

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 2363 OF 2005

1. Deenbandhu Singh Shivsaran Singh,
aged about 53 years,
2. Smt. Muglawati Deenbandhu Singh,
aged about 50 years,
residing at R.M. Road, Oshwara,
Jogeshwari (West) Mumbai.
C/o. No.2/8 Shivsharan Singh
(Ram naresh), Chawl, Mumbai-400102. **...APPELLANTS**

V/s.

1. Bharat Tarachand Bhaglat,
residing at Suraj Niwas, Bothegaon Phata,
MIDC, Ahmednagar (Maharashtra)
2. The New India Assurance Co. Ltd.,
having their registered office at New India
Assurance Building, Fort, Mumbai.
Insurance Cover Note No.679496
Renewal Policy No.: 31/00673/117
Ahmednagar V/T 25/09/98. **...RESPONDENTS**

Mr. T.J. Mendon, Advocate for the Appellants.

Mr. Shubham Misar, Advocate for the Respondent No.2.

CORAM	:	ABHAY AHUJA, J.
RESERVED ON	:	28th JUNE, 2023
PRONOUNCED ON	:	18th AUGUST, 2023

JUDGMENT :

1. This appeal has been filed by parents of the deceased, who, died
in motor vehicle accident on 2nd May, 1998.

2. Earlier the appellants had filed claim application under Section 166 of the Motor Vehicles Act, 1988 seeking a compensation of Rs.10,00,000/-. However, the Motor Accident Claims Tribunal, Mumbai (the “MACT, Mumbai”) only partly allowed the claim holding that the appellants were entitled to recover and get Rs.2,00,000/- inclusive of the No Fault Liability amount of Rs. 50,000/- together with interest @ 7.5% p.a from November, 2003 till realization. Aggrieved by the same this appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (the “MV Act”).

3. The brief facts are that the son of the appellants, who was studying M.B.A course at Lonir, Dist. Ahmednagar and had completed first year of M.B.A. course, on 2nd May, 1998, while he was coming home in an auto rickshaw along with his friend met with an accident in which he sustained serious injuries. Sujeet Singh, son of the Appellants, was traveling in auto-rickshaw No. MH-16-B-2112 belonging to Respondent No. 1 and insured with Respondent No. 2 when the said auto-rickshaw in which Sujeet was travelling while passing in front of Advani Company met with an accident and turned turtle due to rash and negligent driving of auto-rickshaw driver. Due to the said accident Sujeet Singh sustained very serious injuries, was taken to a hospital at

Ahmednagar and thereafter brought to K.E.M Hospital, Mumbai but unfortunately he died at the K.E.M Hospital on 25th May, 1998 as a result of the injuries. The matter was reported to the police and a case was filed against the auto-rickshaw driver. It was contended that the deceased had a bright career and after completing the M.B.A. course would have earned easily Rs.3,00,000/- to Rs.4,00,000/- per year and that his age was 22 years and the claim for compensation of Rs.10,00,000/- was justified.

4. It is submitted that inspite of due and proper service, owner of the auto rickshaw being Respondent No.1 herein, remained absent and the claim before the Tribunal went ex-parte against him. The Insurance Company being Respondent No.2 herein, had filed written statement before the Tribunal and objected to the claim and denied the liability.

5. The Tribunal considered the evidence of Appellant No.1, who is the father of the deceased and the claimant's witness Pramol Saxena, who was with the deceased at the time of accident being eye-witness, documentary evidence such as FIR, spot panchnama, post-mortem notes, cause of death certificate and observed that the negligence of the driver in the motor vehicle accident was established and proved.

