Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 45, 41, AND 44 OF 2017

FIRST APPEAL NO. 45 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 418 OF 2017

The New India Assurance Company Ltd.
Shree Pant Bhavan(110800),
Opp. Sukh Sagar, Chowpatty,
Mumbai, Maharashtra, Pin-400007. .... Appellant.

Versus

1, Smt. Maria Santana Fernandes, w/o late Mr. Pedro Alcantara Roland: Xavier Fernandes, aged about 58 years, Widow, Indian National,

2. Smt. Candolina Silveira e. Fernandes,
w/o late Shri Reagon Jos Fernandes, aged about 28 years, widow, unemployed,
Indian National,
Both residents of house number 99/1, Grande Vanelim, Colva, Salcete, Goa 403708.

3. Santaji-Kailas Kirdatt,
s/o Mr. Kailas Kirdat, major of age, r/o Building no. 13/704, Panchsheel, Worli Naka,
MumbaiMaharastra. (driver).

4 . Bajirao Baliram Lad,
s/o Baliram Lad, Major of age,
r/o Shri Prastha Co. Hsg Society Bldg.
no. 108, Flat no.2, Station road,
Nalasopara, Thane, Maharashtra (owner) ... Respondents

Mr. Amey Kakodkar, Advocate *for the Appellant-Applicant.*

Mr. Anthony Joe D'Silva, Advocate *for Respondents No.1 and 2.*

FIRST APPEAL NO. 41 OF 2017

The New India Assurance
Company Ltd.
Shree Pant Bhavan(110800),
Opp. Sukh Sagar, Chowpatty,
Mumbai, Maharashtra, Pin-400007. ... **Appellant.**

Versus

1. Custodio Emael D' Costa,
s/o Mr. Joao D' Costa, married,
aged about 66 years,

2. Mrs. Maria Esperanca Da Costa,
w/o Mr. Custodio Emael D' Costa,
aged about 56 years,

3. Miss. Alzira D'Costa,
d/o Mr. Custodio Emael D' Costa,
Aged about 32 years,

4. Miss Sweeta Mary Da D' Costa
d/o Custodio Emael D' Costa

aged about 20 years.

All resident of B-2/F-1,
Nalanda Appts., Rawanfond,
Navelim, Salcete-Goa.

5. Santaji Kailas Kirdatt,
s/o Mr. Kailas Kirdat,
major of age,
r/o Building no. 13/704,
Panchsheel, Worli Naka,
Mumbai, Maharastra (driver).

6. Bajirao Baliram Lad,
s/o Baliram Lad, Major of age,
r/o Shri Prastha Co. Hsg Society
Bldg. no. 108, Flat no.2, Station road,
Nalasopara, Thane,
Maharashtra (owner) …. Respondents.

Mr. Amey Kakodkar, Advocate *for the Appellant-Applicant.*

Mr. Anthony Joe D'Silva, Advocate *for Respondents No.1, 2,3, and 4.*

FIRST APPEAL NO. 44 OF 2017

The New India Assurance
Company Ltd.
Shree Pant Bhavan(110800),
Opp. Sukh Sagar, Chowpatty,
Mumbai, Maharashtra, Pin-400007. … **Appellant.**

Versus

1. Prakash Dharmu Parwar
s/o late Mr. Dharmu Parwar,
aged about 62 years, retired,

2. Smt. Narmada Prakash Parwar
w/o Prakash D. Parwar,
aged about 52 years, housewife,

3. Miss Trupti Prakash Parwar
d/o Prakash D. Parwar,
aged about 26 years,

4. Miss. Panchali Prakash Parwar,
d/o Prakash D. Parwar,
aged about 24 years,

5. Sanjay Prakash Parwar,
s/o Prakash D. Parwar,
aged about 19 years,
All residents of House no. 21,
Gautanwado, Cotombi,
Quepem, Goa 403 214.

6. Santaji Kailas Kirdatt,
s/o Mr. Kailas Kirdat,
major of age,
r/o Building no. 13/704,
Panchsheel, Worli Naka,
Mumbai, Maharastra (driver).

