

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 97 OF 2016

National Insurance Co. Ltd,
through its Divisional Officer,
Subraya Chambers, 1st Floor,
Francisco Luis Gomes road,
Vasco-da-Gama, Goa.

..... Appellant

V e r s u s

1. Shri Dharmendra Saha
Son of Bhikari Saha,
Aged 41 years,
R/o. Near Fisherman Wharf,
(Mr. Don's Cottage)
Mobor, Salcete, Goa.

2. Mohamad Gous,
Son of Rashid A. Khan,
Aged 30 years,
R/o. H. No. 217/2, Aquem Baixo,
Presently R/o H. No. EWH 338, Davorim,
Rumdamol,
Housing Board, Margao, Goa.

3. Mr. Afonso Cota,
Son of Pio Joaquim Cota,
Major of age,
R/o. At 44, Nagvaddo,
Betatbatim, Salcete, Goa.

..... Respondents

Mr. U. R. Timble and Ms. Y. Mandrekar, Advocates for the Appellant.

Mr. Vibhav Amonkar, Advocate under legal Aid Scheme for the Respondent no. 1.

Ms. Marie Rosette Pereira, Advocate for the Respondent no. 2.

Coram :- **F. M. REIS, J**

Date : **21st March, 2017**

ORAL JUDGMENT

Heard Mr. U. R. Timble, learned Counsel appearing for the Appellant and Mr. Vibhav Amonkar, learned Counsel appearing for the Respondent no. 1.

2. Admit.

3. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

4. The challenge in the above Appeal is to a Judgment and Award dated 07.07.2015 passed in Claim Petition no. 100/2014 whereby the Claim Petition filed by the Respondent no. 1 was allowed and the Respondent no. 1 was held entitled to the compensation of Rs.10,97,000/- with interest thereon at rate of 9% thereon from the date of filing of the Petition till realization. The amount paid under Section 140 of the Motor Vehicles Act was ordered to be deducted from the said amount.

5. Shri U. R. Timble, learned Counsel appearing for the Appellants, has assailed the impugned Judgment on two counts. Learned Counsel has pointed out that the Appellants have disputed that the accident had occurred

on account of rashness and negligence on the part of the Respondent no. 2. The learned Counsel further pointed out that the Respondent no. 1 has failed to produce any material or examine witnesses to substantiate the contention that the accident occurred on account of rashness and negligence on the part of the Respondent no. 2. Learned Counsel further pointed out that the accident itself has been disputed by the Appellants and the Respondent no. 1 has failed to adduce any reliable or cogent evidence to substantiate that the deceased expired on account of rashness and negligence on the part of the Respondent no. 2. Learned Counsel as such pointed out that on this count alone, the impugned Judgment and Award passed by the Tribunal be quashed and set aside. The next contention of the learned Counsel appearing for the Appellants is that the Respondent no. 1 is admittedly the father of the deceased, who was a bachelor and, as such, in terms of the law well settled for the purpose of fixing the multiplier, the age of the father would have to be considered. Learned Counsel further submits that the learned Judge whilst passing the impugned Award, has fixed the compensation on the basis that the multiplier would be on the basis of the age of the deceased. Learned Counsel further pointed out that the Apex Court in a Judgment reported in **1996(4) SCC 362** in the case of ***U. P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors.*** has categorically held that the amount of compensation is to be fixed by applying a multiplier to the age of the dependent. Learned Counsel further pointed out that despite of the said Judgment, the learned Tribunal has fixed the

multiplier by considering the age of the deceased. Learned Counsel further submits that the learned Tribunal has misconstrued the Judgment of the Apex Court which has taken a view that the age of the dependents would govern the amount of compensation fixed on the basis of the multiplier. The learned Counsel further pointed out that as admittedly there is a difference in the age of the deceased victim and the age of the Respondent no.1, considering the age of the deceased, the multiplier would be 18. The learned Counsel further pointed out that in such circumstances, there would be a difference of nearly Rs.2,00,000/- which have to be deducted whilst fixing the compensation. Learned Counsel further submits that the Apex Court in a Judgment reported in **2014(11) Scale 427** in the case of **Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & anr.** has clearly held that the burden to prove rashness and negligence is on the claimant. In support of such contention, the learned Counsel has also relied upon the Judgment of the Apex Court reported in **2011(4) SCC 589** in the case of **Union of India & Ors. Vs. S. K. Kapoor.** The learned Counsel further pointed out that when there are two Judgments of the coordinate Bench of the Apex Court, the earlier Judgment would have to be considered and in support thereof, the learned Counsel has relied upon the Judgment of the Apex Court reported in **2011 (4) SCC 589** in the case of **Union of India & Ors. vs. S. K. Kapoor.**