6. With respect to the evidence regarding the income and future expected earnings of the deceased, the Tribunal despite the evidence that the deceased was a bright student and could have reached the post of Executive and despite the evidence on record in the shape of the witness Nitin Singh about the fact that he was M.B.A from Banaras Hindu University and got the appointment as Senior Officer with a monthly salary of Rs.15,200/- and observing that, there was no evidence to the fact that the deceased was the only son of the applicants and that the father of the deceased was working as Senior Pharmacist in K.E.M Hospital, Mumbai, which aspect would have to be considered while ascertaining the dependency and future loss caused to the Appellants and considering the uncertainty of life and the then condition for getting jobs and the saturation in the certain field, held that the say of the claimant that the deceased would have earned Rs.15,000/- per month cannot be the basis to come to the conclusion about the dependency of the appellants. Further, observing that there was no evidence to establish that the deceased was the only son, on the basis of the submission on behalf of the Insurance Company that there was no question of applying any particular multiplier and there was no expected future income of the deceased, the Tribunal denied the claim that the deceased would have been in a position to earn ample amount

of pay in a month and that the appellants would be entitled to claim of Rs.10,00,000/- as compensation. The Tribunal observed that the deceased was unmarried and considering future uncertainty of life and age of the appellants and the fact that the deceased had not completed his M.B.A course held that there was no question of considering any specific monthly income of the deceased and the future loss caused to the appellants. The Tribunal concluded that since the appellants, who, at the time of filing the claim petition were of 53 to 50 years of the age and having lost their son who was 22 years taking education in M.B.A course, instead of applying any particular multiplier, and the expected income, it would be just and proper to award lump sum compensation of Rs.2,00,000/- including the No Fault Liability. The Tribunal went on to add that even-though the Appellants had lost their young son, the young son having a bright career could not be expected to support them after his marriage even if he would have survived. The Tribunal has held the owner of the vehicle as well as Insurance Company jointly and severally liable to pay the compensation to the Appellants as well as interest @ 7.5% p.a. from November-2003.

7. I have heard Mr. Mendon, learned Counsel for the Appellants and Mr. Misar, learned Counsel for Respondent No.2 and with their

able assistance. I have perused the records and papers and considered the rival contentions.

8. Mr. Mendon, learned Counsel for the appellant would submit that, the Appeal has been filed by the parents of the deceased for enhancement of compensation. Learned Counsel would submit that the Tribunal failed to appreciate that the deceased was a bright student and was enterprising and could have earned substantially as done by his classmates in the same category had he lived. Drawing the attention of this Court to the record and proceedings, Mr. Mendon, would refer to the deposition witness of PW-3 viz, Mr. Nitin Singh, who passed the MBA examination from Banaras Hindu University in the year 2000 and got appointment as senior officer in Indorama Synthetics India Limited at Bombay, got a monthly salary of Rs. 15,200/- at the initial stage and also produced the appointment letter. It can be seen from the said deposition that Mr. Nitin Singh was the nephew of the deceased and passed out the MBA around the same time as the deceased would have passed out i.e. in the year 2000. It is also observed from the deposition that the salary of Mr. Nitin Singh was revisable every year and his salary at the time of giving evidence was

Rs. 17,200/-. Referring to this evidence Mr. Mendon would submit that the Tribunal ought to have considered this evidence and at least could have considered Rs.15,200/- as the deceased's potential earning capacity. In support, Mr. Mendon relies upon the decisions of the Supreme Court in the case of *Oriental Insurance Co. Ltd. Vs. Deo Patodi and Ors.*¹ and also the decision in the case of *S. Vasanti and another Vs. Adhiparasakthi Engineering College and another*² in support of his contentions and submits that the income of the similarly placed persons as the deceased ought to be considered by the Tribunal while determining deceased potential earning capacity.

