

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 130 OF 2010

Managing Director, North West KRTC, Central Office, Gokul Road, Hubli.

.... Appellant.

V/s

1. Smt. Radeshree G. Gad, Widow of Ghanasham Gad, 52 years of old, housewife, Indian National, R/o. H. No. 52/2, Orgao, Near Ravalnath Temple, Marcela-Goa.
2. Shri Uday Hanappa Naik, s/o Hanappa Naik, r/o. Koddamble Kumta, Tal. Harita, Post Koddamble, Karwar, Karnataka State.
3. Mr. Gokuldas Mahadev Gawade, s/o. Mahadev Gawade, r/o. H. No. 170, Ganapatiwada Khandola Marcela, Ponda-Goa.

4. United India Insurance Co. Ltd. Panaji-Goa.

.... Respondents.

Shri J. Ramaiya, Advocate for the appellants.

Shri S. Redkar, Advocate for the respondent no.1 under Free Legal Aid.

CROSS OBJECTION NO.2/2015 IN FIRST APPEAL NO. 130/2010

Smt. Radeshree G. Gad, W/o Ghansham Gad, Age 53 years, R/o. H. No. 52/2, Orgao, Near Ravalnath Temple, Marcela,Goa.

Applicant/
..... Appellant

IN

Managing Director, North West KRTC, Central Office, Gokul Road, Hubli.

... Appellant.

V/s

1. Smt. Radeshree G. Gad, W/o Ghansham Gad, Age 53years, R/o. H.No.52/2, Orgao, Near Ravalnath Temple, Marcela, Goa.
2. Shri Uday Hannappa Naik, s/o Hannappa Naik, r/o. Koddamble Kumta, Tal. Harita, Post Koddamble, Karwar, Karnataka
3. Mr. Gokuldas Mahadev Gawade, s/o. Mahadev Gawade, r/o. H.No. 170, Ganapatiwada Khandola Marcela, Ponda-Goa.

4. United India Insurance Co. Ltd. Panaji-Goa.

.... Respondents.

Shri S. Redkar, Advocate for the applicant /appellant under Free Legal Aid.

Shri J. Ramaiya, Advocate for the respondents.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on:-3rd August, 2017

Pronounced on:- 4th August,2017.

JUDGMENT:

The original owner is in appeal challenging the judgment

and the award dated 25.11.2008 passed by the then Presiding Officer, MACT, Panaji pursuant to which the Claim Petition filed by the respondent no.1/original claimant was partly allowed and the appellant as the original owner alongwith the driver were held jointly and severally liable to pay the compensation with interest on the estimated sum from the date of filing of the petition till its payment. The respondents are the original claimant, the driver of the vehicle belonging to the appellant and the rider on whose motorcycle the deceased was travelling as a pillion rider. The parties to this appeal would be referred to as the appellant and the respondents for brevity's sake hereinafter.

2. Shri J. Ramaiya, learned Counsel appearing for the appellant/owner submitted that the respondent no.1/original claimant had examined witnesses in support of her case who were either related to her or friends of the deceased. The appellant seriously disputed the involvement of their vehicle in the accident. There was no basis in the case of the respondent no.1 that their driver was driving at a high speed. The evidence on record also indicated that there were no damages to the bus as per the report drawn by the Motor Vehicle Inspector. There was every probability that the appellant's vehicle was not involved in the accident. It was also surprising that there were no eye witnesses to the accident when the accident took place on a road at 16.00 hours. Although the accident and the rashness and the negligence of the driver was proved, the involvement of the appellant

was not proved and so too the contents of the Panchanama were not proved. The appeal had therefore to be allowed and the cross objection of the respondent no.1 had to be dismissed with costs.

