IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.327 OF 2007

Vincentina Paulina D'Souza,
aged 46 years, widow,
wife of late Casiano Robert D'Souza,
r/o. of Navelcar Estate,
Block F-3, Baiguinim, Old Goa. ….Appellant

V/s

1. Sunil Kumar P. (driver),
S/o. Rarichakutty,
R/o. Pongilodi – House,
Via Atholi Culicat,
Post Thalkulathur, Kerala. Dismissed

2. Mr. K.C. Babu,
Managing Director,
Baby Marine Exports,
Calicut, 682 001.

3. The New India Assurance
Co. Ltd. Udipi D.O.
Sri Ram Arcade,
Head Post Office Road,
Udipi – 576 101. Dismissed ….. Respondents

Shri E. Afonso, Advocate for the Appellant.
Shri U.R. Timble and Ms. Y. Mandrekar, Advocates for the respondents No.2.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 27th APRIL, 2017
Pronounced on : 13th JULY, 2017

JUDGMENT :

This is an appeal at the instance of the original claimant challenging the judgment and award dated 12/07/2007 pursuant to which the then learned Presiding Officer of the MACT had partly allowed the petition holding the appellant entitled to the compensation of ₹1,76,300/- and holding the respondents liable to pay the amount to the appellant with interest and costs. The parties would be referred to in their status before the Trial Court for brevity's sake hereinafter.

2. The claimant challenged the impugned judgment and award on the ground that the learned Tribunal failed to grasp the true scope and dimension of her case and thus erred in awarding a meagre compensation of ₹1,27,500/- on the death of her son aged 19 years. The Tribunal failed to appreciate that the deceased was a young apprentice steward employed with the Indian Resort Hotels Limited at Fort Aguada Beach Resort, Sinquerim-Goa and had good future prospects of earning a good salary from time to time. The Tribunal failed to appreciate that on completion of the training he would have been absorbed in permanent service with the minimum monthly salary of ₹5,500/-. The Tribunal erred in not considering the immediate higher earning prospects on completion of the training and that he would earn much more in a five star hotel being Fort Aquada Beach Resort. The impugned judgment and award was not in consonance with the law in awarding compensation in fatal motor accident and

therefore justified interference in an appeal.

3. Shri E. Afonso, learned Advocate for the appellant submitted that the deceased son of the appellant was 19 years 6 months old and was employed with Fort Aguada as an apprentice and drawing a stipend of ₹850/- per month. He had passed his 12th standard and Diploma in Food and Beverages and was registered with Fort Aguada. He had every chance of earning an additional income of ₹5,000/-. He adverted to the evidence on record and submitted that the learned MACT did not even consider the notional income and ignored the fact that the deceased was a trainee/apprentice in a Five Star Hotel and had chances of earning a salary of ₹5,000/- to ₹6,000/- per month. He relied in **Smt. Sarla Verma V/s. Delhi Transport Corporation [2009 (6) SCC 121], Munna Lal Jain & Anr. V/s. Vipin Kumar Sharma & Ors. [(2015) 6 SCC 347], Rajesh & Ors. V/s. Rajbir Singh & Ors. [(2013) 9 SCC 54], Santosh Devi V/s. National Insurance Company Limited & Ors. [(2012) 6 SCC 421]** and **Sayed Sadiq & Ors. V/s. Divisional Manager, United India Insurance Company Ltd. [(2014) 2 SCC 735]**.

4. Shri E. Afonso, learned Advocate for the appellant further contended that even if 50% deduction was taken into account considering that he had died a bachelor, in the natural course, such a deduction could not be done when he was getting free meals and therefore deduction had to be restricted to 1/3rd. He relied in **Kalpanaraj & Ors. V/s. Tamil Nadu State Transport Corporation [(2015) 2 SCC 764]** to claim amounts on the head of loss of estate, loss of love and affection, **M. Mansoor & Anr. V/s. United India Insurance Company Limited & Anr. [(2013) 15 SCC 603], Reshma Kumari & Ors. V/s. Madan Mohan & Anr. [(2013) 9 SCC 65]** apart from the judgment in **IFFCO TOKIO General Insurance Co. Ltd. & Anr. V/s. Mr. Kevin Fernandes & Ors. (First Appeal No.114 of 2015 and in Royal Sundaram Alliance Insurance Co. Ltd. V/s. Smt. Hanamava Yamanappa Jedi & Ors. (First Appeal No.13/2014)**.

