

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.97 OF 2017**

Reliance General Insurance Company Ltd.	]	
10th floor, Unit 23 and 24, Agrawal Trade Centre	]	
A Wing, Sector 11, Navi Mumbai 400 614	]	
Ins. Policy No.1106172334219219	]	Appellant
Valid from : 8.10.2007 to 7.10.2008	]	(Orig.Insurer)

V/s.

- | | | | |
|-----------|--|----------|-------------------------------|
| 1] | Smt. Soni Mahendra @ Rajesh Nag |] | |
| | Aged about 22 years |] | |
| | Widow of the deceased |] | |
| | |] | |
| 2] | Master Caleb Mahendra @ Rajesh Nag |] | |
| | Aged about 6 years |] | |
| | Son of the deceased |] | |
| | |] | |
| 3] | Smt. Sumati Yudhister Nag |] | |
| | Aged about 48 years |] | |
| | Mother of the deceased |] | |
| | |] | |
| | Since Applicant No.2 is a minor through his |] | |
| | next friend & mother |] | |
| | |] | |
| | All residing at 54/A/2 Shivneri, |] | |
| | Filmcity Road, Goregaon (E), Mumbai-400065 |] |]..... Respondents |
| | |] |](Respondents 1-3 |
| 4] | M/s. Shri Sai Roadways, |] |]are Orig.Applicants |
| | J. P Udyog Nagar, |] |]& Respondent No.4 |
| | Near Railway Phatak, Palghar, |] |]is the Orig. Opposite |
| | Dist. Thane 401 404 |] |]Party) |
| | (Owner of motor truck No.MH-04-F-7236) |] | |

**ALONG WITH
CIVIL APPLICATION NO.4093 OF 2017
IN
FIRST APPEAL NO.97 OF 2017**

Smt. Soni Mahendra @ Rajesh Nag and ors.	]	Applicants.
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In the matter of

Reliance General Insurance Company Ltd.] Appellant.
Versus
Smt. Soni Mahendra @ Rajesh Nag and ors.] Respondents.

Ms. Deepika Motagi a/w Mr. Rajesh Kanojia i/by Res Juris for the Appellant.
Mr. Avinash M Gokhale for the Respondent Nos.1 to 3.

CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.
DATE : 19th December 2017

ORAL JUDGMENT [PER R. M. SAVANT, J.]

1 Heard the learned counsel for the parties. “Admit”. Since the challenge is only as regards the quantum, by consent of the learned counsel for the parties, the above First Appeal is taken up for hearing forthwith. The above First Appeal and First Appeal No.1360 of 2017 are companion Appeals, challenging the same judgment and order dated 18/09/2014.

2 The above First Appeal as indicated above takes exception to the Judgment and Order dated 18/09/2014 passed by the learned Member of the Motor Accident Claims Tribunal, Mumbai. By the said Judgment and Order, the Claim Petition being MACT Application No.3541 of 2007 filed by the Respondent Nos.1 to 3 herein i.e. the original Applicants came to be partly allowed and the directions as contained in the operative part as regards the payment of the amounts mentioned therein came to be issued.

3 The facts giving rise to the above First Appeal can in brief be

stated thus :-

The accident in question took place on 19/10/2007 at about 00.09 hours. The deceased Mahendra Nag was riding his motor cycle bearing No.MH-03-AE-6614 and his maternal uncle one Punual Sham Sunder Suna was sitting pillion. When the motor cycle reached the Western Express Highway near Hub Mall towards Goregaon, the offending truck bearing registration No.MH-04-F-7236 came from Borivali side and was speeding towards Andheri when it dashed against the motor cycle of the deceased in which the deceased and his uncle fell down and both died on the spot. The deceased Mahendra Nag was 32 years of age at the time of the accident. He was working as a cameraman in the film industry. He was working in Aarey Filmcity for Bollywood Film Equipments. The Original Applicant No.1 is his wife and the Original Applicant No.2 is the minor son of the deceased who was born after the death of the deceased, and the Applicant No.3 is the mother of the deceased. It was the case of the Applicants in the Claim Petition that the deceased was earning Rs.8,000/- per day for 20 to 25 working days in a month. He was a tax payer. The Applicants therefore claimed an amount of Rs.2,50,00,000/- as compensation on the death of the deceased on account of the loss of dependency, loss of estate of the deceased, loss of expectation of life and loss of love and affection. It was the case of the Applicants that they were all fully dependent upon the deceased. It seems that the driver of the offending truck was prosecuted by the police. It has come on record that the