3. Shri S. Redkar, learned Advocate for the respondent no.1 contended at the outset by adverting to the Autopsy Report that the death was due to the crush injuries which supported the claimant's case. No evidence was led by the appellant on the aspect of rashness and negligence. He also adverted to the written statement and contended that even assuming without admitting that the respondent no.3 had assaulted the driver, no complaint was lodged against him. The bus had dashed against the motorcycle on the rear side and therefore, the driver was rash and negligent. He relied in **National Insurance Company Limited Vs. Pushpa Rana** [(2009)0 ACJ 287], **Lalita Malhotra Vs. Vijay Pal** [1995 0 Supreme(del) 719] and **Vinod Kumar Vs Urmila Devi**[1983 0 AIR(All) 112]. He also raised cross objections which were directly on the point of law namely that the Tribunal had not considered the age of the deceased but that of the dependent and in that context relied in **Sarla Verma(Smt) and others Vs. Delhi Transport Corporation and another** [(2009)6 SCC 121]. The age of the deceased had to be considered who was barely 19 years old apparent from the Autopsy Report as well as the Birth Certificate and the multiplier of 17 had to be applied for computing the dependency. The income of the deceased at ₹3000/- per month had to be enhanced by 50% considering again the judgment in Sarla Verma

(supra), and after deducting 1/3rd, the dependency had to be worked out.

4. Shri S. Redkar, learned Advocate for the respondent no.1 further relied in **Radhakrishna and another vs. Gokul and others**, [(2013)8 Supreme 56], **Santosh Devi Vs. National Insurance Company Limited** [(2012)6 SCC 421] and **National Insurance Company Vs. Saroj(smt) and others** [(2009) 13 SCC 508] while pressing for the dismissal of the appeal and allowing of the Cross Objections Shri Ramaiya in reply relied in **Pukh Raj Bumb Vs Jagannath Atchut Naik and others**[(2014) ACC 541(Bom)] and submitted that the Cross Objections could not be allowed since the respondent no.1 had accepted the award, filed Execution Proceedings and even withdrawn the amount. The appeal therefore had to be allowed and the Cross Objections had to be dismissed. Since a serious dispute is raised on behalf of the appellant to the involvement of the vehicle in the accident, it would be necessary to examine the evidence threadbare to arrive at a proper finding on the aspect of rashness and negligence of the concerned driver and the involvement of the appellant's vehicle.

5. The respondent no.1 who was the original claimant had set up a case that her daughter aged 19 years was studying and doing tailoring job to earn a living and support the family. She was involved in a vehicular accident on 7.7.2003 while she was travelling as a pillion rider on the motorcycle driven by the respondent no.3. While her

daughter was proceeding on the motorcycle driven by the respondent no.3 from Panaji to Marcel, the driver of the appellant bus proceeding from Panaji to Ponda i.e. in the same direction as the deceased, drove his bus in rash and negligent manner and on reaching at Molar Corlim gave a dash to the motorcycle from behind due to which the rider lost his balance and fell on the road alongwith the pillion rider. She came under the rear wheel of the bus and suffered crushing injuries to her head and other parts of the body resulting in an instantaneous death. The appellant had categorically denied her case as pleaded including her death and disputed the involvement of the bus belonging to them. There was no basis in her case that their driver had driven the bus in a rash and negligent manner and dashed against the motorcycle from behind on which the deceased was travelling as a pillion rider. Their specific case was that the bus was driven slowly and cautiously while proceeding from Panaji towards Ponda. While the bus had started on its journey from Panaji some of the passengers requested to make a stop as they wanted to ease themselves and therefore he had halted the bus on the side. At that time the respondent no.3 alongwith some other persons came and for no reason started assaulting their driver and pulled him out from the bus. There was no impact of the bus with the motorcycle driven by the respondent no.3 and that he was personally responsible for the accident resulting in the death of the deceased. In short there was no involvement of their bus in the accident which led to rashness and negligence of the respondent no.3.

6. The motorcycle rider had taken a specific plea that the deceased was travelling as a pillion rider on the motorcycle driven by him from Panaji towards Marcel and that on reaching at Molar, the respondent no.2, was driving the appellant's bus in a rash and negligent manner and gave a dash to his motorcycle from behind and due to which he lost his balance and fell on the road alongwith the pillion rider who came under the rear wheel of the bus and suffered crushing injuries with her instantaneous death.