7. Bajirao Baliram Lad,
s/o Baliram Lad, Major of age,
r/o Shri Prastha Co. Hsg Society

Bldg. no. 108, Flat no.2, Station road,
Nalasopara, Thane,
Maharashtra (owner) .... **Respondents.**

Mr. Amey Kakodkar, Advocate *for the Appellant.*

None for the Respondents though served *neither present nor represented.*

CORAM : M. S. SONAK &
BHARAT P. DESHPANDE, JJ.

DATED : 6th December 2022

ORAL JUDGMENT : *(Per M.S. SONAK, J.)*

1. The learned Counsel for the parties agree that all these appeals can be disposed of by a common judgment and order because the claim petitions from which these Appeals arise were instituted on account of the vehicular accident dated 19th March 2013, when the bus in which the victims were travelling, plunged from Jagbudi bridge into the river, resulting in the death of several persons and injuries to several others.

2. In First Appeal No.45/2017, the Motor Accident Claims Tribunal, South Goa, at Margao (Tribunal), by its Judgment and Award dated 9/9/2016, made in Clam Petition No.138/2013, awarded the Claimants compensation of ₹2,13,03,000/- with interest at the rate of 9% per annum from the date of claim petition till payment, for the death of their son/husband –Reagon Jose Fernandes (Reagon). At the time of the accident, Reagon was employed as a Third Engineer on a sea-faring vessel, drawing a salary of US$ 4320 per month. There is evidence that Reagon used to work for five months a year.

3. In First Appeal No.41/2017, the Tribunal, by its Judgment and Award dated 9/9/2016, made in Clam Petition No.137/2013, awarded the Claimants compensation of ₹1,76,48,000/- with interest at the rate of 9% per annum from the date of claim petition till payment, for the death of their son/brother –Bento Custodio Dias (Bento). At the time of the accident, Bento was employed as a Third Engineer on a sea-faring vessel, earning a salary of US$ 3840 per month. There is evidence on record that Bento used to work for six months a year.

4. In First Appeal No.44/2017, the Tribunal, by its Judgment and Award dated 9/9/2016, made in Clam Petition No.56/2014, awarded the Claimants compensation of ₹25,66,000/- with interest at the rate of 9% per annum from the date of claim petition till payment on account of the death of their son/brother.

5. Mr Kakodkar, the learned Counsel for the Appellants, quite correctly raised no contentions on the rashness and negligence of the driver of the ill-fated bus. However, even otherwise, the evidence on record establishes without doubt that the bus in which the victims were travelling was driven in a rash and negligent manner by its driver, as a result of which it went off the Jagbudi bridge and plunged into the Jagbudi river at around 3.00 a.m. on 19/3/2013. This tragic accident resulted in the death of several persons and caused injuries to several others.

6. Mr Kakodkar, however, submitted that there was evidence about the driver having consumed alcohol beyond permissible limits. Furthermore, there was evidence about the bus carrying more than 49 passengers, which was the maximum number of passengers the bus could carry in terms of the insurance policy and other R.T.O. documents. He, therefore, submits that there was a breach of the terms and conditions subject to which the insurance policy was issued. He offered that the Appellant-Insurance Company should either be exonerated from the liability or, in any case, the Tribunal should have made a *"pay and recover order"*.

7. Mr Kakodkar pointed out that the Appellants have taken out Misc. Civil Application No.418/2017 in First Appeal No.45/2017, seeking leave to produce additional evidence at the appellate stage. He submits that this additional evidence is in the form of an alcohol examination certificate, which certifies that the blood of the driver Santaji Kailas Kridatta, who survived the tragic accident, contained 0.083% of ethyl alcohol, i.e. 83 mg of ethyl alcohol, which was over and above the permissible limits. He submits that this additional evidence must be allowed in the interest of justice, and based upon the same, a finding returned that there was a fundamental breach of the terms and conditions of the insurance policy.