5. Shri U.R. Timble, learned Advocate for the respondents no.2 submitted that at the time of death, the deceased was only drawing a stipend and was not in regular employment

and therefore there were no basis in the claim towards the enhanced wages. There were also no basis to consider his salary at ₹1,000/- per month. He next contended that the multiplier applicable to the case was based on the age of the parents and in that context relied in **Uttar Pradesh State Road Transport Corporation & Ors. V/s. Trilok Chandra & Ors. [1996 (4) SCC 362]** as also in **Ashvinbhai J. Modi V/s. Ramkaran Ramchandra Sharma & Anr. [2015 (2) SCC 180]**. Besides, he relied in **Central Board of Dawoodi Bohra Community & Ors. V/s. State of Maharashtra & Anr. [2005 (2) SCC 673]** while fairly conceding that he had no quarrel on the grant of compensation on the head of love and affection. At a latter date Ms. Y. Mandrekar holding for Shri U.R. Timble for the respondents no.2 conceded that the judgment in **Trilok Chandra** (supra) was not applicable to the case and therefore this Court had to award appropriate compensation in the circumstances of the case. i would consider their submissions, the judgments relied upon supra, particularly on the aspect of the earning and the entitlement and besides the fate of the appeal, there being no singular dispute on the aspect of rashness and negligence at the instance of the respondent no.1.

6. Be that as it may, it would not be out of context to briefly allude to the case of the claimant as set out in the petition. She had stated that her son aged 19 years was working as a steward at Fort Aguada drawing a monthly income of ₹5,000/-. He had succumbed to the injuries sustained in the course of the vehicular accident on 26/11/2003 and had maintained the petition for compensation claiming an amount of ₹5,00,000/- which the respondents were jointly and severally liable to pay to her. Since there has been no particular dispute on the aspect of rashness and negligence of the truck driver and the death of her son, that aspect of the evidence would not be relevant to be looked into while deciding this appeal, the appeal being primarily for the enhanced compensation. In that context, it would not be out of context to advert to the evidence of the appellant who had broadly stated that her son had studied uptill 12th standard and done a course in Food and Beverage Service having passed in 1st class. At the time of the accident he was employed as an apprentice for training in the course of Major Apprentice for 2 years at Fort Aguada Bach Resort on a monthly salary of ₹5,000/- and that in the course of time he

would earn ₹10,000/- thereby entitling her to the compensation.

7. She had produced a letter from the Fort Aguada Beach Resort confirming the employment of the deceased as an apprentice at Fort Aguada on a monthly stipend of ₹850/- during the first year of the training, ₹950/- during the second year and ₹1090/- during the third year of the training. She however admitted in the cross-examination that she did not have any document to show that her son was earning ₹5,000/- per month and yet denied the suggestion that he was not earning ₹5,000/- per month. She had also examined the Human Resource Executive at Fort Aguada in support of her case who confirmed that her son was working as an apprentice in Food and Beverages on a stipend of ₹850/- per month and was getting free meals. Besides, he was getting tips from the customers and on completion of the training he would be normally absorbed. He would draw a monthly salary of ₹5,500/- per month on being absorbed as a Waiter and he would get 20% in addition apart from free meals while on duty. He was materially unshaken in his testimony that he was working for Fort Aguada for last 20 years, knew the

deceased personally and besides showed the Muster Roll to show that he was working at Fort Aguada Beach Resort. In this backdrop, i would now proceed to appreciate the contention of Shri E. Afonso, learned Advocate for the appellant on the earnings of the deceased and the entitlement of the appellant if at all to the enhanced compensation.