7. In **Vinod Kumar** (supra), it was held that generally the burden to prove the rash and negligent driving of the vehicle is on the claimant where circumstances are established to show that the road was clear and there was impediment and traffic, and yet the accident had occurred, the burden lay on the driver or the owner to prove the reason for the accident. The reason as to why the accident occurred was within the special knowledge of the driver. Since the driver was dead, the burden lay on the owner to explain the circumstances under which the accident occurred. In **Pushpa Rana**(supra), the Hon'ble Apex Court held that the issue of chargesheet, copy of FIR and recovery memo are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under the Motor Vehicles Act are not akin to proceedings in a civil suit and strict rules of evidence are not required to be followed in such cases.

8. **Pukh Raj Bumb** (supra), had filed a petition before MACT

under Section 166 of the Act for the grant of compensation of ₹66,60,429/- on account of the injuries sustained by him in the vehicular accident resulting in permanent disability. He stated that he was 67 years old, retired from government service as an IAS officer and after retirement was pursuing the legal profession and earning about ₹25,000/- per month from legal practice which entitled him to the compensation as prayed for in the petition. The respondent nos.1 and 2 denied his case on the quantum and stated that the accident had occurred due to his negligence alone. The respondents no.3 alleged that the respondent no.1 was not holding a valid and effective driving license and that he was himself responsible for the accident. On an analysis of the entire evidence on record the Tribunal found that no eye-witness was examined by the claimant and the Panchanama of the Scene of Accident and Sketch could not be looked into, as the same had not been proved. The Tribunal further found that there was no evidence to prove the rash and negligent driving of the respondent no.1. The claimant filed the First Appeal challenging the findings of the Tribunal that he failed to prove rashness and negligence driving of the respondent no.1 and also on the quantum of compensation, while the respondent no.1 filed the cross objections. In the facts of the case the claimant had suffered 91.5% permanent disability and was bedridden and therefore had appointed his wife as his next friend since there was no conflict of interest between him and his wife. He had also filed an application under Order XLI Rule 27 of CPC for leave to produce various

documents.

9. In **Pukh Raj Bumb** (supra) it was contended on his behalf that the records clearly revealed the negligence of the learned Advocate who conducted the case of the claimant before the learned Tribunal. Besides, the compensation awarded by the Tribunal was not fair and reasonable considering his status and earning apart from his bedridden condition due to 91.5.% disability. Quite on the contrary it was contended on behalf of the respondent no.2 that there was no evidence except mere suggestions and denials and that the incompetence of the lawyer could not be a ground for remand. It was also contended on behalf of the respondents no.3 that there was no evidence produced by the claimant to prove the rashness and negligence on the part of the respondents no.1 or even to show to how the accident had taken place. Moreover, the Panchanama of the Scene of Accident and Sketch had not been admitted in evidence nor their contents proved and the application under Order XLI Rule 27 was not tenable.

10. In this case too it was reiterated that strict proof of the evidence is not required to be given by the claimant and who can prove his case by a preponderance of probability and relying in **Bimla Devi** (AIR 2009 Sc 2819). In **Pukh Raj Bumb**(supra), the learned Judge found that though the claimant's witness had produced the FIR on record which was registered upon the complaint lodged by the Head Constable, he had merely deposed that he had investigated the case

and lodged the FIR but had not proved the contents of the complaint. He had also not stated as to what investigation was carried out by him. Besides, though the claimant's witness had produced the Panchanama, however the claimant had not examined the pancha witnesses to prove the contents of the Panchanama and even the Investigating Officer had not stated the details of the Panchanama. In that context it was observed that the submission of the learned Counsel for the claimant that since the Panchanama and the Sketch had been marked as Exhibit Aw1/A, the same had to be taken as proved was a misconceived submission and not acceptable. A reference was made to the judgment in **Zeena Sorabji and others Vs Mirabelle Hotel Co.(Pvt) Ltd and others**, [AIR 1981 Bom.446] where it was held that when a document had to be proved and relied upon in evidence, three aspects had to be considered by the Court namely (i) the proof of the execution of the document, (ii) proof of the contents of the document, and (iii) the evidentiary value of the document as a whole. When a party consents to the document being exhibited, all that can be imputed to him of having admitted is the proof of the execution. The proof of its execution does not invest the document with any probative or evidentiary value if otherwise it has none. A proof of a document is something which is independent from the evidentiary value of the document. Moreover by consent, proof of the document may be dispensed with, but if the document is intrinsically inadmissible in evidence, no amount of consent by any party can confer the status of admissibility upon the

said document. In that context it was observed that the tribunal had rightly held that the Panchanama of the Scene of Accident/Sketch could not be looked into as it has not been proved. In the ultimate it was held that the judgment and the award dismissing the petition was in accordance with the settled principles of law and no interference was warranted with the same.