8. Mr Kakodkar, without prejudice, submitted that the compensation awarded by the Tribunal in the impugned awards was excessive and warranted interference. He submitted that the Tribunal failed to appreciate and follow the decision of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. & Ors. Vs. Patricia Jean Mahajan and ors.***[1], in which the Hon'ble Supreme Court held that the Tribunal must be conscious of several aspects like the Indian economy, fiscal and financial status, etc., before making a massive award to the dependants of a victim who must have been earning in U.S. dollars. He pointed out that

1. (2002) 6 SCC 281

the Hon'ble Supreme Court has held that the multiplier must be reduced in such a situation so that some realistic and just compensation can be awarded.

9. Mr Kakodkar submitted that the living expenses are very high abroad, and the dependants who now live in India must not get a bonanza due to the unfortunate death of their son/husband/brother in the vehicular accident. He submitted that the ruling in *Patricia Mahajan* (supra) was recently followed in ***Jiju Kuruvila and ors. vs. Kanjujamma Mohan and ors***[2].

10. Mr Kakodkar submitted that even otherwise, the compensation determined by the Tribunal in the impugned Awards is contrary to the law in ***National Insurance Co. Ltd. vs. Pranay Sethi and ors.***[3]. He submitted that even the interest of 9 % per annum awarded by the Tribunal, is excessive and the same should not have exceeded 7% per annum.

11. In First Appeal No.44/2017, Mr. Kakodkar submitted that the finding about the deceased Vivek earning ₹15,000/- per month is based upon no evidence and is only a surmise or a conjecture. He submitted that though Vivek had a Diploma in

2. (2013) 9 SCC 166

3. (2017) 16 SCC 680

Automobile Engineering, the documents show he was not a very good student. He relied on ***R.Adhikesavan and anr. Vs. T. Dhanam and another***[4] to submit that in similar circumstances, the monthly salary of a diploma holder in Automobile Engineering was notionally taken at ₹6500/- per month. Mr Kakodkar pointed out that the pleadings and the evidence establish that Vivek was not employed at the time of his unfortunate demise in the accident.

12. For all the above reasons, Mr Kakodkar submitted that these Appeals be allowed, the impugned Judgments and Awards be set aside, and the Appellant be exonerated of the liability to pay any compensation amount or, in the alternate, he submitted that the compensation amounts be reduced by accepting the Appellants' contentions.

13. Finally, Mr Kakodkar submitted that a *"pay and recover order"* be made even concerning reduced compensation amounts.

14. Mr Silva, learned Counsel for the Respondents-Claimants in First Appeals No. 41/2017 and 45/2017, pointed out that the Appellant-Insurance Company had not even raised any defence in

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4. 2019 SCC OnLine Mad 19157

its written statement about any fundamental breach of the terms and conditions of the insurance policy. He pointed out that the only defence raised was that the bus driver had no valid driving license. The Insurance Company led no evidence to prove this aspect. Therefore, he submitted that no leave may be granted to either produce any additional evidence at the appellate stage or to even urge the contention about any fundamental breach of the terms and conditions of the insurance policy.

15. Mr. Silva submitted that the principles in *Patricia Mahajan* (supra) and *Jiju Kuruvila* (supra) have been duly considered by the Tribunal in arriving at just compensation. He submitted that the Tribunal had followed the law in ***Sarla Verma (Smt.) and ors. Vs. Delhi Transport Corporation and anr.***[5] which was the law at the time when the impugned Awards were made.

16. Though served, respondents in First Appeal No. 44/2017 were neither present nor represented.

17. The rival contentions now fall for our determination.

18. Upon due consideration of the rival contentions and perusing the material on record, the following points arise for determination in these Appeals:

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5. (2009) 6 SCC 121,

(A) Whether the Appellants-Insurance Company can be permitted to raise the issue of a fundamental breach of the terms and conditions of the insurance policy when no such a plea was taken in the written statement, and the evidence on record also does not otherwise support such a plea?

(B) Should any leave be granted to the Appellant-Insurance Company to produce any additional evidence at the appellate stage in the context of the fundamental breach of the terms and conditions of the insurance policy?