8. In **Rajesh and Ors.** (supra), a three Judge Bench of the Hon'ble Apex Court granted leave to appeal at the instance of his widow and the three minor children of late Bijender Singh who was around 33 years of age at the time of the accident on 5/10/2007 and working as a clerk in a school under the Education Department in the State of Haryana. The Salary Certificate filed alongwith the Claim Petition showed that he was getting a monthly salary of ₹6,926/- from which the Tribunal deducted 1/3rd of the amount towards the personal expenses, applied the multiplier of 16 and further awarded an amount of ₹10,000/- towards all other conventional heads and the compensation was rounded off to ₹8,96,500/- with interest @ 7.5% from the date of the filing of the petition. The petitioners dissatisfied with the award passed by the learned MACT approached the High Court, which following the

judgment in **Sarla Verma** (supra), of the Apex Court modified the award holding that only 1/4th should have been deducted from the income and an amount of ₹10,000/- was also awarded for the loss of consortium in addition to ₹10,000/- already granted by the Tribunal on other conventional heads thereby holding that the total compensation to which they were entitled with interest was ₹10,17,000/-. The widow and the children approached the Apex Court not satisfied with the award passed by the High Court and hence the appeal by leave.

9. In **Rajesh** (supra), the three Judge Bench of the Hon'ble Apex Court considered the decision in **Santosh Devi** (supra), which had further explained **Sarla Verma's** case (supra), with regard to the settled norms and held at para 11 as follows:

> "11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and

their impact on the life of the people."

It further held at paragraphs 14 to 18 as follows:

"14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc. would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although, the wages/income of those employed in unorganized sectors has not

registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

10. In **Rajesh** (supra), another issue which arose for consideration before the Apex Court was whether the Tribunal was competent to award the compensation in excess of that claimed in the application under Section 166 of the Act. It considered the judgment in **Nagappa V/s. Gurudayal Singh**

[2003 (2) SCC 274] where it was held at para 10 as follows:

> "Thereafter, Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

This principle was followed in the latter decisions in **Oriental Insurance Co. Ltd. V/s. Mohd. Nasir [2009 (6) SCC 280]** and in **Nangamma V/s. United India Insurance Co. Ltd. [2009 (13) SCC 710]**.

11. In **Rajesh** (supra), the Hon'ble Apex Court observed at para 18 as follows:

> "18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of ₹25,000."

The petitioners had produced the Salary Certificate of the deceased which showed that after the revision of the salary by the Sixth Pay Commission with effect from 1/01/2006, the deceased drew a monthly salary of ₹9,520/-. It was submitted that since the Sixth Pay Commission benefits were announced only subsequently making it to operate retrospectively from 1/01/2006, the Salary Certificate could not be produced before the Tribunal or the High Court. Applying the principles laid down in **Sarla Verma** (supra), as explained in **Santosh Devi** (supra), and in the instant case, the Apex Court reassessed the compensation by allowing a 50% increase in the salary to be added towards the future prospects, deducted 1/4th towards the personal expenses and applying the multiplier of 16 awarded the compensation of ₹20,56,320/-. Besides, an amount of ₹1,00,000/- was awarded towards the loss of consortium and an equal amount towards the loss of care and guidance for minor children and ₹25,000/- towards the funeral expenses with interest @ 7.5% p.a. from the date of the petition till the realisation and disposed off the appeal accordingly.

12. In **Munna Lal Jain** (supra), another three Judge Bench of the Hon'ble Apex Court granted leave to appeal where the

family of the deceased sought enhancement of the compensation awarded in their favour. The appellants who were the claimants before the MACT, Karkardooma, Delhi were the parents of Satendra Kumar Jain, aged 30 years and a bachelor and the claim raised by his parents was ₹95,50,000/-. The Claims Tribunal awarded a total compensation of ₹6,59,000/- including the loss of dependency to the tune of ₹6,24,000/- with interest @ 7.5% p.a. Dissatisfied, the appellants approached the High Court of Delhi which enhanced the compensation to ₹12,61,800/- with interest considering the monthly income at ₹12,000/- and adding 30% towards the future prospects relying on **Santosh Devi** (supra), and deducting 50% towards the personal expenditure and applying the multiplier of 13. The claimants were still not satisfied and who were before the Hon'ble Apex Court for further enhanced compensation. The appeal was limited to the question of application of the multiplier and deduction on account of the personal and living expenses.