11. The claimant/respondent no.1 had reiterated her case on oath alleging that her daughter was travelling as a pillion rider on the motorcycle driven by the respondent no.3 from Panaji towards Marcel and due to the dash given by the appellant's driver to the motorcycle from behind, it had caused their fall and her daughter had come under the rear wheel of the bus resulting in her instantaneous death. She had produced the FIR alongwith the Complaint, the Panchanama of the Scene of Accident alongwith the Sketch, the Inquest Panchanama and the Particulars of the vehicles amongst others in support of her case. She had admittedly not seen the accident and was informed about it telephonically by some person who had witnessed the accident and thereafter she had gone to the spot, noticed that the motorcycle was fallen on the road but the bus was nowhere in sight.

12. She categorically denied the suggestion that the bus was not involved in the accident or that there was no collision between the bus and the motorcycle and relented that she had no personal knowledge of the accident and had made the statement based on the information given to her. A cursory perusal of the FIR and the

Complaint reveals that one Sameer Gaonkar had reported to the Police that he was proceeding to the Corlim petrol pump from his residence on the said afternoon and when he reached at Molar Corlim he saw the respondent no.3 standing by the road side and crying in pain. On questioning, he had revealed that when he was returning home with the deceased, the bus owned by the appellant and driven by the respondent no.1 while overtaking him gave a dash from behind due to which he lost his balance and fell on the road and so too the pillion who came under the left rear wheel of the bus, suffered crushing injuries to her head and succumbed to them. He had also noticed the deceased lying in a pool of blood and soon thereafter the Police had arrived at the spot alongwith the fire personnel and ambulance and shifted the deceased to the GMC hospital.

13. The Scene of Accident Panchanama with the Sketch reveal that the motorcycle bearing the stated registration number was lying on the road with the deceased too lying on the road and the bus of the appellant lying at a distance of 48.70 metres ahead of the deceased facing Ponda direction. There were damages noticed both on the motorcycle and the bus apart from scratch marks noticed on the front bumper of the bus. Hemant Naik CW2 was the panch to the Scene of Accident Panchanama at Corlim Molar who stated that the bus bearing the registration number KA-26-F-433 and the motorcycle bearing the registration No. GA-01-K-5367 were involved in the accident and were available at the spot of the accident. He was shown the body of the girl

lying at the spot of the accident and then the Sketch was drawn showing the position of the vehicle and the body and the other details were recorded in the Sketch. He duly identified his signature on the Panchanama and the Sketch, Exh. 30 colly and confirmed that it was drawn in his presence between 17.00 hours - 17.45 hours. He also confirmed during his cross-examination that there was another pancha present at the time of drawing the Sketch of the Accident Panchanama and that the bus was shown at the distance of 48 mts away from the body while the motorcycle was 50 mts away from the bus. He relented that spot of the accident was not shown in the panchanama.

14. Shri J. Ramaiya, learned Advocate for the appellant contended in that context that there was every possibility that the appellant's vehicle was not involved in the accident. However such a statement in isolation cannot benefit the appellant and the totality of the evidence had to be seen to conclude on the aspect of the involvement of the bus or otherwise as the case may be. PSI Gawas Cw5 had registered the motor vehicular accident and proceeded to the spot at Corlim Molar where he drew the Scene of Accident Panchanama and also the Sketch. He had seen the injured person fallen on the road, identified the Panchanama and the Sketch and his signature thereon and thereafter he took both the vehicles in custody. Sameer Gaonkar had lodged the complaint at the Old Goa Police Station and which was recorded by him as per his say and thereafter he had registered the offence against the driver of the bus under Section 279,

337 and 304A IPC. He had recorded the statement of the witnesses and filed the chargesheet against the bus driver. He maintained that he had received the information about the accident, recorded an entry in the Station Diary and then proceeded to the spot of the accident. He also admitted that there were damages to the bus as per the Accident Report Form prepared by the RTO. Once again Shri Ramaiya, learned Advocate on behalf of the appellant contended that the absence of damages to the bus ruled out its involvement in the accident. However, this statement has to be read in conjunction with that recorded in the Panchanama which clearly reflects that there were damages to the front part of the bus apart from the scratch marks noticed on its bumper.

