

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

FIRST APPEAL NO. 2521 OF 2019

The New India Assurance Co. Ltd.,
Through its Sr. Divisional Manager (Legal Hub),
D.O. No.I, Adalat Road, Aurangabad
Suryakant s/o Sahebrao Makhare,
Age 55 years, Occu: Service,
R/o Aurangabad

... Appellant
(Org. Respondent No.2)

Versus

1. Smt. Vimal Madhukar Varpe,
Age 50 years, Occu: Household,
2. Dr. Mahesh Madhukar Varpe,
Age 34 years, Occu. Education,
3. Kum. Dr. Kajal Madhukar Varpe,
Age 27 Years, Occu: Education,

No.1 to 3 R/o Karpe Estate,
Malharwadi Road, Rahuri (Bk),
Tq. Rahuri Dist. Ahmednagar

4. Sow. Sushma Nandkumar Shirsath,
Age 32 years, Occu: Household,
R/o Deshwandi, Tq. Rahuri,
Dist. Ahmednagar
5. Sudhakar Chandrabhan Kale
Age 34 years, Occu: Business,
R/o Chincholi, Tq. Rahuri,
Dist. Ahmednagar
(Owner & Driver of Swift Car
Reg.No. MH-17-AE-1947)

... Respondents
(R-1 to 4 Org.Claimants)
R-5, Org.R-1)

....

Mr. S. R. Bodade, Advocate for appellant
Mr. S. T. Mahajan, Advocate for respondent Nos. 1 to 4
Mr. K. M. Gadhave Patil, Advocate for respondent No.5

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 16th NOVEMBER, 2021

PRONOUNCED ON : 23rd DECEMBER, 2021

PER COURT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 21.12.2016, passed by the Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Patition No.196 of 2012, granting compensation of Rs.34,65,000/- with interest @ 9% p.a. on account of death in vehicular accident.

2. Facts giving rise to the present appeal are as follows:-

Deceased Madhukar had been to a car service station on 26.07.2011. He was accompanied by his friend Dadasaheb Gagare. Both of them were on their way back on the motorbike bearing registration No.MH-17-AK-9140. A Swift car bearing registration No.MH-17-AE-1947, knocked them down. Dadasaheb was riding the motorbike. The deceased was pillion rider. As a result of the injuries suffered in the accident, Madhukar passed away. His widow and

three children, therefore filed petition for compensation contending that the deceased was serving with Agriculture Produce Market Committee (APMC), Rahuri as Secretary at a monthly pay of Rs.43,271/-. It was also the case, that the deceased had agriculture income of rupees One lakh plus Rs.20,000/- per month from milk business.

The Tribunal, on considering the monthly income of the deceased at Rs.40,000/- subtracted therefrom 1/4th on account of personal and living expenses of the deceased, since the claimants were four in number. Multiplier of 9 was applied as the deceased was 56 years of age. As such, loss of dependency was worked out at Rs.32,40,000/-, Rs.2,25,000/- were awarded towards loss of love and affection, loss of consortium and loss of estate and funeral expenses.

3. Heard.

Shri S. R. Bodade, learned Advocate for the appellant – Insurance Company would submit that the rider of the motorbike was attempting to cross the road, Ahmednagar – Manmad. The motorcycle rider ought to have given way to the vehicles coming from other side and passing by the junction. As such, it was a case of

contributory / composite negligence. The owner and insurer of the motorbike have not made parties to the claim petition. The petition therefore suffers for non joinder of necessary parties. According to the learned Advocate, deceased was little over 56 years of age when he breathed his last. Only two years service was left to his credit. A split multiplier ought to have been applied by the Tribunal. According to the learned Advocate, for the month of July-2011, take home salary of the deceased was Rs.131/-. No income tax return for the relevant year was produced on record. The income of the deceased ought to have been considered on deduction towards income tax, professional tax etc. He would further submit that except the widow of the deceased, none of the claimants was dependent. The claimant No.4 is a married daughter of the deceased. Nos. 2 and 3 claimants are the medical practitioners. They are earning a handsome income. The witness has also admitted to have had received Rs.10,00,000/- as service benefits of the deceased. The same should have been taken into consideration by the Tribunal. The learned Advocate has relied on the following authorities.

