

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 113 OF 2010

1. Mrs. Sangamma Kolkar,
w/o Sangappa Kolkar,
about 45 years old, housewife,

2. Mr. Sangappa Kolkar,
aged 48 years,
son of late Mr. Mallappa S.Kolkar,
Both r/o. H. No.15,
Near Samuel Ground,
Cana, Benaulim,
Margao Goa

... Appellants

V e r s u s

1. Mr. Vasudev Gaonkar,
s/o. Siddesh Gaonkar,
age 46 years,
resident of H.No.36,
Villian Sanguem,
and presently residing
at H.No.223/B,
Zamcotto, Dramapur.

As per order dated 1.3.2012
passed by the Id. Registrar (Judl.)
appeal stands dismissed for
want of prosecution.

2. Mr. Carmo Dourado,
(Owner of Bus bearing No.
GA 01 M 3443),
H.No.661, Mungal, Pequenco,
Margao, Goa.

3. The National Insurance Company Ltd.,
Through it's General Manager
(Insurer of the Bus)
2nd Floor, Marchon Building,
Opp. Lohiya Maidan,
Margao, Goa.

... Respondents.

Mr. Salil Saudagar, Advocate for the appellants.

Mr. U. R. Timble, Advocate for the respondent no.3.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 02.07.2015

JUDGMENT PRONOUNCED ON : 23.07.2015

J U D G M E N T :

The present appeal is preferred by the original claimants against the judgment and award passed by the Presiding Officer of the Motor Accident Claims Tribunal, Salcete, Margao, in Claim Petition No. 173/2008 dated 23.04.2010, by which the learned Presiding Officer has awarded compensation of Rs.1,60,500/- together with 9% interest inclusive of the amount awarded under Section 140 of the Motor Vehicles Act. Being dissatisfied with the quantum of compensation, the parents of the deceased came to this Court.

2. The parties are referred to their original status.
3. The brief facts of the case may be stated as follows :

The claimants/appellants have claimed total

compensation of Rs.10,00,000/- on account of death of their son Manju Kolkar in the motor vehicular accident which took place on 03.09.2008 at about 17.10 hours near Samson Bar. At the relevant time, the deceased Manju was proceeding on Hero cycle along with pillion rider Shabir from Amori air-conditioned family bar and restaurant to Cana, Benaulim. At that time, the respondent no.1 came with bus bearing registration No. GA-01-T-3443 from the side of Maria hall, Benaulim to go towards Margao. The respondent no.1 was driving the vehicle in rash and negligent manner due to which the vehicle gave dash to the bicycle in which the deceased was seriously injured.

4. After the accident, the injured Manju was immediately taken to Hospicio hospital at Margao, however, he died due to the injuries on the same day.

5. The accident occurred due to sole negligence of respondent no.1 who was driving the vehicle in rash and negligent manner and that too under the influence of alcohol.

6. At the time of the accident, the deceased was 17 years old and was working as a Waiter in the Amori air-conditioned family restaurant and bar situated at Colva road, Per Seraulim,

Salcete Goa and he was earning Rs.2800/- per month.

7. The respondent no.2 is the owner and respondent no.3 is the insurer of the vehicle and vehicle was insured with respondent no.3 during the period from 14.10.2007 to 13.10.2008.

8. Pursuant to the notice, all the respondents appeared and filed their written statement. The respondent nos. 1 and 2 by the written statement have denied the claim of the claimants/appellants and have specifically contended that the rider of the Hero cycle came towards the wrong side and dashed against the rear side of the bus and the respondent no.1 was not even aware about the said dash.

9. The respondent no.3 also resisted the claim petition on the ground that the accident occurred due to the fault of the deceased himself. Further, it is contended that the respondent no.1 was not holding an effective driving licence and did not possess permit and fitness certificate of the vehicle. Further more, the respondent no.1 was under the influence of alcohol so the respondent no.2 has violated the terms and conditions of the policy. Hence, the respondent no.3 is not liable to pay the

compensation.