15. The appellant had examined their driver Uday Naik as Rw1 who reiterated his case on oath that he had started the bus from Panaji to go to Lakshimeshwar and after crossing Old Goa, some of the passengers wanted to ease themselves. At that time the respondent no.3 alongwith one more person came and told him not to proceed followed by another four to five persons in a Maruti van who opened the driver's side door of the bus and pulled him out and thereafter assaulted him alongwith the respondent no.3. These persons also assaulted the conductor who came to his rescue. Therefore there was no involvement of the bus in the accident nor did he run over the girl under the wheel of the bus. He was driving the bus slowly, cautiously and diligently and there was no involvement of the bus in the accident.

He categorically denied the suggestion that he had tried to overtake the motorcycle and in that process gave a dash to it on the rear side. He also denied the case put to him that due to the impact the motorcycle rider had lost his balance and fell on the road alongwith the pillion rider and thereafter the wheels of bus ran over the pillion rider causing her instantaneous death. Surprisingly despite his presence at the spot, he claimed want of knowledge on whether the Panchanama was drawn at the spot and showing the position of the bus, the motorcycle and the deceased lying on the road. He also categorically denied the case that he had made a false statement about being pulled out of the bus by the respondent no.3 and some other persons and being assaulted by them. It is surprising that he had not lodged any written complaint to the Police regarding the assault on his person and on the conductor. Accepting his case for a moment that he was assaulted by the respondent no.3 and by some other persons at his instance, it does not stand to reason why the respondent no.2 should not have lodged the complaint when such an incident took place and thereafter he was held liable for rash and negligent driving and causing the death of the pillion rider.

16. M. V. Inspector Dalvi, Rw2 stated that he had inspected the bus in question at the Old Goa Police Station on 11.7.2003 and found that there were no damages to the bus. First and foremost the accident had taken place on 7.7.2003 and the so called inspection was carried out more than 4 days later on 11.7.2003. Besides, although he

claimed to have inspected the motorcycle in question on the same day, he did not spell out what were the damages noticed by him on the motorcycle which is rather surprising for a Motor Vehicle Inspector. Be that as it may, the learned Presiding Officer of the Claims Tribunal held on an assessment of the material that the driver of the bus had driven the bus rashly and negligently and after finding that the evidence of the driver was not all natural not to lodge a complaint inspite of the so called assault on his person. The learned Presiding Officer of the MACT as he then was ultimately concluded that the driver of the bus drove the same in a rash and negligent manner and gave a dash to the motorcycle from behind causing his fall and that of the pillion rider on the road resulting in her instantaneous death due to which the deceased was run over under the wheel of the bus. This finding of the learned MACT does not warrant any interference contrary to the contention of Shri J. Ramaiya, learned Advocate for the appellant. Therefore, the contention on his behalf that there was every probability that the appellant vehicle was not involved in the accident does not stand the test of scrutiny and is accordingly discarded.

17. Shri S. Redkar, learned Advocate for the respondent no.1 had also invited attention to the Autopsy Report which confirmed that the death of the pillion rider was due to the crush injuries suffered by her in the vehicular accident. The Doctor examined by the respondent no.1 in support of her case also confirmed that the crushing injuries were caused in a vehicular accident. Therefore considering the

evidence in its totality juxtapositioned with the contention of Shri J. Ramaiya and the evidence on record, i have no hesitation to conclude that no different view is possible except that drawn by the learned MACT on the rashness and negligence of the bus driver and the involvement of the bus in the accident and therefore, disallow the contention on behalf of the appellant in that context.

