

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 341 OF 2017
WITH
CROSS-OBJECTION ST. NO. 22326 of 2018**

- 1] Jyoti Kamalakar Bhangale,
age 52 years, occ. Household,
- 2] Shishir Kamalakar Bhangale,
age 34 years, occ. Education,
- 3] Swapnali Kamalakar Bhangale,
age 29 years, occ. Education,
- 4] Pandharinath Dhamra Bhangale,
age 75 years, occ. Nil,
- 5] Sau. Belabai @ Lilawati
Pandharinath Bhangale,
age 76 years, occ. Nil

All r/o Laxmi Nagar,
Jalgaon, Tq. And
Dist. Jalgaon

...Appellants
[Orig.Petitioners]

VERSUS

- 1] Dinesh Nilkanth Jangle,
age Major, occ. Business,
r/o 707/19, Badri Plot,
Bhusawal, tq. Bhusawal,
Dist. Jalgaon,
- 2] New India Assurance Company
Ltd. Office at Mandore Market
Jilhapeth, Jalgaon,
Tq. And Dist. Jalgaon

...Respondents
[Orig.Opponents]

...

Advocate for Appellants : Mr. Vinod P. Patil
AGP for Respondent no.1 : Mr. A.S.Jadhav h/f Mr.
P.R.Katneshwarkar
Advocate for Respondent no.2 : Mr.M.R.Deshmukh

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CORAM : SUNIL K.KOTWAL, J.

**DATE OF RESERVING
THE JUDGMENT : 06.09.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 21.09.2018**

J U D G M E N T :

This appeal is directed against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 96 of 2012, awarding compensation of Rs. 27,80,400/- to the claimants. Appellants are original claimants and respondent no.1 is owner of the offending vehicle and respondent no.2 is insurer Insurance Company. Even Insurance Company has filed Cross-objection in the same appeal, on the grounds of, (1) deduction of incorrect amount towards personal and living expenses, (2) number of dependents in the family of the deceased, (3) improper application of multiplier as deceased is above 55 years, (4) inappropriate split multiplier, and (5) arithmetical error in the computation of compensation.

2. Heard strenuous arguments submitted by Shri Vinod Patil, learned counsel for the appellants, Shri A.S.Jadhav, learned counsel for respondent no.1 and Mr. M.R.Deshmukh, learned counsel for respondent no.2.

3. In the present appeal, only quantum of compensation awarded by the Tribunal is disputed, and therefore, the discussion is restricted only with "the quantum of compensation".

4. At the out set, I must observe that there is no arithmetical error while calculating the total amount of compensation of Rs. 27,80,400/-.

5. Learned counsel for the appellants submits that the learned Tribunal wrongly applied the procedure of split multiplier by dividing the annual income of deceased in two slots i.e. pre-retirement income and post-retirement income. He submits that in view of the law laid down by the Apex Court in the case of **"Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr."** [AIR

2009 SC 3104], splitting of multiplier is not permissible.

6. Next objection of the learned counsel for the appellants is that in view of law settled by the Larger Bench of the Apex Court in the case of **"National Insurance Company Limited vs Pranay Sethi and others"** [(2017) 16 SCC 680] the compensation awarded by the Tribunal under conventional head is incorrect.

7. Learned counsel for respondent no.2 submitted that though according to the claimants there are only five dependents in the family of deceased, the learned Tribunal instead of deducting $1/4^{\text{th}}$ amount towards personal and living expenses of the deceased, erroneously deducted $1/5^{\text{th}}$ amount.

8. Next objection of the learned counsel is that claimant nos. 2 and 3 are major son and daughter of the deceased having independent source of income, and therefore, they do not fall in the

category of 'dependents'.

9. His next limb of arguments is that at the time of death the age of deceased was more than 55 years, and therefore, appropriate multiplier can be applied as 9 and not 11 as applied by the Tribunal. He submitted that the judgment of the Tribunal is incorrect, regarding splitting of the multiplier in two slots i.e. multiplicand prior to retirement slot and after retirement slot. He submits that even in the case of **Sarla Verma** (supra), Devis formula is adopted for calculating the appropriate multiplicand. He placed reliance on "**Chhaya vs Suresh**" [ALL MR 2015 (1) 213]. Single Judge of this Court adopted the procedure of dividing the loss of income on account of death of the deceased in two slots i.e. slot before retirement and slot after retirement and applied the multiplier of 8 for the slot prior to retirement and multiplier of 5 for the slot post retirement.

10. At the out set, I must make it clear that

procedure laid down by the Apex Court in **Sarla Verma** (supra) for application of appropriate multiplicand after calculating loss of annual income to the family of the deceased due to accidental death and thereafter deducting amount towards personal and living expenses of the deceased and thereafter applying appropriate multiplier considering the age of the deceased at the time of his death is approved by the Larger Bench of the Supreme Court in the case of **National Insurance Company Limited vs Pranay Sethi** (supra). Larger Bench has only modified the amount of compensation to be awarded to the dependents under conventional head and the amount to be added in the annual income of the deceased towards future prospects.

11. In **Sarla Verma** (supra), the Supreme Court has prescribed following steps to determine the compensation in the cases of death.

“ Step 1 (Ascertaining the multiplicand)
The income of the deceased per annum
should be determined. Out of the said

income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. "

12. After ascertaining the total loss of

dependency to the family of the deceased, conventional amount is to be awarded as compensation, as specified in the case of **National Insurance Company Limited vs Pranay Sethi** (supra).

