORDER :

This appeal is by original claimants pursuant to the provisions of Section 166 of the Motor Vehicles Act seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.376 of 1999 decided on 08/08/2003.

2. The facts, as are necessary for deciding the issue raised in the present appeal, are as under :

The son of appellants namely Baban died in an accident on 06/11/1998 while he was travelling in jeep bearing Registration No. MH-20-E/9146, which was insured with respondent No. 3, which met with an accident with Matador bearing Registration No. MP-09/A-8587, which was insured with respondent No. 6 Insurance Company.

3. The claim under Section 166 of the Motor Vehicles Act dated 11/08/1999 for compensation amount of Rs. 3,00,000/- was adjudicated by Motor Accident Claims Tribunal by awarding compensation of Rs.1,34,800/- with interest @ 9.00% p.a.

4. While awarding compensation, claims tribunal has applied multiplier of 13, keeping in mind the age of the mother of deceased which was 45 at the relevant time and ignored the age of the deceased, which was quoted 25 years on post mortem report at Exhibit-44. As such, according to the claimants, the multiplier which was applied pursuant to age factor of the claimants was incorrect and as such, sought enhancement by applying multiplier having regard to the age of deceased, which was of 25 at the relevant time. In addition to above, learned Counsel for the appellant has raised issue about addition of future prospects, as according to him, loss of future prospects, love and affection and funeral expenses were not considered by the tribunal and as such, sought enhancement.

5. Learned Counsel for the respondents has opposed the claim and sought to support the order of the claims tribunal relying upon the certain rulings. According to him, the award delivered by the claims tribunal does not call for interference and sought dismissal

of the appeal.

6. In my opinion, the following points are required to be framed for determining the issue raised;

(a) Whether the claims tribunal has committed an error by applying multiplier after taking into account the age of the claimants i.e. mother and not that of the deceased?

(b) Whether the claims tribunal was right in not awarding compensation towards loss of future prospects, loss of love and affection and funeral expenses?

7. I have heard respective learned Counsel. Learned Counsel for the appellants, while inviting my attention to the observations made by learned tribunal in the matter of applicability of the multiplier, has pointed out the observations made in paragraph-15 which reads thus :

> "15. Now, it is case of claimants that, at the time of accident/death, deceased Baban was 21 years old. Though the claimants have not produced any age proof of deceased Baban, the Post mortem report Exh. 44 shows the age of deceased as 25 years. However, in this case the age of deceased son Baban is not material to consider the multiplier. The

claimants are the parents of deceased. Therefore, in view of the authority in case of **Gulam** Kadar v/s United India Insurance Co. Ltd. reported in 2001(1) T.A.C. 752 (Karnataka), the age of parents particularly the age of mother is material to consider the multiplier. In this case, the age of claimant No. 2 Kamalbai mother of deceased Baban is 45 years. Therefore, considering this age of claimant No. 2 the proper, multiplier in this case would be 13. If we apply this multiplier, then total loss of dependency of claimants would come to Rs.(9,600x13) =1,24,800/-. Thus, the claimants would be entitled to total compensation of Rs.1,34,800/-."

8. Learned Counsel for the appellants would further urge that perusal of the judgment reflects that there was no consideration for addition of future prospects and that of loss of consortium and funeral expenses. In support of his contention, he has relied upon the law laid down by the Apex Court in the judgment of ***Munna Lal Jain vs. Vipin Kumar Sharma*** reported in ***2015 SCC Online SC 505.*** He has invited my attention to the observations of the Apex Court after considering the judgment in the matter of ***Santosh Devi vs. National Insurance Co. Ltd., [(2012) 6 SCC 421]*** and ***Sarla Verma vs.Delhi Transport Corporation [(2009) 6 SCC 121]*** in the matter of applicability of proper multiplier and addition of future prospects. Learned Counsel for the appellant also relied upon the judgment of

the Apex Court in the matter of ***P.S. Somnathan and others vs. District Insurance Officer and another*** reported in ***2011(3) Mh.L.J. 735*** so as to support his contention that multiplier for computing the compensation shall refer to the age of the deceased. In addition to above, learned Counsel for the appellants also relied upon the judgment of the Apex Court in the matter of Reshma Kumari and others vs. Madan Mohan and another reported in 2013 AIR SCW 3120 and particularly paragraph-34 so as to canvass that in view of Sections 163A and 166 of the Motor Vehicles Act, the appropriate multiplier qua age of the deceased is to be taken into account as per Second Schedule. In addition to above, he has placed reliance upon the judgment of the Apex Court in the matter of ***Rajesh and others vs. Rajbir Singh and others*** reported in ***(2013) 9 SCC 54*** so as to canvass that even in case of self employed persons and those who are engaged on fixed wages, the future prospects needs to be added to that of 50% of the last wages drawn. In addition to above, he would urge that based on the said judgment, he claimed Rs.25,000/- towards loss of consortium and Rs. 1,000/- towards funeral expenses.