13. In **Munna Lal Jain** (supra), the Hon'ble Apex Court observed at para 10 as follows:

> 10. As far as future prospects are concerned, in

Rajesh and others v. Rajbir Singh and others, 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.
"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.

14. In **Munna Lal Jain** (supra), the Apex Court held that the deceased being of 30 years, 50% was the required addition. The only other question remaining at large was on the multiplier. The Apex Court was conscious of the fact whether the multiplier should depend on the age of the dependents or that of the deceased, hanging fire for sometime, but that had been given a quietus by another three-Judge Bench decision in **Reshma Kumari** (supra). The Apex Court considering the age of the deceased, the period of

his active career and taking into consideration the monthly income at ₹12,000/- computed the compensation at ₹18,36,000/- towards the loss of dependency by adding 50% towards the income, deducting 50% since the deceased had died a bachelor and by applying the multiplier of 17 considering the age of the deceased held the appellants entitled to ₹18,36,000/-, there being no change on the amounts awarded by the High Court on the other heads or on the rate of interest.

15. **Syed Sadiq** (supra), claimed in his appeal that he had been earning ₹10,000/- per month by doing vegetable vending work. However, the High Court considered the loss of income at ₹3,500/- per month considering that he had not produced any document to establish his loss of income. The Apex Court observed that it was difficult for them to convince themselves as to how a labour involved in an unorganised sector doing his own business was expected to produce documents to prove his monthly income and in that context relied in **Ramachandrappa V/s. Royal Sundaram Alliance Insurance Co. Ltd. [(2011) 13 SCC 236]** where it was held at paras 13 to 15 as under:

“13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning ₹4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of ₹3000/- only on the assumption that wages of a labourer during the relevant period viz. in the year 2004, was ₹100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of ₹3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of the labourer was between ₹100/- to ₹150/- per day or ₹4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from ₹4500/- to ₹3000/- per month. We, therefore, accept his statement that his monthly earning was ₹4500/-.”

16. In **Syed Sadiq** (supra), the Hon'ble Apex Court found from the material on record that the appellant was 24 years old at the time of the occurrence of the accident and earning his livelihood by vending vegetables. It considered **Santosh Devi** (supra), where the issue regarding the calculation of prospective increment of income in the future of self-employed people came up for consideration and took judicial notice of the fact that with a view to meet the challenges posed by the high cost of living, the persons falling in the said category periodically increase the cost of their labour. Their Lordships therefore held the appellant entitled to 50% increment in the future prospects based upon the principle laid down in **Santosh Devi** (supra), and applying the multiplier of 18 held the appellant entitled to the compensation of ₹50,000/- towards the costs of an artificial leg, ₹75,000/- towards the pain and suffering , ₹50,000/- towards the loss of marital prospects, ₹75,000/- towards the loss of amenities, ₹1,00,000/- towards the medical and incidental costs, ₹25,000/- towards the costs of litigation and ₹17,90,100/- towards the loss of future income taking the total tally to ₹21,65,100/- with interest @ 9% p.a.

17. **Kalpanaraj** (supra), questioned in appeal the correctness of the judgment passed by the High Court of Judicature at Madras urging various facts and legal contentions in justification of their claim. The deceased while going on his motorcycle from Vellore to Kannamangalam collided with the bus of the respondent Corporation due to which he had sustained fatal injuries and died on the spot. His legal representatives namely his widow and two minor children filed the petition contending that the accident occurred solely due to the rash and negligent driving of the bus of the respondent Corporation and claimed ₹20,00,000/-. The Tribunal on considering the material evidence on record and the supporting documents found the bus driver guilty and holding the monthly income of the deceased at ₹15,000/-, adopting the multiplier of 18 determined the compensation at ₹32,40,000/- which was restricted to ₹20,90,000/- as that was the amount claimed by the appellants.