offending vehicle was owned by the Opposite Party No.1 at the time of accident. It was also insured with the Appellant herein – the Insurance Company. It was therefore the case of the Applicants that the Opposite Party No.1 and the Insurer are both jointly and severally liable to pay the compensation to the Applicants. The Applicants have therefore sought the payment of the amounts claimed by them with 12% interest and other consequential reliefs.

4 In so far as the Claim Petition is concerned, though the service was effected, the Opposite Party No.1 i.e. the owner of the vehicle did not appear before the Tribunal and it is only the Insurer who participated in the proceedings.

5 In so far as the Appellant i.e. the Insurer is concerned, it has filed its written statement. It was the case of the Appellant - Insurer in its written statement that the accident has occurred due to negligence of the deceased as the deceased was driving the motor cycle carelessly and without observing rules and regulations of traffic. It was the case of the Appellant - Insurer that the deceased had lost control over his motor cycle and fell on the road and in view of the fact that the motor cycle was being driven at a high speed, the motor cycle dashed on the wall in a very high force due to which the deceased and the rider sustained serious injuries and died on the spot.

6 On the basis of the pleadings that were on record the Tribunal framed the following issues :-

1] Whether the applicants prove that on 19.10.2007 deceased Mahendra @ Rajesh Yudhistir Nag died of the injuries sustained by him in an accident occurred on Western Express Highway, Goregaon, Mumbai, involving motor truck bearing registration No.MH-04-F-7236 which was driven in rash and negligent manner?

2] Whether the applicants are entitled to compensation amount ? If yes, what amount and from whom ?

3] What Order and Award ?

7 On behalf of the Applicants the evidence of the Applicant No.1 and two witnesses i.e. one Deepak Kanhayalal Joshi and Lawrence B Pereira was adduced. In so far as the Opposite Party No.1 i.e. the owner of the truck is concerned, as indicated above, he did not appear and contest the Claim Application, hence adverse inference was drawn by the Tribunal against the Opposite Party No.1 /Owner.

8 In so far as the income of deceased Mahendra is concerned, the same has been proved through the evidence of Deepak Joshi who was the representative from Sphere Origins Company, Andheri, Mumbai wherein the deceased was working and Lawrence Pereira who was a Director of Photography in films. Through the evidence of Deepak Joshi it has been proved that the deceased was paid Rs.1,80,000/- for six months as per the ledger produced through the said witness at Exhibit 43 which ledger is for the period from 01/04/2007 to 31/03/2008.

 Through another witness i.e. Lawrence Periera the factum of the deceased being the member of the Western India Cameramans Association, Mumbai has been proved. It has further been proved that the deceased had an opportunity to get work for 7 to 8 months in an average in a year. It has further come in the evidence of the said witness that the deceased was working as an Assistant Cameraman with Balaji TeleFilms and he was earning Rs.3,000/- per day.

9 The Tribunal on the basis of the evidence on record therefore came to a conclusion that the average monthly income of the deceased was Rs.30,000/-. In so far as the loss of future prospects is concerned, the Tribunal took into consideration the fact that a formula for increase of income for the

loss of future prospects adopted for persons with permanent jobs in Sarla Verma's case reported in 2009 ACJ 1298 (SC) can also be applied to the persons who were self employed or were engaged on fixed wages. The Tribunal thereafter referred to the judgment in Rajesh and others v/s. Rajbir Singh and others which was cited on behalf of the Applicants and observed that formula of 50% of actual income for persons below 40 years, 30% for age group of 40 to 50 years and, 15% for age group of 50 to 60 years was to be applied so as to increase the income in case of self employed persons or the persons who were engaged on fixed wages. It is in the back-drop of the judgment of the Apex Court in Sarla Verma's case and thereafter the formula in Rajesh v/s. Rajbir Singh's case and considering the fact that the deceased was 32 years of age at the time of his death, that the Tribunal held that the monthly income of the deceased would be Rs.30,000/-+Rs.15,000/- for 8 months in a year. The Tribunal thereafter deducted 1/3rd income towards personal and living expenses of the deceased, and therefore calculated the total dependency of the Applicants in the sum of Rs.30,000/- and thereby calculated annual dependency of the Applicants as Rs.30,000/- x 8 = Rs.2,40,000/-. The Tribunal thereafter applied formula enunciated by the Apex Court in Sarla Verma's case in respect of the total dependency and considering the age of the deceased as 32 years, the Tribunal applied the multiplier of 16 and therefore came to a conclusion that the total dependency would be Rs.2,40,000/- x 16 = Rs.38,40,000/-. The Tribunal thereafter has granted Rs.25,000/- for funeral