(C) Whether the Tribunal in First Appeal No.45/2017 and 41/2017 failed to determine the compensation amount correctly since, admittedly, the deceased were seamen, earning in U.S. dollars, while the Claimants/dependants were residents in India?

(D) Does the Tribunal's compensation in each of these appeals represent just compensation?

(E) Is the interest awarded by the Tribunal in the impugned award excessive?

19. On the first and second points for determination, at the very outset, it is necessary to clarify the legal position in the context of the defence about the fundamental breach of the terms and conditions of the insurance policy. It is well settled that the insurance company must raise such a plea at the earliest instance, and further, the burden of proving such a defence, is upon the insurance company. For this purpose, the insurance company must adduce adequate evidence before the Tribunal. Such evidence would include the insurance policy and evidence about a fundamental breach of its terms and conditions.

20. The Appellant-Insurance Company filed its written statement opposing the claims in the present case. In the written statement, apart from several denials, the only defence in the context of the fundamental breach was that the driver of the ill-fated bus did not have a valid driving license and, therefore, there was a breach of the terms and conditions of the insurance policy. Though this defence was raised, there was not even an attempt on the part of the Appellant-Insurance Company to make good the same. Consequently, this defence was not even pressed in these Appeals.

21. Instead, in these Appeals, Mr Kakodkar submitted that there was a fundament breach of the terms and conditions of the insurance policy for the following reasons :

(a) That the driver of the ill-fated bus had consumed alcohol above the prescribed limits; and

(b) The ill-fated bus was carrying more than its capacity of 49 passengers and one driver.

22. As noted earlier, the above defences were not even raised in the written statement, as originally filed. The written statement was not even attempted to be amended to incorporate the above defences. The Appellant-Insurance Company never examined any witnesses before the Tribunal to place on record any evidence on the breaches that they now belatedly allege.

23. The impugned awards indicate that the owner and the driver of the ill-fated bus did not even appear before the Tribunal and, therefore, were marked *ex-parte.* Moreover, even in these Appeals, the owner, and the driver, though served, have chosen not to remain present and contest these Appeals. All this was possibly on the basis that the owner had insured the ill-fated bus and, therefore, liability, if any, would be borne by the Insurance Company.

24. Suppose the Appellant-Insurance Company were to have raised the pleas they now seek to raise in these Appeals in their written statement. In that case, it is possible that the owner and the driver would have entered appearances and even led evidence to establish that there was no breach, much less a fundamental breach of the terms and conditions of the insurance policy. Therefore, at this stage, it would be pretty harsh and inequitable to allow the Appellant-Insurance Company to raise the plea of a fundamental breach of the terms and conditions of the insurance policy, the basic pleadings remaining as they are.

25. The Appellant-Insurance Company did not explain its failure to raise the above pleas and to lead evidence in support thereof. In the absence of a valid explanation, no case was made to allow the Appellants' application under Order 41, rule 27 of C.P.C., taken out only in First Appeal No.45/2017. No such application has been made in First Appeal No.41/2017 or First Appeal No. 44/2017. There was not even a plea to lead the additional evidence in the other two Appeals where the Appellant-Insurance Company has made no such application.

26. Though the alcohol examination certificate proposed to be produced on record remarks that the driver's blood contained 0.083 grams of ethyl alcohol, based upon the same, no fundamental breach of the terms and conditions of the insurance policy can be inferred without the driver having an adequate opportunity to cross-examine or otherwise rebut the certificate. As it is, there is no explanation why such a defence was not raised in the written statement and why no such evidence was produced before the Tribunal. The owner and the driver were, thus, deprived of an adequate opportunity to dispute the alcohol examination certificate.

27. Furthermore, no doctor was examined by the Appellant-Insurance Company, thereby depriving the owner and the driver of an opportunity to cross-examine the doctor who has issued the Alcohol Examination Certificate. Therefore, neither would it be appropriate to permit the Appellant-Insurance Company to raise such defences, nor is any case made to allow the Appellant's application under Order 41, Rule 27 of the C.P.C.