- (i) K R Madhusudhan & Ors Vs Administrative Officer & Anr – 2011 CJ (SC) 1299;
- (ii) United India Insurance Co. Ltd. vs Indiro Devi and others – AIR 2018 SC 3107;

- (iii) Malarvizhi and others vs United India Insurance Company Limited and another – 2020 (1) T.A.C. 328 (S.C.);
- (iv) The Oriental Insurance Company Limited vs Kahlon @ Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and another – 2021 (4) T.A.C. 1 (S.C.);
- (v) Gita Mondal and others vs Jagga Singh and another – 2016 ACJ 1785.

4. Shri S. T. Mahajan, learned Advocate for the respondents – claimants would, on the other hand, submit that nothing has been granted towards future prospects. Wrong multiplier has been applied. According to him, in view of the Apex Court judgments in the case of *National Insurance Company Limited vs Pranay Sethi and others – (2017) 16 SCC 680* and *Sarla Verma (Smt) and others vs Delhi Transport Corporation and another – (2009) 6 SCC 121*, the claimants are entitled for enhancement in the amount of compensation.

5. It was an accident between the motorbike and the Swift car. Driving licence of the car driver is on record. The deceased was riding pillion on the motorbike. As such, for the claimants, it was a case of composite negligence and therefore entitled to proceed against any one of the tortfeasors. Although much has been argued

so as to point out rashness/negligence on the part of the motorbike rider, this Court is not inclined to make any observations in that regard since neither the rider nor the owner and the insurer of the motorbike were the parties to the petition.

6. The deceased was little over 56 years of age when he met with the accident. Two years service was at his credit. It is therefore contended by the learned Advocate for the appellant – Insurance Company that a split multiplier ought to have been applied. He relied on the judgment in the case of ***Gita Mondal*** (supra). In the said judgment, it has been held that in case of a government employee, the unexpired period of service should be taken into consideration for assessment of loss of dependency and not the age of the victim.

7. The Apex Court, in case of ***N. Jayasree & Ors v Cholanmandalam MS General Insurance Company Limited in Civil Appeal No.6451 of 2021***, has observed thus:

*“23. In **Sarla Verma (2009) 6 SCC 121**, this Court has held that while calculating the compensation, the courts should take into consideration not only the actual income at the time of the death but should also make additions by taking note of future prospects. It was further held that though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to*

avoid disparate yardsticks being applied or disparate methods of calculation being adopted.

24. *In Reshma Kumari & Ors. vs. Madan Mohan & Anr. - (2013) 9 SCC 65*, a three Judge Bench of this Court has approved the judgment in **Sarla Verma**.

25. *In Pranay Sethi - (2017) 16 SCC 680*, this Court has not only approved the aforesaid observations made in **Sarla Verma** but also held as under:

“**59.3.** 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 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.

59.4. 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.”

26. *In K.R. Madhusudhan and Ors. vs. Administrative Officer and Anr – (2011) 4 SCC 689*, this Court was considering a case where the High Court had applied split multiplier for the purpose of calculation of compensation towards loss of dependency and held as under:

“**8.** In **Sarla Verma** judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more

than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances.

9. We are of the opinion that the rule of thumb evolved in Sarla Verma is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.”

*27. In **Puttamma and Ors. vs. K.L. Narayana Reddy and Anr.** - (2013) 15 SCC 45, this Court was again considering a case where split multiplier for the purpose of calculation of dependency compensation was applied. It was held thus:*

*“32. For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in **Sarla Verma** prepared a table for the selection of a multiplier based on the age group of the deceased/victim. The 1988 Act, does not envisage application of a split multiplier.*

*33. In **K.R. Madhusudhan v. Administrative Officer**, this Court held as follows: (SCC p. 692, paras 14-15)*

“14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by

the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method.

*34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in **Sarla Verma** as affirmed in **Reshma Kumari**.”*

*28. From the above discussion it is clear that at the time of calculation of the income, the Court has to consider the actual income of the deceased and addition should be made to take into account future prospects. Further, while the evidence in a given case may indicate a different percentage of increase, standardization of the addition for future prospects should be made to avoid different yardsticks being applied or different methods of calculation being adopted. In **Pranay Sethi**, the Constitution Bench has directed addition of 15% of the salary in case the deceased was between the age of 50 to 60 years as a thumb rule, where a deceased had a permanent job. In view of the above, the High Court was not justified in applying split multiplier in the instant case.*

(III) What is the amount of compensation that should be awarded to the appellants?"

8. The judgment in ***Pranay Sethi*** is a Constitution Bench judgment of the Supreme Court. In para 59.7, it has been observed that the age of the deceased should be the basis for applying the multiplier. It has also given direction in the cases in which addition of income has to be made towards future prospects. The relevant paragraphs of the judgment read as under:-

“59.3. 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 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.

