

IN THE HIGH COURT OF ORISSA AT CUTTACK**MACA No.617 of 2012**

[From the judgment dated 23rd April, 2012 passed by Shri P. Ch. Mohapatra, LL.M., 1st MACT, Cuttack in M.A.C. No.601 of 2009]

Suryamani Jena and Others

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Appellants

Versus

***Secretary, Home Department,
Government of Odisha, Bhubaneswar***

Respondent

Advocate(s) appeared in this case :-

For Appellants : Mr. K. C. Nayak, Advocate

For Respondent : Mr. Sarojananda Mishra,
Additional Government Advocate

CORAM : JUSTICE B.P. ROUTRAY

JUDGMENT

4th May, 2022

B.P. Routray, J.

1. Present appeal by the claimants is directed against the impugned judgment dated 23rd April, 2012 of learned 1st MACT, Cuttack passed in MAC No.601 of 2009 wherein compensation to the tune of Rs.5,44,500/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 19th October, 2009 has been granted on account of death of the deceased in the motor vehicular accident dated 7th August, 2009.

2. The claimants who are present Appellants are the parents and sister of the deceased. The deceased was a bachelor. The case of the claimants is that on 7th August, 2009 when the deceased was going in his motor cycle, the police van bearing registration number OR 05 B 2622 (hereinafter referred as 'offending vehicle') dashed against it from the backside and ran over the deceased resulting his death.

3. The learned Tribunal while fixing negligence on the part of the driver of the offending vehicle directed for payment of compensation to the aforesaid tune taking the monthly income of the deceased at Rs.4,500/- and applying multiplier '15'. While determining the multiplier the learned Tribunal counted the age of the parents of the deceased instead of the deceased.

4. The Appellants challenged the quantum of compensation mainly on the ground that the learned Tribunal has erred in law by counting the age of the parents for the purpose of multiplier. They further submitted that despite the salary certificate of the deceased filed on record, the learned Tribunal disbelieving the same had determined the monthly income taking him as a skilled labourer @ Rs.150/- per day.

5. First coming to examine the income of the deceased it reveals that the salary certificate under Ext.12 was produced from the side of the Claimants with the claim that he was serving as Branch Manager of a finance company at Bargarh, namely Ashmitha Micro Finance Ltd. and getting salary of Rs.14,734/- per month. The learned Tribunal disbelieved such claim of monthly income to the extent of Rs.14,734/- by discarding the salary certificate on the ground that the same has not been satisfactorily proved. It is true that P.W.3 examined on behalf of the Claimants was the Area manager of the aforesaid finance company who has stated about the occupation and working of the deceased in the company as such. The learned Tribunal without discussing the evidence of said P.W.3 discarded the claim of the Appellants with regard to his income and took him as a skilled labourer capable of earning Rs.150/- per day. No such rationality is seen behind such approach of the Tribunal to discard the income of the deceased adduced through P.W.3. The position of P.W.3 as an Area Manager of the company and proving the salary certificate by coming to the witness box is not sufficiently rebutted in his cross-examination. Therefore, the approach of the Tribunal is not found reasonable to take the income of the deceased as a skilled labourer. As

such, the income of the deceased is accepted at Rs.14,734/- and considering the statutory deductions there-from as per the prevalent tax rate for the financial year 2009-10, the income of the deceased can safely be assessed at Rs.14,000/- per month.

6. Admittedly the deceased was a bachelor aged about 25 years. No challenge is there to the said finding of the learned Tribunal. As per the principles decided in the case of *National Insurance Company Ltd. v. Pranay Sethi and Others* (2017) 16 SCC 680 it has been held as follows:-

“XXX XXXX XXXX

37. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from *Sarla Verma v. DTC, reported in (2009) 6 SCC 121*, *Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65*, *Rajesh v. Rajbir Singh, (2013) 9 SCC 54* and *Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347*. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, *Sarla Verma* (supra) lays down:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *UP SRTC v. Trilok Chandra, (1996) 4 SCC 362*, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family

members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.
32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

7. The Constitution Bench of the Hon’ble Supreme Court have further observed in *Pranay Sethi* case (supra) that for the purpose of multiplier the table placed in the case of *Sarla Verma v. DTC, reported in (2009) 6 SCC 121* has to be followed. No different approach was taken to count the age of the parents in case of a bachelor. The probable reason may be that,

the parents are still alive and it would be inappropriate to consider the expected life duration of living persons. So the multiplier is decided in reference to the age of the deceased based on the normal expectancy of his life and not the expected life duration of his parents who are not dead.