28. Mr Kakodkar referred to the insurance policy and some R.T.O. documents that deal with the passenger capacity. However, there is no clinching evidence about the capacity being exceeded. In any case, in the absence of any such defence in the written statement and other independent evidence, it would not be appropriate to infer any fundamental breach of the terms and conditions of the insurance policy. It is well settled that there can be no variation between pleadings and proof. The two points for determination are answered accordingly.

29. Regards the third point for determination, we must say that the Tribunal has not only considered but has correctly appreciated the scope and import of the decision of the Hon'ble Supreme Court in *Patricia Mahajan* (supra) and *Jiju Kuruvila* (supra).

30. In *Jiju Kuruvila* (supra), the main issue was about the relevant foreign exchange rate applicable when the victim was employed in the U.S.A., earning income in U.S. dollars, and the compensation was claimed by the dependants in India, in Indian rupees. The Hon'ble Supreme Court held that the exchange rate prevailing on the filing date of the claim petition would be applicable.

31. The Tribunal, in this case, has followed the law in *Jiju Kuruvila* (supra) and relied on the exchange rate prevalent at the time of the institution of the claim petition. Thus, there is compliance with the law in *Jiju Kuruvila* (supra).

32. The decision in *Patricia Mahajan* (supra) does not appear to have been cited before the Tribunal. Therefore, the Appellants are not justified in contending that the Tribunal failed to follow the law in the said decision. However, that does not mean that the Tribunal's award would be immune from a challenge if it is indeed found that the same is contrary to the law laid down in *Patricia Mahajan* (supra). Therefore, the contention in this regard will be examined.

33. Mr Kakodkar relied upon the observations in paragraph 19 of *Patricia Mahajan* (supra). Accordingly, he submitted that the impugned awards, in this case, warrant interference because the Tribunal failed to follow the approach prescribed in paragraph 19. Paragraph 19 of *Patricia Mahajan* (supra) reads as follows :

> *"19. In the present case, we find that the parents of the deceased were 69/ 73 years. Two daughters were aged 17 and 19 years. Main question, which strikes to us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 Dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs. 47 comes to Rs. 10.38 crores and with multiplier of 13 at the conversion rate of Rs. 30 the amount came to Rs. 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so.*

Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants namely, parents aged 69/73 years live in India, but four of them are in the United States. Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission. Considering all the facts and factors as indicated above, to us it appears that application of multiplier of 7 is definitely on the lower side. Some deviation in the figure of multiplier would not mean that there may be a wide difference between the multiplier applied and the scheduled multiplier which in this case is 13. The difference between 7 and 13 is too wide. As observed earlier, looking to the high amount of multiplicand and the ages of the dependants and the fact that parents are residing in India in our view application of multiplier of 10 would be reasonable and would provide a fair compensation i.e. purchase factor of 10 years, We accordingly hold that multiplier of 10 as applied by the learned Single Judge should be restored instead of multiplier of 13 as applied by the Division Bench, We find no force in the submission made on behalf of the claimants that in no circumstances the amount of multiplicand would be a relevant consideration for application of appropriate *multiplier. We have already given our reasons in the discussion held above."*

34. According to us, the ruling in *Patricia Mahajan* (supra) is distinguishable on several counts. Firstly, in the said decision, the Hon'ble Supreme Court was concerned with a victim who had a regular job in the U.S.A., earning thousands of dollars per annum. Moreover, the victim was living on the land in the U.S.A. and, consequently, would have spent a considerable amount on living expenses in the U.S.A.

35. In contrast, in the Appeals at hand, the two victims were seamen, working on sea-faring vessels for about 5/6 months in a year. Therefore, most of their lodging and boarding expenses were taken care of. Moreover, there is evidence about these victims making remittances in India. Documentary evidence was produced to support this fact, which was not even challenged.