18. Coming to the cross objections raised by the respondent, Shri Ramaiya, learned Advocate for the appellants relying upon **Pukh Raj Bumb**(supra), a Division Bench judgment of this Court, contended that the respondent no.1 was not entitled to claim any enhanced compensation even applying the principle in **Sarla Verma** (supra). In **Sarla Verma** (supra), the Hon'ble Apex Court held that assessment of compensation, though involves certain hypothetical considerations, should nevertheless be objective. It held that the age of the deceased and not of the dependent had to be considered. Besides, it also spelt out the selection of the relevant multiplier and multiplier for appropriate table taking into account the inconsistency in the decisions of the various Tribunals and Courts and considering its earlier judgments in *Susamma Thomas* and *Trilok Chandra*. It further spelt out the power to make additions of the actual income existing at the time of the death having regard to the future prospects of the deceased. The deceased in the present case as borne out from the record namely the Autopsy Report and the Birth Certificate was 19 years old and therefore the multiplier applicable would be 17 and not that applied by the learned

Tribunal considering the age of the dependent. Moreover applying the principles in **Sarla Verma**(supra), and the age of the deceased, income which was proved at ₹3,000/- per month would have to be enhanced by 50% which would be ₹4500/- per month. After deducting 1/3rd towards her personal expenses, the dependency would work out to ₹6,12,000/-.

19. In **Radhakrishna and others** (supra), the son of the appellant was killed in a road accident when the motorcycle on which he was going alongwith his friend was hit by a truck belonging to the respondent no.1. The Appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of ₹5,60,000/-on the premise that the accident was caused due to the rash and negligent driving of the truck owned by the respondent no.1, insured with the respondents no.3, that he was 19 years old and a student of a degree course of Engineering and that after completion of his studies he was expected to get a good job and earn substantial salary. The owner and the driver claimed that the truck was duly insured with the respondents no.3 and compensation, if any, was payable by the respondents no.3. The respondents no.3 denied its liability by asserting that the driver of the truck and the motorcyclist did not have valid driving licences and even that the appellants were not entitled to the compensation since the deceased was travelling as a pillion rider. The Tribunal on a consideration of the issues which were framed, answered them in favour of the appellants and in so far as the enhancement of the

compensation was concerned, observed that the deceased was 19 years old at the time of the accident whose probable income could be determined at ₹15,000/-per annum, deducted 1/3rd towards his personal expenses and by applying the multiplier of 17, worked out the dependency at ₹1,70,000/- apart from awarding ₹2,000/- towards the funeral expenses. The appellants challenged the award by an Appeal under Section 173 of the Act but could not persuade the High Court to grant substantial enhancement in the compensation giving rise to the appeal by Special leave.

20. In **Radhakrishna** (supra), Their Lordships considered a two Judge Bench judgment who took cognizance of the lack of uniformity and inconsistency in awarding compensation to the victims of accidents caused by motor vehicles and referred to the judgments in **U.P.S.R.T.C V. Trilok Chandra** [(1996) 4 SCC 362], **G. M. Kerala SRTC Vs. Susamma Thomas** [(1994) 2 SCC 176] and made the following observations:-

“Assessment of compensation though involves certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the

formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation.”

21. In **United India Insurance Company Ltd. and Ors v/s. Sobha Amarsingh Rajput and Ors.** [MANU/MH/2157/2016], a learned Single Judge of the principal Bench at Mumbai held that the age of the parents being higher than the age of the deceased, the choice of multiplier had to be made depending on the average age of the parents and not to the age of the deceased.

22. In **Ms. Perfeta alias Perpetua Camelo Marques and another v/s. Mr. Dilip Galande and 2 others** (Civil Application (Review) No. 35 of 2016), a learned Single Judge of this Court considered the Judgment of the Single Judge in **Sobha Rajput** (supra) and on consideration of the Judgment in **Sarla Verma**(supra), observed at para 8 that there were conflicting decisions on this point whether the age of the deceased or the age of the claimant's parent was relevant for determining the multiplier and in that view of the matter directed the Registry to place the matter alongwith the Judgments referred therein before the Hon'ble Chief Justice for her consideration.