9. He has also relied upon paragraphs-15, 16 and 17 of Santosh Devi (supra) so as to canvass that even if daily wager is entitled for addition of future prospects. In the matter of applicability

of proper multiplier, he has also relied upon the judgment in the matter of ***Amrit Bhanu Shali and others vs. National Insurance Company Limited and others*** reported in ***(2012) 11 SCC 738***, particularly paragraphs-15 and 16.

10. While countering the above referred submissions, Mr. Totla, learned Counsel for respondent-Insurance Company would urge that while supporting his contentions about applicability of proper multiplier is based on the age of claimants, has relied upon the judgment of the Apex Court in the matter of ***The Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer*** reported in ***2003(8) SCC 731*** and another judgment in the matter of ***National Insurance Company Ltd. vs. Shyam Singh and others*** reported in ***2011 (7) SCC 65***.

11. In the light of above referred submissions, this Court has proceeded to examine the entitlement of the claim as regards proper multiplier, addition of future prospects, loss of consortium and funeral expenses., Perusal of the record reflects that deceaed Baban was employed as labour and doing daily wager work. In the post mortem report i.e. Exhibit-44 his age was shown as 25 years.,

12. Apart from above, his income was considered as Rs.50/-

per day and the tribunal has calculated his monthly income at Rs.1200/- per month at the relevant time and after multiplying with 12 months and formed opinion that the deceased at the relevant time was earning Rs. 14,400/- per year. The tribunal then proceeded to deduct 1/3rd personal expenses and has reached to the conclusion that loss of annual dependency would be Rs.9600/-.

13. In my opinion, the above referred approach of the tribunal in the light of judgments cited supra, particularly in the matter of Santosh Devi and Sarla Verma, the personal deductions should have been to the extent of half-half of the amount of total income. Relevant observations from the judgment of Apex Court from the case of Munna Lal Jain could be referred to as under :

> " On the issue of deduction towards personal and living expenses in Sarla Verma (Smt.) and others v. Delhi Transport Corporation, at paragraph-31, it was held that:
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> "31. … 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 parent(s) 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 dependants, because they will either be independent and earning, or married, or be dependent on the father.”

The deduction ordinarily in the case of a bachelor at 50 % was approved recently by a three-Judge Bench decision in Reshma Kumari and others v. Madan Mohan, holding that the standard fixed in Sarla Verma (supra) on the aspect of deduction for personal and living expenses … “must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out”. Preceding paragraph-41 reads as follows:

“41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man’s net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.”

> In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed."

14. In view thereof, out of annual income Rs.14,400/- (1200X12), the personal deductions should have been Rs. 7200/- as deceased was a bachelor.

15. It is required to be noted that loss of future prospects in the present matter is also required to be considered. Based on the judgment cited supra in the matter of Mulla Lal, it is required to be noted that the said judgment was delivered based on the judgment in the case of Rajesh (supra). The Apex Court, therefore, considered that if the deceased was below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. The relevant observations in the matter of Munna Lal Jain on the matter of future prospects are as under :

> " As far as future prospects are concerned, in Rajesh and others v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased

while computing future prospects. To quote:

> “8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”
>
> The deceased being of the age of 30 years, 50% is the required addition.”

In the present case, the age of the deceased was 25 years and as such, there will be addition of 50% to the actual income of the deceased and as such, while calculating the compensation again amount of 50% of his earning will be required to be added to the annual gross income of the deceased i.e. Rs.7200/-. In view thereof, while calculating compensation, annual income of the deceased will be required to be considered to tune of (7200+7200) Rs. 14,400/- by adding future prospects as is ordered by the Apex Court in the matter of Munna Lal (supra).