13. Though, learned counsel for respondent no.2 heavily relied on the verdict of Single Judge of this Court in **Chhaya vs Suresh** (supra), the practice adopted by the learned Judge while determining the loss of dependency to the family of the deceased is nowhere provided by the Supreme Court in **Sarla Verma** (supra). The Apex Court nowhere speaks about dividing the annual income of deceased in two slots i.e. pre-retirement slot and post-retirement slot. On the other hand, after careful reading the last few paragraphs of the judgment of the Apex Court in the case of **Sarla Verma** (supra), it emerges that though in the case before the Apex Court the deceased was scientist in Indian Council of Agricultural Research on monthly salary of Rs. 3402/-, while calculating the loss of dependency, the Apex Court considered same salary

and did not split the multiplicand in pre-retirement slot and post-retirement slot. Thus, as canvassed by the learned counsel for respondent no.2, the loss of dependency to the family of the deceased cannot be calculated by dividing the multiplicand in two slots i.e. pre-retirement slot and post-retirement slot.

14. The logic behind the argument submitted by the learned counsel for respondent no.2 is that after retirement the income of the deceased would be reduced, and therefore, pre-retirement multiplicand and post-retirement multiplicand shall be divided into two parts and thereafter appropriate multiplier be applied. However, like the case of **Chhaya vs Suresh** (supra), every deceased cannot be treated as labour, who has no prospects after his retirement. In the case at hand, the deceased is Veterinary doctor, and therefore, after his retirement in addition to his pension, he could have earned more than his regular salary by practicing on Veterinary side. It cannot be ignored that persons having professional

qualification or special skill can earn more, in proportion with increase of their period of experience. For example, a Government servant, such as, Doctor, Engineer, Architect can earn more after their retirement than regular salary in service on account of gaining more specialised skill in their profession, due to long experience. Therefore, the ratio in the case of **Chhaya vs Suresh** (supra) is not applicable in the present case as well as in similar matter, on account of above distinguishing facts.

15. In the case at hand, at the time of death, the deceased was 55 years old, as mentioned in the postmortem notes (Exh.32). He was in service of Zilla Parishad, Jalgaon as Veterinary doctor on the post of Zilla Animal Husbandry Officer as Veterinary doctor. By examining Subhash Ladwanjari (PW 2), the claimants have proved the salary certificate (Exh.45) of the deceased for the month of January, 2012. At the time of his death, his total salary was Rs.59,495/- and income tax of Rs. 3,000/- and professional tax

of Rs.200/- is deducted from that salary. Deductions towards GPF, GIS, Housing loan are to be included in the income of the deceased. Thus, less taxes, at the time of death, monthly income of the deceased is Rs.56,295/-. At the stage of arguments, learned counsel for the respondents did not dispute the monthly income of the deceased. Thus, annual income of the deceased is Rs. 56,295 x 12 = Rs. 6,75,540/-.

16. The Larger Bench of the Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra) held that when deceased had permanent job and he was between 50 to 60 years of age, 15 per cent income should be added in the annual income of the deceased. As deceased was 55 years old at the time of death, 15 per cent income is to be added in his annual income, i.e. Rs.6,75,540/- + 1,01,331/- (15 per cent addition), which comes to Rs.7,76,871/-. Thus, annual income of the deceased is Rs.7,76,871/-.

17. As ruled by the Apex Court in **Sarla Verma**

(supra), specific amount is to be deducted towards living and personal expenses of the deceased. Learned counsel for the respondent has rightly pointed out that when there are 5 dependents in the family of the deceased, $1/4^{\text{th}}$ amount is to be deducted towards personal expenses of the deceased, as per verdict of the Apex Court. No doubt, as no evidence has been placed by the respondents to show that respondent nos. 2 and 3 have independent source of income, only because they are major, they cannot be excluded from the category of dependents in the family of the deceased. Thus, after deducting $1/4^{\text{th}}$ amount from the annual income of the deceased the total loss sustained by the claimants on account of death of deceased is Rs.7,76,871/- minus Rs.1,94,218/- ($1/4^{\text{th}}$ deductions) = Rs.5,82,653 /-.

18. At the time of death, the deceased was 55 years of age. Therefore, as laid down by the Apex Court in **Sarla Verma** (supra) multiplier of 11 is applicable. After applying this multiplier, the

total loss of dependency to the claimants is Rs.5,82,653/- x 11 = Rs.64,09,183/-.

19. Additional compensation is to be awarded under the head, "conventional compensation". In **National Insurance Company Limited vs Pranay Sethi** (supra), the Apex Court ruled that for loss of consortium Rs.40,000/-, for loss of estate Rs.15,000/- and for funeral expenses Rs.15,000/- should be awarded to the claimants as conventional compensation. Thus the claimants are entitled to the total compensation as under :-

1) Loss of dependency	Rs. 64,09,183/-
2) Loss of consortium	Rs. 40,000/-
3) Loss of estate	Rs. 15,000/-
4) funeral expenses	Rs. 15,000/-

Total : Rs.64,79,183/-

20. The claimants are also entitled to interest on the total amount of compensation of Rs.64,79,183/- (Rs.Sixty Four Lac Seventy Nine Thousand One Hundred Eighty Three only) at the rate of nine per cent per annum from the date of filing of the petition till realization of this amount.

The compensation shall be inclusive of interim compensation received by the claimants under Section 140 of the Motor Vehicles Act.

21. Thus, the appeal preferred by the original claimants deserves to be allowed to enhance the quantum of compensation payable to the claimants. Even Cross-objection is to be partly allowed to apply the deduction of 1/4th amount from the annual income of the deceased towards living and personal expenses of the deceased.

22. Accordingly, First Appeal No. 341 of 2017 is allowed in the above terms. The parties shall bear their respective costs. The award passed by the Tribunal be modified in aforesaid terms. Civil Applications, if any pending, are accordingly disposed of.

[SUNIL K.KOTWAL, J.]

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