10. The learned Presiding Officer inasmuch as has framed nine issues relating to the accident, negligence of the deceased and regarding the breach of the terms and conditions of the policy. Before the learned Tribunal, the claimant no.1/appellant no.1 has filed her affidavit under the provisions of Order 18 Rule 4 of the Civil Procedure Code and reiterated all contents of the petition. To prove the manner in which the accident occurred, the claimants/appellants have relied upon the evidence of Mira D'Silva, LPSI and AW4 Shabir Ahmed Murzawar, pillion rider of the cycle. To prove the spot and location of the accident, the claimants/appellants have relied upon the evidence of pancha witness Gilbert Fernandes. To prove the salary of the deceased, the claimants/appellants have relied upon the evidence of Amar Dhumatkar, Bar owner. No evidence is adduced on behalf of the respondents. Considering the evidence on record and upon hearing both the sides, the learned Presiding Officer has partly allowed the petition and awarded compensation as referred to earlier.

11. I have heard the arguments of Mr. Saudagar, learned counsel appearing for the claimants/appellants and Mr. U. R.

Timble, learned counsel appearing for the respondent no.3.

12. Considering the evidence on record and looking to the rival submissions of both sides, the controversy is with regard to the determination of the salary, multiplier to be adopted and deduction towards the self expenses.

13. According to Mr. Saudagar, learned counsel appearing for the claimants/appellants, there is sufficient evidence to hold that the deceased was earning Rs.2,800/- per month and relying upon the observations in the case of **Sarla Verma & Ors. vs Delhi Transport Corp.& Anr** and in the case of **Reshma Kumari and others V/s Madan Mohan and another**, available on **CDJ Law Journal 2013 SC 270**.

14. As against this, Mr. Timble, learned counsel appearing for the respondent no.3/insurance company has argued that the appropriate multiplier is to be selected based upon the observations of the Apex Court in the case of **U.P. State Road Transport Corporation and others V/s Trilok Chandra and others** reported in **(1996) 4 SCC 362**. Looking to the rival submissions made by both the counsel appearing for the parties, let us see what evidence is adduced by the claimants/appellants to

determine the salary of the deceased. The claimant no.1/appellant no.1 in her affidavit has clearly stated that her son was aged 17 years old when expired and he was working as a Waiter in Amori air-conditioned family bar and restaurant, Margao and his monthly income was around Rs.2,800/- per month. The bar owner Amar Dhumatkar has deposed at Exhibit 46 and deposed on oath that Manju Kolkar was working in his restaurant as a Waiter and his salary was Rs.1,500/- per month and he also used to get further amount of Rs.1,300/- by way of tips. Accordingly, he has issued salary certificate. Thus, there is evidence on record to show that the deceased was earning Rs.2,800/- per month. Mr. Timble, learned counsel appearing for respondent no.3/insurance company has argued that tips of Rs.1,300/- per month allegedly received by the deceased cannot be considered as an earning because it depends upon the customers attending the bar. He further argued that the deceased has served only for one or two months in the said bar. Therefore, there was no certain and definite income of the deceased. According to Mr. Timble, the income of the deceased determined by the learned Presiding Officer appears to be correct. I do not agree with the submission of Mr. Timble because any how the deceased was getting Rs.2,800/- per month that may be including the tips. What is to be considered is the gross monthly earning of the deceased. In my opinion notional

income prevailing at the time of the accident considered to be Rs.3,000/- per month. In such circumstances, the income of the deceased claimed by the claimants/appellants is quite reasonable even considering the notional income of the person. Hence, the earning of the deceased is considered to be Rs.2,800/- per month.

15. The next controversy is with regard to the selection of the appropriate multiplier. Mr. Saudagar, learned counsel appearing for the claimants/appellants relying upon the observations in the case of **Reshma Kumari and others V/s Madan Mohan and another** reported in **CDJ 2013 SC 270** has strongly contended that while determining the compensation with regard to the death of a person, a multiplier in reference to the age of the deceased has to be taken into consideration.