18. In **Kalpanaraj** (supra), the Corporation filed an appeal challenging the order of the Tribunal but the High Court restricted itself to ascertain whether the compensation

awarded by the Tribunal was excessive and to what amount the appellants claimants were entitled. The High Court opined that the Tribunal erred in relying upon the statement of evidence of the wife of the deceased to determine his monthly income at ₹15,000/- instead of relying on the income shown in the Income Tax Returns. The High Court also opined that the Tribunal erred in not deducting 1/3rd towards the personal expenses of the deceased and applied the multiplier of 18 instead of 13 considering the age of the deceased which was 46 at the time of the accident. The High Court took the monthly income of the deceased at ₹3,115/- per month and determined the compensation under the head of "loss of income" at ₹4,86,000/-, reduced the compensation under the head of funeral expenses from ₹25,000/- to ₹10,000/- and reduced the compensation under the head of "loss of love and affection" to the minor children at ₹20,000/- each apart from reducing the amount towards the loss of consortium to the wife at ₹30,000/- and awarded a total amount of ₹5,76,000/- as compensation to the appellants claimants.

19. In **Kalpanaraj** (supra), the two Judge Bench of the Hon'ble Apex Court found that the only available documentary

evidence on record of the monthly income of the deceased was the Income Tax Returns filed by him with the Income Tax Department and therefore the High Court was correct to determine the monthly income on the basis of the Income Tax Returns. However, the High Court was in error in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating the compensation, in the light of the principle laid down in **National Insurance Co. Ltd. V/s. Indira Srivastava [(2008) 2 SCC 763]**. On that basis considering the legal principle laid down in **Santosh Devi** (supra), allowing a 30% increase in the future prospects of income, considering the age of the deceased at 46 years and adopting the multiplier of 13 as per the principle laid down in **Sarla Verma** (supra), the total amount of compensation was computed at ₹14,86,524/- under the head of loss of income. Further, since the deceased had left behind the widow and his two children, the amount to be deducted under the head of personal expenses was 1/3rd of the total income taking the compensation to ₹9,91,016/-. An amount of ₹10,000/- was granted towards the damages to the motorcycle. The Apex Court found that the amount awarded by the High Court towards the loss of consortium and loss of love and affection to the minor children was on the lower side in view of the principle laid down in **Rajesh** (supra) and awarded a compensation of ₹1,00,000/- each on the twin heads apart from ₹1,00,000/- towards the loss of estate, ₹1,00,000/- towards the loss of expectation of life of the deceased, ₹50,000/- towards the funeral expenses and cost of litigation taking the total compensation to ₹14,51,000/-.

20. In **M. Mansoor** (supra), a two Judge Bench of the Hon'ble Apex Court was dealing with the appeal at the instance of the parents of the deceased who were dissatisfied with the reduction of the compensation determined by the MACT, Chennai. The deceased had died in a vehicular accident involving the bus of the Corporation alongwith four other persons. His parents maintained the petition under Section 166 of the Act for the award of compensation of ₹28,00,000/- on the premise that the accident was caused due to the rash and negligent driving of the container lorry and besides the deceased was 24 years old, an MBA graduate and employed as a Business Manager in Intel Comox Management India and earning ₹18,100/- per month. The Tribunal found favour with their case on the aspect of the

rashness and negligence of the container driver and on the basis of his earnings and deducting 1/3rd towards his personal expenses held the claimants entitled to ₹24,65,668/- with interest @ 9% p.a. This award was challenged by the respondents Insurer before the High Court of Judicature of Madras which referred to the judgment in **Sarla Verma** (supra), and reduced the compensation to ₹15,14,648/- by applying the multiplier of 12. The Apex Court deducted 50% as the personal and living expenses for the bachelor. The Apex Court however did not concur with the application of the multiplier of 12 considering the age of the deceased at 24 and the decision in **Sarla Verma** (supra), by virtue of which the multiplier of 18 ought to have been applied and on that basis awarded the compensation of ₹20,64,800/- with interest.

