

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 40 OF 2019

Reliance General Insurance Co. Ltd. }
 Through Its Corporate Office, }
 4th Floor, Chintamani Avenue, }
 Off Western Express Highway, }
 Goregaon (E), Mumbai-400 063. } **...Appellant**

Versus

1. Smt. Bharati Jaywant Mhatre }
2. Kum. Swapnali Jaywant Mhatre }
 }
 Both R/at Koproli, Post-Saral, Taluka- }
 Alibag, District-Raigad. }
3. Sureways Shipping Solutions }
 Godown No.J-8, }
 Jay Bhavani Compound, Purna Village, }
 Bhiwandi } **...Respondents**

...

Mr. Rahul Mehta i/b KMC Legal Venture Advocate for the Appellant.
 Mr. T. Mendon, Advocate for the Respondent Nos. 1 & 2.

...

CORAM : S. G. DIGE, J.

DATE : 20TH FEBRUARY, 2023.

JUDGMENT :-

1. The issue involved in this appeal is the income of deceased considered on higher side and deduction of amount for personal expenses.

2. It is the contention of learned counsel for appellant that deceased was working in private company. There was no evidence on record about his monthly salary but Tribunal has considered his income at Rs. 50,181/- which is on higher side.

3. Learned counsel further submits that at the time of accident, deceased was Bachelor, so deduction for personal expenses should be 1/2, but Tribunal has deducted 1/3 which is not proper. Hence, requested to allow the appeal.

4. Learned counsel for respondents-claimants submits that the claimants have examined the witness from the company of deceased to prove his income and it has been proved before the Tribunal that deceased was getting salary of Rs. 50,181/-. He was also getting overtime but the Tribunal has not considered the overtime and has considered the monthly income only, which is proper.

5. Learned counsel further submits that though deceased was a Bachelor, he was maintaining his widowed mother and younger unmarried sister. So deduction of personal expenses would

be 1/3 and not 1/2. He relied on **Sarla Verma V/s. Delhi Transport Corporation¹**

6. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. To prove the income of deceased, the claimants have examined Talvir Shaikh, Officer Capro Management this witness has stated that deceased Swapnil was working in Capro Management Solution Pvt. Ltd. and he was getting Rs. 50,181/- as salary. He was also getting overtime. The salary slips of the deceased are at Exhibits 41 and 42. The Tribunal has not considered the amount of overtime paid to the deceased but has considered monthly salary of deceased at Rs. 50,181/-. I do not find any infirmity in it. In respect of deduction of personal expenses, it is the contention of learned counsel for appellant that as deceased was a Bachelor, it should be 1/2 and not 1/3. The Hon'ble Apex Court in the case of **Sarla Varma (supra)** in para 32 has observed that where the family of Bachelor is large and dependent on the income of deceased as in a case where he has widowed mother large number of younger and non earning sisters or brothers, his personal and living expenses may be restricted to 1/3 and contributing to the

1 (2009) 6 SCC 121

family will be taken as 2/3. In the present case, claimant no. 1 is widowed mother of deceased and claimant no. 2 is unmarried younger sister of the deceased. In view of the observations of Hon'ble Apex Court, the personal expenses considered by the Tribunal is proper. In view of the above, appeal is devoid of merit and I pass following order.

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it.
- iii. All pending Civil Applications, if any, are disposed of.

(S. G. DIGE, J.)