16. As against this, Mr. Timble, by relying upon the observations in the case of **Trilok Chandra** (supra) has strongly contended that it is not necessary to consider the age of the deceased in each and every case and by relying upon the observations in the above referred case, Mr. Timble, has argued that the multiplier has to be selected depending upon the age of the deceased or the claimants whichever is higher. Mr. Timble, during the course of the arguments has argued that the law laid

down by three Judge Bench of the Hon'ble Apex Court in **Trilok Chandra** (supra) has not been set aside by a Larger Bench. Therefore, it still hold good law. As against this, Mr. Saudagar, learned counsel appearing for the claimants/appellants has argued that the three Judge Bench of the Hon'ble Apex Court in the case of **Reshma Kumari** (supra) has held that the selection of the appropriate multiplier shall be as per the observations and table approved in Sarla Verma's case and the Hon'ble Apex Court further observed that they do not think it necessary to revisit the law on that point as they were in full agreement with the view in Sarla Verma's case. Therefore, it is necessary to refer the relevant observations in the case of **Reshma Kumari** (supra) at paras 33 and 34 thus :

“**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 dependents. 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.

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.”

17. I have carefully gone through the observations in the cases of ***Trilok Chandra*** (supra) as well as ***Reshma Kumari*** (supra) and considering the facts and circumstances of the present case, I am of the opinion that the observations in the case

of **Reshma Kumari** (supra) are more appropriately applicable to the facts of the present case because recently three Judge Bench of the Apex Court has affirmed the law laid down in the case of Sarla Verma. Therefore, I am of the opinion that the multiplier as indicated in the table approved in Sarla Verma's case has to be selected in reference to the age of the deceased.

18. Looking to the observations recorded by the learned Presiding Officer, the learned Presiding Officer has deducted one third amount of the earning towards the self expenses. Mr. Timble, has argued that the deceased was aged about 17 years and was unmarried. Therefore, one third deduction towards the self expenses was improper. Mr. Timble, was right in submitting so because in the case of **Sarla Verma** (supra) such deductions are shown to be half in case of a death of a bachelor. Therefore, the learned Tribunal ought to have deducted half of the amount. For the reasons recorded above, I am of the opinion that the amount calculated and awarded to the claimants/appellants needs to be replaced by following calculations.

19. The monthly earning of the deceased is considered to be Rs.2,800/- x 12 = Rs.33,600/- per annum. Half to be deducted towards the personal expenses of the deceased had he be alive

comes to Rs.16,800/-. The multiplier as per the table referred to in Sarla Verma's case to the age of 17 years is of 18. Hence, Rs.16,800/- x 18 = Rs.302400/-, which the claimants/appellants are entitled on account of loss of earning of the deceased.

20. Mr. Saudagar, learned counsel appearing for the claimants/appellants has submitted that the amount of Rs.25,000/- be awarded to the claimant on account of funeral expenses as awarded in the case of **Rajesh and others V/s Rajbir Singh and others** reported in **2013(9) SCC 54**. I do not think that the claimants/appellants are entitled to the compensation for the amount of Rs.25,000/- towards funeral expenses because the claimants/appellants are seems to be from low economic group as the deceased was working in the bar as a Waiter. I am aware that there are many other expenses in connection with the funeral if the deceased is follower of particular religion. There are religious practices and conventions pursuant to the death in a family. However, there is no whisper in the pleadings and evidence of the claimants/appellants that they require huge expenses for the funeral. Therefore, I am of the opinion that as per the observations in the case of **Sarla Verma**, (supra) the claimants/appellants are entitled for compensation of Rs.5000/- for funeral expenses and Rs.5000/- for the loss of

estate. Hence, the total amount works out to Rs.3,12,400/- which the claimants/appellants are entitled together with 9% interest from the date of the petition till its realisation. Hence, the appeal is partly allowed and the award passed by the learned Presiding Officer is modified accordingly to the extent as referred to above.

K. L. WADANE, J

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In view of the disposal of FA No. 113 of 2010 MCA No. 420 of 2015 stands disposed of as no separate order is necessary.