21. In **Reshma Kumari** (supra), the decision of the three Judge Bench of the Hon'ble Apex Court was answering the reference from a two Judge Bench of the Supreme Court in **Reshma Kumari & Ors. V/s. Madan Mohan & Anr. [(2009) 13 SCC 422]** where two common questions namely; (i) Whether the multiplier specified in the second Schedule appended to the Act should be scrupulously applied

in all the cases? and (ii) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards the determination of the future prospects? Answering the reference, the Apex Court held that the determination of the compensation based on the multiplier method is the best available means and the most satisfactory method and must be followed invariably by the Tribunals and Courts. Their Lordships concluded that in the applications for compensation made under Section 166 of the Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in **Sarla Verma** (supra), read with para 42 of that judgment. Their Lordships held that in the cases where the age of the victim happens to be upto 15 years, 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** (supra), should be followed. As a result, while considering the claim applications under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek the guidance or for placing reliance on the Second Schedule in the Act. The Claims Tribunals shall follow the steps and guidelines for determination of the compensation in the cases of death. While making addition to the income for future prospects, the Tribunals shall follow para 24 of the judgment in **Sarla Verma** (supra). Insofar as deduction for personal and living expenses is concerned, it was directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in **Sarla Verma** (supra), and answered the reference accordingly in the following terms:

> 43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in **Sarla Verma** (supra) read with para 42 of that judgment.
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> 43.2. In cases where the age of the deceased is up to 15 years, irrespective of the Section 166 or Section 163-A 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** (supra),

should be followed.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of **Sarla Verma** (supra) for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in **Sarla Verma** (supra).

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in **Sarla Verma** (supra), subject to the observations made by us in para 41 above.

43.7. The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

22. **Mr. Kevin Fernandes** (supra), was an order of this Court relied upon by Shri E. Afonso, basically to buttress his

contention that the judgment of a larger Bench latter in point of time would apply vis-a-vis the judgment of a smaller Bench earlier in point of time. **Royal Sundaram Alliance Insurance Co. Ltd.** (supra), which was relied upon by Shri E. Afonso, learned Advocate for the appellant to buttress his plea relying on **Sarla Verma** (supra), was that it was the age of the deceased which was relevant for adopting the multiplier and not that of the claimants as held in **Kerala SRTC V/s. Susamma Thomas [1994 (2) SCC 176]**. **Ashvinbhai Modi** (supra), were the appeals filed by the appellant against the common judgment and order passed by the High Court of Gujarat at Ahmedabad wherein it dismissed the appeal filed by the claimant and allowed that filed by the Insurance Company. The appellant had filed the petition before the MACT at Ahmedabad claiming ₹28,73,000/- as compensation. The Tribunal ascertained the future income of the deceased at ₹18,000/- per month, deducted 1/3rd towards his personal expenses and adopting the multiplier of 16, calculated the loss of dependency to the parents at ₹23,04,000/- apart from awarding ₹15,000/- towards the love and affection and ₹5,000/- towards the funeral expenses. The Tribunal had fixed the contributory negligence on the part of the deceased at 20% and deducting that percentage towards the contributory negligence awarded an amount of ₹18,59,200/- to the appellant who preferred an appeal before the High Court for enhancement while the Insurance Company filed the appeal for reduction of the compensation awarded by the Tribunal. On hearing the parties, the High Court affirmed the future income of the deceased at ₹18,000/- per month and deducted 50% towards the personal expenses. It further held that the Tribunal had erred in considering the age of the deceased at the time of his death rather than the age of his parents for the determination of the multiplier and therefore applying the multiplier of 13, determined the loss of dependency at ₹14,04,000/- against ₹23,04,000/- determined by the Tribunal and with further deduction of 20% towards the contributory negligence.

23. In **Ashvinbhai** (supra), the two Judge Bench found on a consideration of the matter that the deceased was 19 years old and pursuing his medical degree with good marks at the time of the accident and in that context, referred to the judgment in **Arvind Kumar Mishra V/s. New India Assurance Co. Ltd. [2010 (10) SCC 254]** where this Court