expenses, Rs.1,00,000/- for loss of consortium. The Tribunal has also granted a sum of Rs.50,000/- each to the Applicant Nos.2 and 3 for loss of love and affection and also Rs.50,000/- for the loss of estate to the Applicants. The Tribunal accordingly held that the Applicants would be entitled to compensation in the sum of Rs.41,15,000/- in total. The Tribunal accordingly answered all the issues against the Opposite Party No.1 and the Insurance Company, and in favour of the Applicants. As indicated above, it is the Insurer i.e. the Appellant who is in Appeal against the said Judgment and Order dated 18/09/2014 passed by the Tribunal.

10 As indicated above, the learned counsel appearing for the Appellant-Insurer Ms. Deepika Motagi submitted that the above First Appeal has been filed only on the question of quantum. It was the submission of the learned counsel for the Appellant that the Tribunal erred in granting the amount towards the loss of future prospects considering the fact that the deceased was self-employed or was earning fixed wages. The learned counsel would contend that the Tribunal erred in applying the ratio laid down in Rajesh v/s Rajbhir Singh's case to the facts of the case as the accident had taken place in the year 2007 when the Judgment of the Apex Court in Sarla Verma's case was holding field. It was the submission of the learned counsel for the Appellant that the Apex Court in Sarla Verma's case has specifically held that loss of future prospects would not be applicable to a person who is self-

employed or earning fixed wages. This was the only contention urged on behalf of the Appellant i.e. the Insurer.

11 Per contra, to controvert the said submission of the learned counsel for the Appellant-Insurer, the learned counsel appearing for the Respondent Nos.1 to 3 herein i.e. the Claimants Shri Avinash Gokhale would draw our attention to the Judgment of the Constitution Bench of the Apex Court in National Insurance Co. Ltd. v/s. Pranay Sethi and others reported in 2017 ACJ 2700. The learned counsel would contend that the Constitution Bench of the Apex Court has now upheld the addition of the amount on account of the loss of future prospects to a self-employed person or a person earning fixed wages. The learned counsel drew our attention to paragraph 61 of the said Judgment where the conclusions of the Apex Court are to be found.

12 Having heard the learned counsel for the parties, the question that arises is whether the Judgment and Order passed by the Tribunal requires interference at the hands of this Court in the above First Appeal. As indicated above, the challenge to the impugned Judgment and Order is restricted to only the quantum. The said challenge as urged by the learned counsel for the Appellant-Insurer is therefore revolving around the grant of the amount on account of the loss of future prospects. The said issue is now no more res-integra and has been concluded by the Constitution Bench of the Apex Court in

Pranay Sethi's case (supra). Paragraph 61 of the said Judgment is material and is reproduced herein under :-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the

deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

Hence reading of the said conclusions of the Apex Court discloses that the Judgment in Rajesh v/s Rajbhir Singh's case is held to be not binding in view of the fact that it has not taken into consideration the decision in Reshma Kumari's case. In so far as the loss of future prospects in respect of the self-employed person is concerned, clause (iv) of the said conclusion governs the field. The Apex Court has held that if the deceased was self-employed or on a fixed salary, an addition of 40 per cent of the established income should be granted where the deceased was below the age of 40 years and, an addition of 25 per cent where the deceased was between the age of 40 and 50 years, and 10 per cent where the deceased was between the age of 50 and 60 years. In so far as the multiplier is concerned, the Apex Court has reiterated what has been