9. Learned Counsel for the Appellants would further submit that the compensation is required to be calculated considering the age of the deceased. He would submit that the Tribunal has grossly erred in ignoring that the deceased was 22 years of age and had a bright career. Learned Counsel refers to the decision of the Hon'ble Supreme Court in the case of *Sarla Verma & Ors Vs. Delhi Transport Corporation and Anr.*³ and in particular to paragraph 18 of the said decision to emphasise this point. He further refers to paragraph 42 of the said decision and

1 2009 ACJ 2359

2 2023 ACJ 100

3 (2009) 6 SCC 121

submits that considering the age of the deceased the operative multiplier would be 18, which would need to be considered for computing the compensation. Learned Counsel also refers to the constitution Bench's decision of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. National Insurance Company Limited Vs. Pranay Sethi and Ors. (supra)* and in particular to paragraph 61 of the judgment to submit that as declared by the Hon'ble Supreme Court multiplier has to be applied as per the age of the deceased and accordingly the compensation has to be worked out.

10. Learned Counsel further submits that it is the mandate of Section 168 that compensation is required to be determined by the Tribunal or the Court which is just reasonable and proper. Learned Counsel submits that there is no embargo or restriction on the powers of the Tribunal or the Court to grant an amount more than the amount claimed. Learned Counsel relies upon the decision of the Hon'ble Supreme Court in the case of *A. P. S.R.T.C Vs. M. Ramadevi and Ors.*⁴. Learned Counsel also refers to the case of *Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service*⁵ in support of his contentions.

4 2008 (3) SCC 379

5 2013 ACJ 2733

11. Learned Counsel for the Appellants submits that since it has been proved that the deceased classmate had received an income of Rs. 15,200/- per month, the same can be considered as the minim. Learned Counsel has submitted the following calculation for computation of the compensation that the Appellants claimed ought to be awarded to them:-

<i>“Age of deceased 22 years</i>	
<i>Income per month</i>	<i>Rs. 17,200.00</i>
<i>uture Prospect 40%</i>	<i><u>Rs. 6,080.00</u></i>
	<i>Rs. 21,280.00</i>
<i>Claimants are in Numbers</i>	
<i>Personal Expenses ½</i>	<i>Rs. 10,640.00</i>
<i>Dependency</i>	
<i>Multiplier for age 22 is 18</i>	
<i>Calculation of Compensation</i>	
<i>(10,640 X 12 X 13)=</i>	<i><u>Rs.22,98,240.00</u></i>
<i>Loss OF Consortium Rs.40,000/- with 10%</i>	
<i>increase for every 3 years for 4 claimants</i>	<i><u>Rs. 88,000.00</u></i>
<i>Funeral Expenses 15000/- with 10%</i>	
<i>Increase for every 3 years</i>	<i>Rs. 20,000.00</i>
<i>Loss of Estate Rs. 15,000/- with</i>	
<i>10% increase for every 3 years.</i>	<i>Rs. 20,000.00</i>
	<i><u>Rs.24,26,260.00”</u></i>

12. With respect to the interest to be awarded to the Appellants, learned Counsel draws the attention of this Court to Section 171 of the MV Act and submits that simple interest at the rate from the date of making the claim should be awarded to the Appellants and not what

the Tribunal has done. Learned Counsel submits that the claimants would be entitled to received compensation as calculated above along with interest at least at the rate of 9% p.a from the date of application till realisation of the compensation and not from November 2003.

13. On the other hand, although Mr.Misar does not dispute that rash and negligent driving of the driver of the said auto rickshaw led to the death of Mr.Sujeet Singh, however, with respect to quantum, learned Counsel would submit that since the deceased was a student who had not completed his course, no income can be anticipated, and therefore, the Tribunal did not consider the claim of the Appellants as proposed.

