IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3027 OF 2019

The New India Assurance Company Limited
through its Branch Manager,
Branch Office Opposite to Municipal Corporation
Office, Dhule, Dist. Dhule

Through it's Authorized Signatory/
Senior Divisional Manager / In-charge legal Hub,
Ajay Engineering Compound, Near Kranti Chowk,
Mahesh Compound, Adalat Road, Aurangabad … **Appellant**
(Org.Respdt.No.3)

Versus

1) Surekha Bhagwan Desle
Age: 50 years, Occu. Household,

2) Hitendra Bhagwan Desle
Age: 26 years, Occu. Education,

Both R/o. Mukti, Taluka Shindkheda,
Dist. Dhule

3) Ibraheem Gulzarbeg Mirza
Age: 29 years, Occu. Driver,
R/o. Shevgaon, Post. Karmal,
Tq. & Dist. Aurangabad

4) Mirza Javed Beg Gulzar Beg
Age Major, Occ. Vehicle Owner,
R/o. Shevgaon, Post. Karmal,
Tq. & Dist. Aurangabad … **Respondents**
(Respdt.Nos. 1 & 2 – Orig. Claimant
Respdt.Nos. 3 & 4 – Orig.Respdt.Nos.1 & 2)

Mr. Mohit R. Deshmukh, Advocate for appellant
Mr. Mahesh H. Patil, Advocate for respondent Nos. 1 & 2

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CORAM : R. G. AVACHAT, J.
DATED : 28th OCTOBER, 2021

PER COURT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 15.03.2019, passed by the Motor Accident Claims Tribunal (Tribunal) in Motor Accident Claim Petition (Petition) No.589 of 2015. By the impugned judgment and award, the appellant – Insurance Company and the owner of the vehicle involved in the accident, have been directed to pay a sum of Rs.47,66,000/- as compensation, with interest @ 8% per annum on account of death occurred in vehicular accident.

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

Deceased Bhagwan was serving with Maharashtra Constabulary. He was 53 years of age. On 20.07.2015, the deceased was proceeding on his motorbike. The Truck bearing No.MH-20/CT-0935 knocked him down. As a result of the injuries suffered in the accident, he breathed his last. His widow and the son, filed petition for compensation. The Tribunal held the deceased to have been drawing monthly salary of Rs.48,356/-. After addition of 15% of the monthly income of the deceased towards future prospects and applying multiplier of 11, granted compensation of Rs.46,95,966/- on account of loss of dependency. Compensation has also been awarded under conventional heads, such as, funeral expenses, loss of estate and loss of consortium.

3. Learned Advocate for the appellant – Insurance Company would submit that the salary slip of the deceased Exh.42 reflects therein payment of Rs.8,939/- towards arrears of Dearness Allowance (D.A.). The Tribunal ought not to have considered the said amount for grant of compensation. The deceased was income tax payer. Nothing has been deducted towards income tax. Learned Advocate would, further submit that, it is a fit case wherein the Tribunal ought to have applied split multiplier. The deceased would have retired from service within five years. Post retirement, he would have received only pension. His job was not such that he could have been reemployed post retirement. According to the learned Advocate, multiplier of five, therefore, ought to have applied to the component of salary, while multiplier of six for pension amount. The learned Advocate, therefore, urged for interference with the impugned judgment and award.

4. Learned Advocate for the respondents/claimants would on the other hand supports the impugned judgment and award. He would submit that the claimants are in fact entitled for enhancement of compensation.

5. <u>SPLIT MULTIPLIER</u> :

Since the deceased was 53 years of age, due for retirement on completion of 58 years of age, learned Advocate for the appellant – Insurance Company submitted application of split multiplier. In support of his claim, he relied on the following two authorities.

(i) Union of India and others vs. K. S. Lakshmi Kumar and others – ILR 2000 KAR 3809;

(ii) Chaya w/o Dilip Tamte and others vs. Suresh s/o Gurusidappa Karanje and another (First Appeal No.985 of 2012 – High Court of Bombay, Bench at Aurangabad).

6. In para 16 of the judgment in case of Union of India vs K. S. Lakshmi Kumar (Supra), it has been observed thus:

> "***16.*** *Where the multiplier applicable is higher than the number of years of service which the deceased had before superannuation, the contribution to the family (or loss of dependency) cannot obviously be calculated with the reference to the salary income, for the entire period of multiplier. Let us illustrate. If a person aged 56 years (whose age of superannuation is 60 years) dies in an accident, leaving him surviving his wife and two children,*