36. Secondly, in *Patricia Mahajan* (supra), by applying the usual multiplier, the compensation amount came to ₹10.38 crores and ₹16.12 crores. The Hon'ble Supreme Court observed that these amounts, in respect of an accident that occurred on 3/2/1995, were huge. Indeed, the Hon'ble Supreme Court observed that looking at the Indian economy, fiscal and financial situation, this amount was certainly a fabulous amount though in the background of American conditions, it may not be so.

37. Hon'ble Supreme Court held that where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Therefore, the Hon'ble Supreme Court held that in such a situation some deviation in the figure of the multiplier would be appropriate. Therefore, though the prescribed multiplier was 13, the Hon'ble Supreme Court reduced the same to 10.

38. In the present case, the dependants in First Appeal No.45/2017 have been awarded compensation of ₹2.13 crores, and in First Appeal No.41/2017, have been awarded compensation of ₹1.76 crores. Considering that the victim in First Appeal no.45/2017 was 29 years old and the victim in First Appeal No. 41/2017 was hardly 27 years old, and they were employed as engineers on sea-faring vessels, the compensation awarded to their dependants for an accident that occurred in the year 2013 can, hardly, be regarded as a huge or fabulous. Therefore, the contention based upon *Patricia Mahajan* (supra), will have to be rejected. The third point for determination is answered accordingly.

39. Regarding the fourth and fifth points for determination, the Tribunal has made its award based upon Sarla Verma (supra), thereby awarding excessive compensation for loss of love and affection, funeral expenses, and loss of estate. To that extent, the impugned awards warrant interference, given the law laid down by the Constitution Bench in *Pranay Sethi* (supra).

40. Towards consortium, each claimant could be awarded ₹40,000/-. Besides, the Claimants would be entitled to ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate. The impugned awards will have to be modified so that the compensation amounts, under these heads, align with the law laid down in *Pranay Sethi* (supra).

41. Similarly, the Tribunal has added 50 % towards future prospects, again relying upon *Sarla Verma* (supra). However, considering the evidence on record and the law in Pranay Sethi (supra), an addition of 40% would be appropriate for future prospects. To that extent, the impugned awards will have to be modified.

42. In First Appeal No.44/2017, the evidence on record does not justify the finding that the victim, Vivek, would have earned ₹15,000/- per month. The evidence on record undoubtedly establishes that Vivek had a Diploma in Automobile Engineering. However, Vivek was yet to be employed, evident from the pleadings in the claim petition and the evidence in support. There is evidence about Vivek working as a Trainee Service Advisor from 7/6/2011 to 31/3/2012, with M/s Chowgule Industries Ltd., on a gross salary of ₹4,500/- per month.

43. Even Prakash Dharmu Parwar, Vivek's Father, in his affidavit-in-evidence, deposed that considering Vivek's young age, well-built physique, and educational qualification, he would have easily earned a minimum salary of ₹12,500/- per month in any employment at the threshold. This witness also deposed that with prospects of promotion in future, Vivek would have earned not less than ₹75,000/- per month had he not died in the accident.

44. The Tribunal, however, went by the Seventh Pay Commission scales applicable to Government employees. Therefore, the Tribunal was not justified in surmising that Vivek, in all probabilities, would have got a Government job based upon a Diploma in Automobile Engineering. Thus, though some guesswork is inevitable in such matters, the finding about Vivek's notional income being ₹15,000/- per month is excessive. Instead, going by the evidence on record, including the deposition of Vivek's Father, Vivek's educational qualification, experience, and physique, a figure of ₹12,000/- per month appears to be reasonable and just.

45. In ***S. Chandrasekharan and ors. vs. M. Dinakar and anr.***[6]***,*** the Hon'ble Supreme Court took the notional income of a B.Com. graduate, aged 37 years, at ₹26,250/- per month. Therefore, making allowance for the salaries in the State of Goa, the fact that this accident took place in the year 2013, and his Father's deposition, Vivek's monthly income can be taken appropriately at ₹12,000/- per month.