14. There is no dispute that the deceased was traveling in the auto-rickshaw, which met with an accident, which was caused due to the negligence of the driver of the auto rickshaw. There is also an eye witness to the same. The only issue that arises is with respect to quantum of compensation and primarily with respect to the income of the deceased. There is no dispute that the deceased was 22 years old and had completed the first year of the MBA course. The evidence of Mr. Nitin Singh, is not in dispute. He was a colleague and nephew of

the deceased in the MBA course at Banaras Hindu University, got an appointment letter as senior officer in Indorama Synthetics India Limited at a monthly salary of Rs.15,200/- which was revisable upwards. This evidence has neither been disputed nor been controverted on behalf of the insurance company. Respondent No.1 though served is neither represented nor is present. It is gathered from the Tribunal order that even before the Tribunal the Respondent No.1-owner of the vehicle was not represented and the matter was heard ex-parte against him. Despite clear and uncontroverted evidence that Mr. Nitin Singh was appointed at a salary of Rs. 15,200/-, the Tribunal has completely ignored the same on the ground that there was no evidence to the fact that the deceased was the only son of the Applicants. In my view, the Tribunal has grossly erred in failing to consider this vital evidence for deciding the compensation that would be payable to the Appellants. The Tribunal has completely misdirected itself towards considerations such as uncertainty of life, the condition of getting jobs and saturation in the field for none of which the Tribunal has cited any instances or adduced any evidence to reject the claim of the Appellants. Also, despite the clear mandate of the Hon'ble Supreme Court in the case of *Sarla Verma & Ors Vs. Delhi Transport Corporation and Anr.* (*supra*) and *National Insurance Company Limited Vs. Pranay Sethi and*

Ors.(supra), as will be elucidated later, the Tribunal has failed to apply multiplier considering the age of the deceased and has on irrelevant considerations ordered a lump sum compensation of Rs. 2,00,000/-.

15. There is no dispute that the Appellants are the legal representatives of the deceased and as such entitled to be awarded compensation under the MV Act. The Hon'ble Supreme Court in the case of *Oriental Insurance Co. Ltd. Vs. Deo Patodi and Ors. (supra)* and also in the case of *S. Vasanti and another Vs. Adhiparasakthi Engineering College and another(supra)* has clearly observed that when the deceased or his classmates who had been pursuing the same education and started earning then the income that they earned at the time of appointment can be considered as the income of the deceased. Paragraphs 10 and 11 of the decision in the case of *S. Vasanti and another Vs. Adhiparasakthi Engineering College and another(supra)* is usefully quoted as under:-

“10. A perusal of the affidavit filed by the appellant No.1 before the Tribunal would reveal that she had specifically stated that two of her son's classmates were gainfully employed with well known companies in India and were drawing monthly income of Rs.39,869/- and Rs.44,588 respectively. It will be relevant to note that neither the Tribunal nor the High Court has adverted to these averments made by appellant no.1.

11. It could thus be seen that the deceased-S. Sathyanarayan was 23 years of age at the time of accident. He was a qualified Engineering graduate and was pursuing an MBA degree at SRM University to further his professional capabilities. In view of the specific averments made in the affidavit as to the employment prospects of the classmates of the deceased-S. Sathyanarayan and also his young age at the time of accident, we are of the considered view that the Tribunal and the High Court have erred in not giving due weightage to the same. Had the deceased-S. Sathyanarayan not met with the unfortunate accident, he would have surely drawn a salary equivalent to that of his classmates or at least an amount near the said amount. Furthermore, the deceased was the only issue of the appellants. Since no parent should have to suffer through the death of their children, much less their only child, we are of the considered view that the monthly income as calculated by the High Court is inadequate.”

16. In this view of the matter, the PW-3 viz. Mr. Nitin Singh having been examined and having stated that after completing MBA, he was recruited as a senior officer at Indorama Synthetics India Ltd and was appointed on a salary of Rs. 15,200/- per month, in my view Rs.15,200/- ought to have been considered as the income of the deceased.

17. Further, it would also be pertinent to refer the Section 168 of the MV Act, which mandates that the amount of compensation that should be determined should be just. Section 168 of the M. V. Act is quoted as under :

“168. Award of the Claims Tribunal. — (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

17.A Also in this regard the decision of the Hon’ble Supreme Court in the case of *A. P. S. R. T. C. vs. M. Ramadevi and Ors. (supra)* is also pertinent. Paragraphs 8 and 9 are usefully quoted as under:-

“8. Learned counsel for the respondents on the other hand submitted that there is no embargo on the Tribunal or the High Court awarding compensation exceeding the amount claimed. It was also submitted

that the interest was reduced to 9% from 12% as fixed by the Tribunal. It was, therefore, submitted that there was no infirmity in the High Courts order.