how should the total loss of dependency be calculated? Let us assume that his salary was Rs.6,000.00 and after retirement, his pension would be Rs.3,000.00. Under the Davies method accepted and adopted by the Supreme Court, the applicable multiplier will be '9'. But, deceased would have got salary income for only 4 years and then he would get only pension. If the deduction towards personal and living expenses of the deceased is one third, the contribution to the family during the period of service (4 years period) would have been Rs.4,000/- (that is Rs.6000-2000). But, obviously the contribution to the family would not have been Rs.4,000/- after his retirement, that is from the 5th year onwards. When the pension is Rs.3000/- per month, after deducting one third as personal and living expenses, the contribution to the family will only to be Rs.2,000/- per month. Therefore, the loss of dependency cannot be taken as Rs.4,000/- per month for the entire period of 9 years representing the multiplier. It has to be taken as Rs.4,000/- per month for the first four years (when he would have been in service) and Rs.2,000/- per month for the remaining five years (when he would have received pension). The method adopted in the above illustration will have to be applied in this case."

7. Moreover, this Court in its judgment dated 27.06.2014, in First Appeal No. 985 of 2012, has observed thus:-

"*... In view of the age of the deceased which was 50 years and the age of the claimants this Court holds that 13 is the proper multiplier. Deceased would have done hard work at least for 5 years after retirement. However, in the present case 13 or 11 cannot be adopted as multiplier for the salary income, multiplicand. The deceased was in Government service and he was to retire after completion of 58 years. Thus 8 years service was left and so only in respect of 8 years there was loss of aforesaid dependency. In view of this circumstance, 8 needs to be adopted as multiplier for aforesaid multiplicand. As per the law laid* *down in the aforesaid case it can be said that loss of income for the period of 13 years needs to be considered. After deducting 8 from the proper multiplier which was 13, it can be said that for 5 more years the deceased would have made some income for the family. It can presumed that the deceased would have made income of Rs.3000/- after retirement and one-forth amount from that can be deducted for personal expenses. So it can be said that for remaining multiplier of 5 years there was monthly loss of Rs.2250/-. As per the calculation the loss of dependency in respect of the first period of 8 years comes to Rs.8,64,000/- and in respect of second period of 5 years the amount comes to Rs.1,35,000/-.....*"

8. The Apex Court, in case of ***N. Jayasree & Ors v Cholamandalam 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?"

9. 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 betweeen 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.*"

10. The aforesaid paragraphs of the Apex Court would undoubtedly indicate that application of split up multiplier has altogether been ruled out in cases wherein deceased was to retire from service within a short span of time.

11. QUANTUM :-

The deceased was 53 years of age when he breathed his last. He was serving as an Assistant Police Sub-Inspector. His salary certificate Exh.42 does indicate his total emoluments were

Rs.48,356/-. A sum of Rs.8939/- was inclusive therein towards arrears of dearness allowance. This component ought not to have been considered by the Tribunal, since it was not a part of monthly salary of the deceased. Besides this, a sum of Rs.200/- ought to have been deducted towards professional tax. Thus, the monthly salary of the deceased would come to Rs.39,217/- (48356-8939-200).

12. In the case of ***Pranay Sethi*** (supra), it has been observed that the established income means the income minus the tax component. Admittedly, the deceased was income tax assessee. Form No.16 (Part A and B) (Exh.45), for the year 2014-2015 indicate the deceased had paid a sum of Rs.21,566/- as income tax, i.e. Rs.1797/- per month. After deduction of Rs.1797/- from his monthly income, it comes to Rs.37,420/- (39217-1797). 15% thereof is added thereto towards future prospects. It comes to Rs.43,033/- (37420+15% i.e. 5613). The annual income of the deceased comes to Rs. 5,16,396/-(43033 x 12). 1/3rd thereto is deducted therefrom towards personal and living expenses. It comes to Rs.3,44,264/- (5,16,396 – 1,72,132). Applying the multiplier of 11 thereto, it comes to Rs.37,86,904/-.

13. As such, the amount of compensation on account of loss of dependency comes to Rs.37,86,904/-. Rs.70,000/- awarded are towards loss of estate, loss of consortium and funeral expenses, the total amount of compensation comes to Rs.38,56,904/-. The respondents are entitled to Rs.38,56,904/-. The rate of interest awarded by the Tribunal to stand unaltered for want of challenge thereto in the appeal memo.

14. In the result, the appeal partly succeeds in terms of the following order:

ORDER

(i) The appeal is partly allowed.

(ii) The amount of compensation awarded by the Tribunal is scaled down from Rs.47,66,000/- to Rs.38,56,904/-, to be paid with interest @ 8% p.a. from the date of the petition to the date of payment/ deposit of the amount.

(iii) The amount of compensation be apportioned in proportion of 75 : 25 between the widow and the son of the deceased.

(iv) The amount in deposit be paid to the respondents/claimants with interest accrued thereon, immediately.

15. In view of disposal of appeal, Civil application No.10466 of 2021 also stands disposed of.

[R. G. AVACHAT, J.]

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