held in Sarla Verma's case both as regards deduction towards the personal and living expenses also as regards selection of multiplier. Hence in terms of the Judgment of the Constitution Bench of the Apex Court in ***Pranay Sethi's*** case (supra) the deceased being 32 years of age at the time of his death, the loss of future prospects would have to be calculated at the rate of 40 per cent of the established income and not 50 per cent as awarded by the Tribunal. In so far as the multiplier and deduction towards the personal and living expenses are concerned, the Judgment and Order passed by the Tribunal is not required to be interfered with. In so far as the entitlement under the conventional heads viz. Loss of estate, loss of consortium and loss of funeral expenses are concerned, the same would obviously have to be in terms of the Judgment of the Constitution Bench of the Apex Court in ***Pranay Sethi's*** case (supra) viz. The same would be in the sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and to the said extent the Judgment and Order passed by the Tribunal would have to be modified. In the light of the Judgment of the Constitution Bench of the Apex Court in ***Pranay Sethi's*** case (supra), the submission of the learned counsel appearing for the Appellant-Insurer Ms. Motagi that the Judgment in Sarla Verma's case was required to be applied in so far as loss of future prospects by the Tribunal would have to be rejected as we are now deciding the above First Appeal when the Judgment of the Constitution Bench of the Apex Court in ***Pranay Sethi's*** case (supra) is holding the field.

13 In our view, the Judgment and Order of the Tribunal would have to be modified to the limited extent as we have mentioned herein above. To make it explicit We conclude as under :-

- (i) The Addition on account of loss of future prospects would have to be brought down from 50 per cent to 40 per cent.
- (ii) For loss of estate, loss of consortium and funeral expenses, the Applicants would be entitled to Rs.15,000/- Rs.40,000/- and Rs.15,000/- respectively.
- (iii) The above First Appeal is allowed to the aforesaid extent and is disposed of as such.
- (iv) After the dictation of the above judgment was complete, the learned counsel for the parties i.e. Ms. Motagi for the Appellant and Mr. A M Gokhale for the Respondent Nos.1 to 3 have placed before us a Statement containing the calculations in respect of the amount that the Respondent Nos.1 to 3 would be entitled to in terms of the instant Judgment. The amounts mentioned in the said statement are the amounts acceptable to both the parties. Hence they are the agreed amounts under different heads mentioned in the said statement. The said statement is signed by both the

learned counsel. The said statement is taken on record and marked as "X" for identification. The said statement along with the foot notes is reproduced herein-under:-

Heads of Compensation	Amount awarded (INR)
Monthly Income	30000
Future Prospects 40% of 30,000 = 12000	12,000+30,000=42,000
Deduction of 1/3 rd in Income towards personal and living expenses 42,000 x 1/3 = 14,000	42,000-14,000=28,000
Annual Dependency 28000 x 8	2,24,000
Total Dependency 2,24,000 x 16	35,84,000
Funeral Expenses	15000
Loss of Estate	15000
Loss of Consortium	40000
Total	36,54,000

- A] Amount payable = Rs.36,54,000/- along with interest @ 7.5% p.a. from the date of application (19/12/2007) till date of stay order (09/06/2015) = Rs.57,03,744/-.
- B] Amount deposited in Tribunal = Rs.63,62,121/-
- C] Eligible refund entitled to Insurer/Appellant = Rs.6,58,377/- (B-A)

The Respondent Nos. 1 to 3 would accordingly be entitled to the amounts mentioned in the said statement whereas the Appellant would be entitled to the refund as mentioned in the said statement from the amount which is deposited in the Tribunal.

The only question which remains is as regards the accrued interest on the amount which has been deposited by the Appellant in the Tribunal. In so far as the interest accrued on the amount deposited from the date of deposit is concerned, the interest would be calculated on pro-rata basis i.e. the Appellant would be entitled to accrued interest on the amount of Rs.6,58,377/- and the Respondent Nos.1 to 3 would be entitled to the accrued interest on the amount of Rs.57,03,744/-. Both the learned counsel for the parties are also agreeable to the aforesaid apportionment of the accrued interest on pro-rata basis.

- (v) In view of the disposal of the above First Appeal, the Civil Application No.4093 of 2017 filed by the Respondent Nos.1 to 3 herein i.e. the original Applicants for withdrawal of the amount does not survive and to accordingly stand disposed of as such.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]