46. The Tribunal deducted 50% of Vivek's personal expenses because Vivek was admittedly a bachelor. However, the Tribunal failed to appreciate that Vivek was survived by his Father, who was 60 years old; his mother, who was 50 years old; a sister who was a student (24 years old); another sister, aged 22 years, and a brother aged 17 years, also a student. There is evidence about these Claimants being dependent upon Vivek.

47. In the above circumstances, the observations in paragraphs

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6. 2022 (3) TAC 353 (SC)

31 and 32 of *Sarla Verma* (supra), would apply. Paragraphs 31 and 32 of *Sarla Verma* (supra), read as follows :

> *"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to a bachelor, 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 dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, 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."*

48. In *Pranay Sethi* (supra), the above observations in *Sarla*

Verma (supra) were not disturbed. Therefore, in the facts of the present case, the Tribunal was not justified in deducting 50% towards Vivek's personal expenses. Instead, the deduction could have been to the extent of one-third.

49. The accident, in this case, occurred on 19/3/2013. Therefore, the award of interest at the rate of 9% per annum is excessive. Instead, interest at 7% per annum would be appropriate. Thus, the fourth and fifth points for determination are answered in the above terms.

50. Based upon the above determination, just compensation in First Appeal No.45/2017 would work out to ₹1,97,82,128/-, with interest at the rate of 7% per annum, instead of ₹2,13,03,000/- with interest at the rate of 9% per annum as determined by the Tribunal. Therefore, the impugned award in First Appeal No.45/2017 is modified accordingly.

51. In First Appeal No.41/2017, just compensation would work out to ₹1,65,44,595/-, with interest at the rate of 7% per annum, instead of ₹1,76,48,000/- with interest at the rate of 9% per annum, as determined by the Tribunal. Therefore, the impugned award is modified accordingly.

52. The compensation in First Appeal No.44/2017 would work out to ₹26,49,200/-, with interest at the rate of 7% per annum, instead of ₹25,66,000/-, with interest at the rate of 9% per annum determined by the Tribunal. Therefore, the impugned award, in this case, is also modified accordingly.

53. In the context of First Appeal No.44/2017, it is trite that the Appeal Court can award compensation higher than what may be granted by the Tribunal even though the Claimants may have filed no cross objections or cross-appeal. This is because it is the duty of the Courts to award just compensation irrespective of the claim. (*See* ***Surekha and ors. Vs. Santosh and or***s.-C.A. No.476 of 2020, decided on 21/01/2020 – (2021) 201 PLR 795).

54. Thus, First Appeals No.45/2017 and 41/2017 are partly allowed, and the impugned Awards made therein are modified in the above terms. Accordingly, the Claimants in the said two appeals will now be entitled to withdraw the compensation amounts deposited by the Insurance Company in this Court in terms of this modified award. Likewise, the Appellant-Insurance Company can withdraw the balance from the deposited amount. The parties will, however, have to furnish their identification and bank details so that the Registry can directly transfer the amounts payable to them in their bank accounts.

55. First Appeal No.44/2017 is dismissed. Therefore, the Claimants in this appeal will also be entitled to withdraw the compensation amount deposited by the Appellant-Insurance Company. Further, the Appellant-Insurance Company is directed to deposit the additional amount as now determined within 4 (four) weeks from today. Upon deposit, the Claimants will also be entitled to withdraw the said amount. The Claimants will have to furnish their identification and bank details so that the Registry can directly transfer the amounts payable to them to their bank accounts.

56. Since the Claimants in First Appeal No.44/2017 have not appeared in this matter, we request the Member Secretary, Goa State Legal Services Authority, to contact the Claimants and render them all possible assistance to receive the compensation amount already deposited in this Court and the compensation amount that is directed to be deposited in this Court, within four weeks.

57. Misc. Civil Application No. 418/2017 in First Appeal

No.45/2017 is also disposed of in the above terms.

58. All the Appeals are disposed of in the above terms. However, there shall be no order for costs.

BHARAT P. DESHPANDE, J. **M. S. SONAK, J.**

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2022.12.09 11:10:07 +05'30'