16. The next question that falls for consideration is whether the tribunal was right in applying multiplier of 13. It is required to be noted that the tribunal applied multiplier keeping in mind the age of claimants and not that of victim. The relevant observations from the matter of Munna Lal Jain by Apex Court could be considered as under :

> " The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:
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> "36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss

> of dependency, the Tribunal must consider (I) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."
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> In Sarla Verma (supra), at paragraph-19, a two-Judge Bench dealt with this aspect in Step 2. To quote:
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> "19. xxxxxx xxx
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> Step 2 (Ascertaining the multiplier)
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> Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."

17. In the present case, the age of the victim in the post mortem report was mentioned 25 years. In view of the cases of Munna Lal, Rajesh and Amrit (cited supra), for applying proper multiplier, the age of the deceased is required to be taken, which in the present case appears to be 25 years. As such, proper multiplier in the present case will be that of 18.

The observations of Apex Court in the matter of Reshma Kumari in paragraphs-26 to 34 pertaining to multiplier are as under :

"26. In Sarla Verma, this Court undertook the exercise of comparing the multiplier indicated in Susamma Thomas, Trilok Chandra and Charlie, for claims under Section 166 of the 1988 Act with the multiplier mentioned in the Second Schedule for claims under Section 163A (with appropriate deceleration after 50 years) as follows:

Age of Deceased	Multiplier Scale as envisaged in Susamma Thomas	Multiplier Scale as adopted by Trilok Chandra	Multiplier Scale in Trilok Chandra as clarified in Charlie	Multiplier Specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation
1	**2**	**3**	**4**	**5**	**6**
Up to 15 years	-	-	-	15	20
15 to 20 years	16	18	18	16	19
21 to 25 years	15	17	18	17	18
26 to 30 years	14	16	17	18	17
31 to 35 years	13	15	16	17	16
36 to 40 years	12	14	15	16	15
41 to 45 years	11	13	14	15	14
46 to 50 years	10	12	13	13	12
51 to 55 years	9	11	11	11	10
56 to 60 years	8	10	09	8	8
61 to 65 years	6	08	07	5	6
Above 65 years	5	05	05	5	5

27. In paragraph 42 (pg. 140) of the Report, this Court in Sarla Verma laid down that the multiplier shall be

used in a given case in the following manner:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

28. The above exercise was undertaken in Sarla Verma to ensure uniformity and consistency in the selection of multiplier while awarding compensation in motor accident claims made under Section 166.

29. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.

30. Almost a century back in Taff Vale Railway Co. v. Jenkins, the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been bread-winner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

31. This Court in C.K. Subramania Iyer and Ors. v. T.Kunhikuttan Nair and Ors., reiterated the legal philosophy highlighted in Taff Vale Railway for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor.

32. In Susamma Thomas (AIR 1966 SC 1631 : 1996 AIR SCW 1356), this Court – though with reference to Section 110B of the Motor Vehicles Act, 1939 – stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in Susamma Thomas is equally applicable to the fatal accident claims made under Section 166 of the 1988 Act. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the tribunals and courts.

33. We have already noticed the table prepared in Sarla Verma for the selection of multiplier. The table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, Susamma Thomas, Trilok Chandra and Charlie for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on

the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma17.

34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and

> living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed."

18. So far as the judgments of Apex Court in the matter of National Insurance Co. Ltd., and Municipal Corporation of Greater Bombay are concerned which are cited supra by the learned Counsel

for Insurance Company, the judgments in the matter of Munna Lal Jain and Reshma Kumari are required to be followed as same are delivered by larger bench.

19. The next aspect of which this Court must take note of is that the tribunal has not awarded any expenses towards funeral, so also that of loss of consortium.

20. In my opinion, it will be appropriate to award the funeral expenses to the tune of Rs.3000/- plus Rs.25,000/- towards loss of consortium. Hence, I pass following order.

21. The first appeal is partly allowed.

22. The claimants will be entitled for compensation of Rs.2,59,200/- (Rs. Two lacs fifty nine thousand two hundred only) inclusive of No Fault Liability from respondent Nos. 1 to 5 jointly and severally with proportionate costs as per 50% 50% liability as observed in paragraph-16 of the order of tribunal.

23. Respondent Nos. 1 to 5 are also directed to pay jointly and severally Rs,25,000/- plus Rs.3000/- = Rs. 28,000/- towards loss of consortium and funeral expenses.

24. The above referred amount shall carry interest @ 7% p.a. from the date of filing of the claim petition.

[**N.W. SAMBRE, J.]**

Tupe/