9. In Nagappa vs. Gurdial Singh and Ors (2003 (2) SCC 274) para 21 as follows:

c1. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award just compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.”

18. Further the decision in the case of *Sanobanu Nazirbhai Mirza & Ors. vs. Ahmedabad Municipal Transport Service (supra)* is also relevant. Paragraphs 8 and 9 whereof are usefully quoted as under:-

“8. In view of the aforesaid fact, we have to hold that it would be just and proper for this court to take a sum of Rs.5000/- as the monthly income of the deceased having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job, wherein the annual income would come to Rs.60,000/-. This Court in judgment of Santosh Devi V. National Insurance Co. Ltd., 2012 ACJ 1428 (SC), has held that an addition of 30% increase must be applied for increase in total income of the deceased over a period of time if he had been alive. Further, in the recent decision in Rajesh v. Rajbir Singh, 2013 ACJ 1403 (SC), this Court while

referring to the case of Santosh Devi (supra) held that in the case of self-employed persons or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects of the deceased. Keeping in view the five dependants of the deceased in the case on hand, 1/5th amount is to be deducted for personal expenses. Having regard to the age of the deceased as 25, as mentioned in the post mortem report, which age is taken by both the Tribunal as well as the High Court, and keeping in mind the life expectancy of the deceased, multiplier of 20 must be applied to the multiplicand for the purpose of quantifying loss of dependancy. Further, following the decision of this Court in Rajesh V. Rajbir Singh (supra), Rs.1,00,000/- must be added under the head of loss of consortium and Rs.1,00,000 under the head of loss of care and guidance for minor children. Further, it was held by this Court in the case referred to supra that Rs. 25,000/- must be awarded for funeral expenses as this Court has made observations in the case referred to supra that the Tribunals have been frugal in awarding the compensation under the head 'funeral expenses' and hence, we award Rs.25,000 under the head of funeral expenses to the claimants/legal representatives. Hence, the total compensation has to be assessed under the various heads as follows :

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculations</i>
<i>(i)</i>	<i>Income</i>	<i>Rs.5,000 p.m.</i>
<i>(ii)</i>	<i>50 percent of above to be added as future prospects [Rs.5,000 + Rs.2,500]</i>	<i>Rs.7,500 p.m.</i>
<i>(iii)</i>	<i>1/5th of (ii) to be deducted as per personal expenses of the deceased [Rs.7,500 – Rs.1,500]</i>	<i>Rs.6,000 p.m.</i>
<i>(iv)</i>	<i>Compensation after multiplier of 20 is applied [Rs.6,000 x 12 x 20]</i>	<i>Rs. 14,40,000</i>

(v)	<i>Loss of consortium</i>	<i>Rs. 1,00,000</i>
(vi)	<i>Loss of care and guidance for minor children</i>	<i>Rs. 1,00,000</i>
(vii)	<i>Funeral and obsequies expenses</i>	<i>Rs. 25,000</i>
(viii)	<i>Pain, loss and suffering</i>	<i>Rs. 25,000</i>
(ix)	<i>Medical expenses</i>	<i>Rs. 3,000</i>
(x)	<i>Attendant charges and transportation expenses</i>	<i>Rs. 3,000</i>
<i>Total compensation awarded</i>		<i>Rs.16,96,000</i>

The amount of Rs.16,96,000/-as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal principles of Nagappa Vs. Gurudayal Singh & Ors. 2003 ACJ 12 (SC) at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

“(7)There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could

be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.”

9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants.”