had held at para 14 that on completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it could be reasonably assumed that he would have got a good job. The appellant had stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of ₹3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join the government service and got selected, he would have been put in the pay scale of an Assistant Engineer and would have at least earned ₹60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position and in that context took his future earnings at ₹60,000/- per annum taking the salary and the allowances payable to an Assistant Engineer in the public employment as the basis. In the facts at large, the Apex Court found that the Courts below had wrongly ascertained the future income of the deceased at only ₹18,000/- per month, which was too less for a medical graduate these days and that they had failed in following the principles laid down by this Court in this aspect. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights and therefore held that they had no doubt in ascertaining the future income of the deceased at ₹25,000/- per month i.e. ₹3,00,000/- per annum. After deducting 1/3rd of the annual income towards his personal expenses and applying the appropriate multiplier of 13, arrived at a total loss of dependency at ₹26,00,000/-. Their Lordships also found that the Tribunal and the High Court had erred in not following the principles laid down in **M. Mansoor** (supra), in awarding a meagre sum of just ₹15,000/- under the heads of loss of love and affection and awarded ₹1,00,000/- and ₹25,000/- towards the funeral expenses against ₹5,000/- following the principles laid down in **Rajesh** (supra).

24. In **S.K. Kapoor** (supra), the two Judge Bench of the Hon'ble Apex Court held that it is well settled that if the subsequent coordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise a prior decision of the coordinate bench is binding on the subsequent bench of equal strength. In **Central**

Board of Dawoodi (supra), a five Judge Bench of the Hon'ble Apex Court summed up the legal position in the matter of the law of precedents as follows:

(i) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(ii) A Bench of lesser quorum cannot doubt the correctness of the view of law taken by a Bench of a larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

25. Coming to the facts of the case, the learned MACT had confirmed the age of the deceased from the Birth Certificate

produced on record and also considered the certificate issued by the Indian Technical Institute showing that he had completed his course in Food and Beverage Service passing the examination in First Class on 30/05/2003. He had also considered the contract of apprenticeship training in the course of major apprentice and on considering the evidence of Ganesh Govekar/Cw4 Human Resource Executive examined in support of her case, took the earnings of the deceased at a meagre sum of ₹1,000/- per month. The learned Tribunal to that extent must be said to have erred otherwise having given due weightage to his age, academic record and employment on a stipend of ₹850/- per month and being cognizant of the fact that he would draw tips. The learned Tribunal however lost sight of the fact that in the course of time i.e. within a year or so he would be absorbed in the service and in which event he could draw an amount of ₹3,000/- per month if not more. The learned MACT had however not even considered the notional income as provided for in the Second Schedule to the Act while fixing the income of the deceased at a meagre sum of ₹1,000/- per month.

26. The deceased if not for the fatal accident would have

earned not less than ₹1,000/- during the course of his apprenticeship and on absorption within a year would have easily earned ₹3,000/- per month and in the course of time would have earned still more i.e. considering his age and a long bright career ahead of him, and there was every chance that he could earn ₹5,000/- per month considering the judgment in **Sarla Verma** (supra). Moreover, i find myself in agreement with the contention of Shri E. Afonso, learned Advocate for the appellant that though he had died a bachelor, nonetheless he was getting free meals at the place of his employment and therefore it would be inappropriate to deduct 50% towards his personal expenditure. It would be appropriate in the circumstances therefore to deduct 1/3rd towards the personal expenditure. Hence, considering his earnings at ₹5,000/- per month, taking 1/3rd towards his personal expenses and applying the multiplier of 18, applying the law on the point as laid down in **Sarla Verma** (supra), that the age of the deceased would be the criteria for adopting the multiplier, the dependency works out to ₹7,20,000/-. The claimant is awarded a reasonable sum of ₹1,00,000/- towards the loss of estate and an equal amount towards the loss of love and affection and finally an amount of

₹25,000/- towards the funeral expenses taking the final tally to ₹9,45,000/-. There can be no dispute with the powers of the Court to grant compensation in excess of that claimed by the party as held by the Hon'ble Apex Court in **Nangamma** (supra). However, considering the uncertainties of life and that the said sum would be paid to the claimant in lumpsum, the amount is reduced by 20% and accordingly the compensation works out to ₹7,55,000/- being the just compensation in the circumstances of the case.

27. In the result, the appeal is allowed whereby the compensation awarded by the learned MACT is enhanced from ₹1,76,300/- to ₹7,55,000/- with interest @9% p.a. from the date of the petition till the date of the judgment apart from the costs of the appeal which the respondents are held jointly and severally liable to pay to the appellant. The appellant shall pay the deficit court fees on the amount awarded in excess of that claimed in the petition.

NUTAN D. SARDESSAI, J.

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