6. On the other hand, Shri Amonkar, learned Counsel appearing for

the Respondent no. 1, has pointed out that the Appellants did not even dispute the occurrence of the accident nor the contention of the Respondent no. 1 that the subject vehicle was driven in a rash and negligent manner. Learned Counsel has taken me through the written statements filed by the Appellants to point out that the averments that the accident had occurred and that there was rashness and negligence on the part of the Respondent no. 2 has not been specifically denied though it was contended that the accident occurred on account of the rashness on the part of the deceased. Learned Counsel further pointed out that the learned Tribunal has rightly appreciated the evidence on record to come to the conclusion that the Respondent no. 2 had rashly and negligently driven the bus which led to the accident and the death of the son of the Respondent no. 1. Learned Counsel further pointed out that the Judgments relied upon by the Appellants are not at all applicable in the present case as once the accident has been established, it was incumbent upon the Appellants to establish by cogent and material evidence the manner in which such accident had occurred. Learned Counsel as such pointed out that the said contention deserves to be rejected. With regard to the next contention of Mr. U. R. Timble, learned Counsel appearing for the Appellants, Mr. Amonkar, learned Counsel appearing for the Respondent no. 1, has pointed out that the issue as to whether the multiplier has to be fixed on the age of the deceased or the age of the independent is no longer res-integra in view of the Judgment passed by the Apex Court in the decision reported in **2013(9) SCC 65** in the case of

Reshma Kumari & Ors vs. Madan Mohan & anr. Learned Counsel further pointed out that in similar circumstances, where the parent was independent, the Apex Court in the Judgment reported in **2015 (6)SCC 347** in the case of **Munna Lal Jain vs. Vipin Kumar Sharma** has taken a view that the multiplier were fixed on the basis of the age of the deceased. Learned Counsel further pointed out that the Judgment reported in **2013(15) SCC 603** in the case of **M. Mansoor & anr. vs. United India Assurance Company Ltd. & anr.**, the Apex Court has also reiterated that considering the multiplier as fixed in the case of **Sarla Varma** reported in **2009(6) SCC 121**, the multiplier was fixed on the basis of the age of the deceased. Learned Counsel further pointed out that the Judgment in a case of **U. P. State Road vs. Trilok Chandra & Ors.** (supra) relied upon by Mr. Timble, learned Counsel, has been noted and considered by the Apex Court in the said Judgment. Learned Counsel as such pointed out that the contention of Mr. Timble, learned Counsel appearing for the Appellants, that the Judgment relied upon by the learned Tribunal is per incurram is totally misplaced and without foundation. Learned Counsel as such submits that the Appeal be rejected.

7. I have duly considered the submissions of the learned Counsel and I have also gone through the records. The following points for determination arises in the present Appeal :

POINTS FOR DETERMINATION

(1) Whether the findings of the learned Judge that the Respondent no. 1 has established that Respondent no. 2, driver, had driven the vehicle rashly and negligently requires interference ?

(2) Whether the multiplier to be fixed is on the basis of the age of the dependent or on the age of the victim of the accident.

8. With regard to the first point for determination, on perusal of the written statements filed by the Appellants, it clearly shows that the factum with regard to the accident has not at all been disputed. The only allegation by the Appellants was that the accident occurred on account of the fault of the victim. But, however, admittedly, no such evidence was adduced by the Appellants nor any material evidence produced on such contention. Learned Counsel has in fact relied upon the testimony of the claimant and the FIR registered after the accident had occurred. Even on going through the cross examination of the claimant, there is no challenge at all to the fact that the accident had occurred and that the concerned Respondent no. 2 was not driving the vehicle in a rash and negligent manner. In such circumstances, once the fact of accident has been established, it was incumbent upon the Respondent no. 2 or the Appellants herein to bring cogent evidence on record to establish the manner in which the accident occurred in case the Appellants were seriously disputing such contentions of the Respondent no.1

herein. Considering the material on record, I find that the findings of the learned Judge that the accident occurred on account of the rash and negligent manner of driving by the Respondent no. 2 cannot be faulted. In any event, the Appellants did not lead any evidence to rebut the evidence adduced by the Respondent no. 1 to the effect that the accident did not occur on account of the rashness and negligence on the part of the Respondent no. 2. The first pointed for determination is answered accordingly.

9. With regard to the second point of determination, the Apex Court in the said Judgment in the case of **Reshma Kumari** (supra) has observed at Paras 35 and 36 thus :

“35. 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.

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*."

10. Taking note of the said observations, it has been clearly held that the multiplier would be fixed on the basis of the age of the deceased.

11. In the other Judgment of the Apex Court in the case of **M. Mansoor** (supra), the Apex Court has observed at Paras 13 and 14 wherein

the dependent was a parent a view has been taken by the Apex Court that the multiplier would be fixed on the basis of the age of the deceased. It is pertinent to note that the Judgment in the case of **Trilox Chandra** (supra) has been noted and considered by the Apex Court whilst passing the said two Judgments.

12. In the Judgment of the Apex Court, in the case of **Munnalal Jain** (supra), it has been clearly observed at Para 11 thus :

11. The remaining question is only on multiplier. The High Court following *Santosh Devi*, 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*. 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: (*Reshma Kumari* case, SCC p. 88, para 36)

“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*."

13. It would be pertinent to note that in the *sai* case, the dependent was a parent and the son was the deceased. In view of the above, the contention of Mr. Timble, learned Counsel appearing for the Appellants, that the multiplier should be fixed with reference to the age of the parent/dependent in the facts of the present case, cannot be accepted. The contention of Mr. Timble, learned Counsel appearing for the Appellants, that the subsequent Judgments of the Apex Court are per incurram as the earlier Judgment in the case of ***Trilox Chandra*** (supra) has not been considered, cannot be accepted as the said Judgment was clearly noted and considered by the Apex Court whilst deciding the reference and the subsequent Judgment referred to herein above. The second point for determination is answered accordingly.

14. In view of the above, I find no merit in the above Appeal which stands accordingly dismissed.

F .M. REIS, J.

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