19. Therefore, in my view, there is no embargo or restriction on this Court to grant more than the amount claimed by the Appellants and that just, reasonable and proper compensation is to be awarded.

20. The Hon'ble Supreme Court in the case of *Sarla Verma & Ors Vs. Delhi Transport Corporation and Anr. (supra)* has held that the compensation is required to be calculated considering the age of the deceased. Paragraph 18 of the said decision is usefully quoted as under:-

"18. Basically only three facts needs to be established by the claimants for assessing compensation in the case of death:

- (a) age of the deceased;*
- (b) income of the deceased; and*
- (c) the number of dependents.*

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- (i) additions/deductions to be made for arriving at the income;*
- (ii) the deduction 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.*

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay"

21. Therefore, it is clear from the above that the compensation is to be decided on the basis of the age of the deceased, the income of the deceased and the number of dependents and the loss of dependency is to be determined on the basis of the additional deductions to be made for arriving at the income, the deduction to be made towards the

personal living expenses of the deceased and the multiplier to be applied with reference to the age of the deceased. Paragraph 42 of the decision in the case of *Sarla Verma & Ors Vs. Delhi Transport Corporation and Anr.(supra)* which refers to the application of multiplier that is to be used is usefully quoted as under:-

“42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas ((1994) 2 SCC 176), Trilok Chandra ((1996) 4 SCC 362) and Charlie ((2005) 10 SCC 720), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 to 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years”.

22. The aforesaid has been confirmed by the constitution Bench of the Hon’ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Ors.(supra)*. Paragraph 61 of the said decision is usefully quoted as under:-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi, 2012 ACJ 1428 (SC), should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, 2009 ACJ 1298 (SC), a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot

take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh, 2013 ACJ, 1403 (SC), has not taken note of the decision in Reshma Kumari, 2013 ACJ 1253 (SC), which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) 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.

(iv) 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.

(v) For determination of the multiplicand, the deduction towards personal and living expenses, the Tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

23. It is therefore, quite clear that multiplier has to be applied and that too to compute the compensation as per the age of the deceased.

24. Mr.Misar, learned Counsel for Respondent No.2-Insurance Company has also tendered the calculations on behalf of the Insurance Company. Learned Counsel would submit that as far as the submissions on behalf of the Appellant-Claimant with respect to the working of the compensation are concerned, except with respect to the heads pertaining to “Loss of Estate” and “Funeral Expenses”, the Insurance Company should not have any particular objection. However, with respect to those two heads, learned Counsel would submit that the computation of loss of estate should be Rs. 16,500/-, and funeral expenses should be Rs. 16,500/-, on the basis of the decision of the Hon’ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Ors.*⁶ Learned counsel would therefore, submit that the amounts of Rs. 20,000/- each as proposed against the aforesaid two heads may not be appropriate.

25. Mr. Mendon, learned Counsel for the Appellant strongly opposes the submission and submits that the same is not in line with the

6 2017 ACJ 2700

decision in the case of *N. Jayasree and Others Vs. Cholamandalam MS General Ins. Co. Ltd.*⁷.

26. I have perused the decision of the Hon'ble Supreme Court in the case of *N. Jayasree and others (supra)*. Paragraphs No. 34 and 35 of the said decision are usefully quoted as under:-

“34. A three-Judge Bench of this court in United India Insurance Co. Ltd v. Satinder Kaur, 2020 ACJ 2131 (SC), after considering Pranay Sethi, has awarded loss of spousal consortium at the rate of Rs.40,000 and loss of parental consortium to each child at the rate of Rs.40,000/-. The compensation under these heads also needs to be increased by 10 per cent. Thus, loss of spousal consortium is awarded at Rs.44,000, and loss of parental consortium is awarded to the two children at the rate of Rs.44,000 each; total : Rs.88,000.