23. Shri J. Ramaiya, learned Advocate for the appellant place reliance in **Sobha Rajput** and **Perfeta Camelo** (Supra), both the Judgments of the learned Single Judges, of this Court to buttress his

plea that assuming without admitting that the respondents were entitled to the compensation, the age of the respondent no.1 had to be considered for adopting the multiplier and not that of the deceased. Shri S. Redkar, learned Advocate for the respondent no.1 relied in **Munna Lal Jain** (supra) and submitted to the contrary namely that it was the age of the deceased which had to be considered for adopting the multiplier and that the Judgment of the Apex Court would hold the field.

24. Both these Judgments are of two Single Judges of this Court one sitting at the principal Bench Mumbai and other at Goa which at the most can have persuasive value. The Judgment in **Munna Lal Jain & Anr. V/s. Vipin Kumar Sharma & Ors.** [(2015) 6 SCC 347] would apply to the case. Hence, the contention of Shri Ramaiya, learned Advocate for the appellants that it was the age of the parents which had to be considered and not that of the deceased for applying the multiplier cannot be entertained in view of the law laid down by the Hon'ble Apex Court which decision is binding on this Court.

25. In **Radhakrishna** (supra), Their Lordships considered the judgment in **Arvind Kumar Mishra Vs. New India Assurance Company Limited**, [(2010) 10 SCC 254] where a two Judge Bench considered the issue relating to the award of the compensation to the appellant who had suffered grievous injuries in a road accident. The appellant in that case was a 25 year old student of Bachelor of Engineering (Mechanical). The Tribunal had awarded compensation of

₹2,50,000/- which the High Court enhanced to ₹3,50,000/- and after noticing the Judgments in **Susamma Thomas**[(1994) 2 SCC 176], and **Sarla Verma**(supra), the Bench enhanced the amount of compensation to ₹9,06,000/-. In the facts of the case their Lordships found that the deceased was a 19 year old student of Engineering Course. The Tribunal had determined the compensation by taking his annual income to be ₹1500/- and deducted 1/3rd towards the personal expenses. In Arvind Kumar Mishra's case, the Bench proceeded on the assumption that after completion of the Engineering Course, the appellant could have been appointed as an Assistant Engineer and earned ₹60,000/- per annum. However, keeping in view the degree of disability, his estimated earning was taken as ₹42,000/- per annum and accordingly the compensation was awarded to him. By applying the same yardstick and having regard to the age of the parents of the deceased, Their Lordships felt that the ends of justice would be served by awarding a lumpsum compensation of ₹ 7,00,000/- to them and partly allowed the appeal.

26. In **Santosh Devi**(supra), the Hon'ble Apex Court held that apart from the government servants, incremental enhancement is also applicable to self-employed persons and those on fixed salary without the provision of annual increment to the extent of 30% of the annual income at the time of death. In **Saroj(smt) and others** (supra), the Hon'ble Apex Court while determining the just compensation held that not only the take home salary but also other allowances and perks

which would have benefited the entire family and prospective loss of future earning are to be considered. In **Ramadevi and others** (supra), the Hon'ble Apex Court held that the Tribunal is not prohibited from the grant of excess compensation of that claimed as if ultimate award just reasonable compensation on the basis of the evidence.

27. It is matter of record that the impugned judgment and award came to be passed by the then presiding officer on 25.11.2008 much before the Hon'ble Apex Court passed the judgment in **Sarla Verma**(supra). Therefore, the objection on behalf of the appellants that the respondent no.1 is not entitled to raise any cross objections having taken the benefit of the award and pursued the Execution proceedings would not stand the test of scrutiny. Even assuming at the highest that the respondent no.1 had initiated the Execution Proceedings in execution of the award in her favour, the changed legal position would entitle the respondent no.1 to seek the benefit thereunder and therefore it would not be open to the appellants to canvass that the Cross Objections are not tenable. This is beside the fact that unlike the contention on behalf of the appellants, it was shown by the respondent no.1 that they had not withdrawn any amount awarded by the Claims Tribunal and that the deposit of the awarded amount still continued in this Court. The objections therefore, to the Cross Objections are found untenable.

28. In the result, therefore, i pass the following:-

ORDER

First Appeal no.130 of 2010 of the appellant is dismissed and the Cross Objection no.2 of 2015 of the respondent no.1 is partly allowed.

NUTAN D. SARDESSAI, J.

vn*/mv