59.4. 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.”

9. The aforesaid paragraphs would undoubtedly indicate that application of split multiplier has altogether been ruled out.

10. QUANTUM:-

The salary certificate of the deceased indicates his gross salary was Rs.43,271/- . No details of deductions from the salary have been shown therein. The Tribunal considered a sum of Rs.40,000/- per month for working out the amount of compensation. As such, a sum of Rs.3,271/- has been subtracted therefrom. Annual contribution towards professional tax is Rs.2,400/-. It was a death that took place in July-2011. The deceased must have been income tax assessee. His Form No.16 for the year 2006-2007 is on record. The same cannot be taken into consideration. In view of this Court, for income of Rs.5,15,000/- in the assessment year 2012-2013, the income tax liability was Rs.36,060/-. The Tribunal has rightly not taken into consideration a sum of Rs.3,271/-. This amount takes care of deduction towards income tax (10%) plus professional tax of Rs.50/- per month.

There can be no two views over what has been submitted by the learned Advocate for the appellant – Insurance Company relying on the authorities (supra) that income of the deceased cannot be assessed only on the basis of salary certificate . The assessment of income of the deceased as per income tax returns is proper.

11. The deceased was in service with APMC, Rahuri. He was 56 years of age when died. The same suggests him to have been in permanent service. In view of the Apex Court judgment in the case of ***Pranay Sethi*** (supra), 15% of his established income ought to have been added towards future prospects. The Tribunal has not granted the same. Although, the claimants have not filed any appeal or cross objection for enhancement of compensation, they are very much entitled to defend the amount under the impugned award by pointing out factors whereunder they should have been granted compensation.

The Tribunal deducted 1/4th of the income of the deceased towards his personal and living expenses since the claimants were four in number. Admittedly, the claimant No.4 is the married daughter. She could not have been termed to be dependent of the deceased. Although Nos. 2 and 3 claimants are highly qualified, they were unemployed when their father passed away. No.3 claimant was to get married.

12. In para 30 of the judgment in the case of ***Sarla Verma*** (supra), it has been observed that deduction towards personal and living expenses of the deceased should be 1/3rd where the number

of dependent family members is 2 to 3. It does not say number of children of the deceased. It is reiterated that since the claimant No.4 was a married daughter and being dependent on her husband, the Tribunal should have deducted 1/3rd instead of 1/4th. Moreover, in terms of the directions in *Pranay Sethi* case, compensation on account of loss of consortium shall be Rs.40,000/-. The same quantum ought to have been granted towards loss of love and affection i.e. a sum of Rs.1,60,000/- have to be awarded to the claimants instead of Rs.2,00,000/-. A sum of Rs.5,000/- should have been awarded more towards loss of estate and funeral expenses, since the amount granted is Rs.25,000/-. In view of this, the respondents-claimants would have been entitled for compensation as under:

13. Rs, 40,000/- per month salary plus 15% added thereto for future prospects. It comes to Rs.46,000/-. Thus, annual income of the deceased comes to Rs.5,52,000/-. 1/3rd amount is deducted towards personal and living expenses since dependents are three. After deduction, it comes to Rs.3,68,000/-. Multiplier of 9 is applied thereto in view of age of the deceased to be Rs.56 years. Applying the multiplier of 9, it comes to Rs.33,12,000/-. Rs. 40,000/- each

are added towards loss of consortium and Rs.30,000/- towards funeral expenses and loss of estate. It comes to Rs.1,90,000/-. Therefore, total compensation comes to Rs.35,02,000/-.

14. It thus appears that a sum of Rs.37,000/- has been awarded less by the Tribunal. This Court cannot enhance the amount of compensation granted by the Tribunal for want of cross objection or appeal therefor.

15. In view of this, the rate of interest awarded on the amount of compensation is higher one. During the period from 2012 to the date rate of interest awarded by the Nationalised Bank on fixed deposits is not more than 6%. This Court is therefore inclined to scale down the rate of interest from 9% to 6% p.a. The amount of compensation is not small.

16. In view of the above, the appeal partly succeeds.

17. The appeal is partly allowed only to the extent of the rate of interest awarded by the Tribunal.

18. The rate of interest awarded by the Tribunal is scaled down from 9% to 6% p.a.

19. Rest of the terms of the impugned award to stand unchanged.

20. The amount in deposit be paid to the claimants with interest accrued thereon and the balance, if any, be paid back to the appellant – Insurance company with accrued interest.

[R. G. AVACHAT, J.]

SMS