35. Thus, the appellants are entitled to compensation as under:

<i>(i) Towards loss of dependency</i>	<i>Rs. 84,16,815</i>
<i>(ii) Loss of estate</i>	<i>Rs. 16,500</i>
<i>(iii) Funeral expenses</i>	<i>Rs. 16,500</i>
<i>(iv) Loss of spousal consortium</i>	<i>Rs. 44,000</i>
<i>(v) Loss of parental consortium</i>	<i>Rs. 88,000</i>
	<i>-----</i>
<i>Total</i>	<i><u>Rs.85,81,815”</u></i>

27. It is observed from the above quoted paragraphs that although the Hon'ble Supreme Court awarded loss of spousal consortium as well as parental consortium at the rate of Rs. 40,000/- each, the

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compensation with respect to loss of estate and funeral expenses was Rs. 16,500/- each and not raised to Rs. 20,000/- as claimed by Mr. Mendon. I am, therefore, not inclined to accept the arguments of Mr. Mendon in this regard and the amount towards loss of estate and funeral expenses be taken as Rs. 16,500/- each.

28. Mr. Misar has also raised an objection that in the event the compensation amount is enhanced by this Court, pursuant to Section 7 of the Maharashtra Court Fees Act-1959, the Appellants would need to pay a deficit Court Fees. That to my mind is a consequence in law which the Appellants would have to follow.

29. Mr. Mendon had drawn the attention of this Court to Section 171 of the Motor Vehicles Act to submit that interest should be paid from the date of the claim and not from November 2003. In this regard, Section 171 of the MV Act is usefully quoted as under:-

***“171. Award of interest where any claim is allowed ----
Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”***

30. It is clear from the above provision that the Court can direct in addition to the amount of compensation simple interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. This means that the Court has discretion to award the simple interest on the compensation not earlier than the date of the claim. Awarding interest from the date when the matter was posted for hearing without written statement may cause injustice to the already delayed claim. I am, therefore, of the view that, interest be awarded from the date of the claim application. The Tribunal, therefore, in my view, has erred in awarding interest at the rate of 7.5% from November 2003. With respect to the rate of interest that has been awarded by the Tribunal, I am not inclined to interfere with the said rate as 7.5 % is a rate which is more than the bank interest rate available as on date and therefore, no interference is required with respect to the rate of the interest awarded to the Appellants.

31. In view of the above discussion, this Court is of the view that the Appellants are entitled to total compensation of Rs.24,19,240/- as per the following calculation:-

<i>Sr No.</i>	<i>Particulars</i>	<i>Amount</i>
1	Monthly Income	Rs.15,200/-
2	Future Prospects (40% of Rs.15200/-)	Rs. 15,200/- + Rs.6,080 = Rs.21,280/-
3	Deduction of personal expenses (50% of Rs 21,280/-), since the deceased was bachelor	Rs. 10,640/-
4	Compensation on Dependency (Multiplier of 18)	Rs.10,640 x 12 x 18 = Rs 22,98,240/-
5	Loss of Estate	Rs.16,500/-
6	Funeral Expenses	Rs.16,500/-
7	Loss of Consortium (As there are 2 Applicants)	Rs. 44,000/- x 2 = Rs.88,000/-
	TOTAL COMPENSATION (4+5+6+7)	Rs.24,19,240/-
	COMPENSATION AWARDED BY LD. MACT MUMBAI	Rs.2,00,000/-
		Rs.22,19,240/-

32. (a) The judgment and award dated 18th July 2005 of the M.A.C.T. is hereby accordingly modified.

(b) As, admittedly, Rs.2,00,000/- awarded by the Tribunal including NFL has already been withdrawn by the Appellants, let the balance of the compensation of Rs. 22,19,240/- be paid by the Respondent No.2-Insurance Company to the Appellants in equal proportion together with interest @ 7.5% p.a. from the date of the Claim

Petition till the payment and/or realisation, subject to payment of deficit Court Fees, within a period of six weeks.

(c) The modified award be drawn up accordingly.

33. Appeal is allowed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.)