8. In *Sube Singh and Anr. v. Shyam Singh (dead) and Ors.*, (2018) 3 SCC 18, the Hon'ble Supreme Court in answering the question regarding application of multiplier with reference to age of the parents of the deceased, have observed as follows:-

“The sole question to be answered in this appeal is: whether the High court was right in applying multiplier 14 for determining compensation amount in a motor accident claim case in reference to the age of parents of the deceased whilst relying on the decision of this Court in *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma*, (2015) 2 SCC 180?

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4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22-9-2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in *Ashvinbhai Jayantilal Modi* case (supra) held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In *Munna Lal Jain v. Vipin Kumar Sharma*, (2015) 6 SCC 347 decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents. We may usefully refer to the

exposition in paras 11 and 12 of the reported decision, which read thus:

“11. The remaining question is only on multiplier. The High Court following *Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

‘36. In *Sarla Verma v. DTC*, (2009) 6 SCC 121, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* case (supra) that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma* case (supra).’

12. In *Sarla Verma* case (supra) at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote:

‘19..... 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.”

5. Considering the aforementioned principle expounded in *Sarla Verma* case (supra), which has been affirmed by the Constitution Bench of this Court in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, the appellants are justified in insisting for applying multiplier 18.”

9. In the case of *Joginder Singh and Another v. ICICI Lombard General Insurance Company*, (2020) 18 SCC 808, Hon’ble Apex Court relying on the observations of *Sube Singh* case (supra) have held as follows:-

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6. We have perused the judgments of the courts below, and find that the wrong multiplier has been applied to the facts of the present case. The issue with respect to whether the multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer res integra. This issue has been recently settled by a three-Judge Bench of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud*, (2019) 5 SCC 554, wherein it has been held that the multiplier has to be applied on the basis on the age of the deceased. The Court held that:

‘10. A reading of the judgment in *Sube Singh* case (supra) shows that where a three-Judge Bench has

categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor of the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon **Munna Lal Jain** case (supra) which is also a three-Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three-Judge bench in **Reshma Kumari** case (supra). The relevant portion of **Reshma Kumari** case in turn has referred to **Sarla Verma** case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions / deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

11. Not only this, the subsequent judgment of the Constitution Bench in **Pranay Sethi** case (supra) has also been referred to in Sube Singh case for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three- Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents’

7. In the present case, since the deceased was 20 years old, a multiplier of ‘18’ ought to have been applied as per the decision of this Court in **Sarla Verma** case.”

10. Further this Court in the case of **Divisional Manager, Reliance General Insurance Co. Ltd. v. Manjushree Mohapatra and Another**, (in

MACA Nos.570 & 640 of 2018, decided on 6th December, 2019) have held that, when a bachelor dies, his age shall be taken into account while applying multiplier. However said decision of this court in ***Manjushree Mohapatra*** case (supra) has been stayed by the Hon'ble Supreme Court in SLP (Civil) Nos.11757-11758 of 2019.

11. In view of the authoritative pronouncements discussed above, the logic of counting age of the parents for the purpose of multiplier as the dependents does not hold good and the Tribunal has failed in his approach in counting the age of the parents, instead of the age of the deceased.

12. No challenge has been made from the side of the Respondent with regard to the dependency of the parents and unmarried sister of the deceased. Nothing has also been brought on record to discard the claim of dependency of the father and unmarried sister on the deceased. Therefore the finding of the learned Tribunal in favour of the claimants as dependents of the deceased is left undisturbed.

13. Applying the principles enumerated in ***Pranay Sethi*** case (supra) the compensation amount is modified as per the following table.

(i)	50% of annual income	Rs.7000/- X 12 = Rs.84,000/-
(ii)	Adding 40% towards future prospects	Rs.84,000 + Rs.33,600/- = Rs.1,17,600/-
(iii)	Applying multiplier '17' (in reference to the age of the deceased)	Rs.1,17,600 X 17 = Rs.19,99,200/-
(iv)	Adding Rs.70,000/- towards funeral expenses, loss of estate and loss of filial consortium for the mother, the total compensation comes to	Rs.19,99,200 + Rs.70,000/- = Rs.20,69,200

14. In the result the appeal is disposed of with a direction to the Respondent, i.e., State of Odisha to deposit the total compensation of Rs.20,69,200/- (twenty lakh sixty-nine thousand two hundred) along with interest @ 6% per annum from the date of filing of the claim application, i.e. 19th October, 2009 before the learned tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal.

15. The appeal is disposed of.

(B.P.Routray)
Judge

M.K. Panda/Sr. Steno