

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 702 OF 2016

IN

M.A.C.P. NO. 34 OF 2013

1. Jagannath Anna Gavade

Age – 54 years, Occupation- Agriculture

2. Shalan Jagannath Gavade

Age- 49 years, Occupation- Household

3. Dadaso Jagannath Gavade,

Age- 24 years, Occupation- Education

R/o. Brhamnal, Tal. Palus, Dist. Sangli

...Appellants
(Orig.
Claimants)

Versus

1. Shashikant Bhupal Khandekar,

Age- 45 years, Occupation- Driver

(Driver of the offending vehicle, Truck No. MHL-4113)

R/o. Nehrunagar, Taluka Tasgaon,

District Sangli.

2. Balaso Datta Patil,

Age- Major, Occupation- Commerce,

R/o. Nimani, Taluka Tasgaon,

District Sangli (Owner of offending vehicle as per their document)

3. Krishna Dattu Patil,

Age- Major, Occupation- Commerce,

R/o. Nimani, Taluka Tasgaon,

District Sangli (Owner of offending vehicle Truck No.MHL-4113 as per document of insurance)

4. The New India Assurance Co. Ltd.

Address- Civil Road, Sangli

...Respondents
(Orig.
Opponents)

Mr. Tejpal S. Ingale, Advocate for the Appellants.

Mr. Nilesh Wable, i/b Umesh R. Mankapure, Advocates for Respondent Nos.1 to 3.

Mr. Sandeep Jinsiwale, Advocate for Respondent No.4.

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON: AUGUST 19, 2024

PRONOUNCED ON: AUGUST 27, 2024

JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. This First Appeal is a challenge to an impugned Judgment and Award passed by Motor Accident Claims Tribunal, Sangli (“**MACT**”) dated 13th August, 2015 (“**Impugned Judgement**”) whereby the Appellants, the next of kin of a 19-year old Sagar Gavade, who died in a motor accident, seek enhancement of the compensation awarded.

2. At the core of the challenge lie three contentions of the Appellants namely:-

- a) incorrect reliance on the age of the parents of the deceased, instead of reliance on the age of the deceased, in arriving at the multiplier factor;

b) non-consideration of filial consortium;

c) and non-consideration of loss of future prospects in computing the compensation.

3. On 7th January, 2023, a Learned Single Judge issued notice and indicated that an endeavour would be made to dispose of the First Appeal at the admission stage. By consent of the parties, on 19th August, 2024, the Appeal was taken up for final hearing and disposal.

4. Mr. Tejpal S. Ingale, Learned Counsel for the Appellants (the parents and brother of the deceased) took me through the record to point out that the MACT had awarded compensation in the cumulative sum of Rs.2,54,000/-. The Respondents have not preferred any Appeal, meaning thereby, they do not quarrel with the insurable interest or with the fact that compensation was payable. However, Mr. Ingale would seriously fault the Impugned Judgment for evidently adopting a wrong multiplier of '13' by taking into account the age of the deceased's parents instead of factoring in the age of the deceased, which would have led to a multiplier of '18'. At the relevant time, the deceased's parents were aged 52 years and 47 years respectively whereas the deceased was aged 19 years. Consequently, he would submit, in terms of the computation

table stipulated by the Supreme Court of India in *Sarla Verma And Others v. Delhi Transport Corporation And Another*¹ (“***Sarla Verma***”), the multiplier factor must necessarily depend on the age of the deceased rather than the age of the deceased’s parents. Evidently, Sarla Verma has been noticed in the Impugned Judgment but the principles stipulated therein have been ignored.

5. Next, Mr. Ingale would submit that it is now trite law the concept of “consortium” has to be applied when computing compensation in motor accident cases. Likewise, conventional heads such as loss of estate, and funeral expenses must also be accounted for, he would submit, and consequently, the Impugned Judgment lends itself to be corrected in this First Appeal. In this regard Mr. Ingale would advert to the conclusions recorded in *National Insurance Co. Ltd. v. Pranay Sethi*² (“***Pranay Sethi***”), rendered by a Constitution Bench of five Judges of the Supreme Court, which also endorsed the multiplier table stipulated in ***Sarla Verma***.

6. Finally, and this is the most contentious difference between the parties, according to Mr. Ingale, the MACT was totally wrong in

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

rejecting the *factum* of the deceased being employed in a garment shop despite noticing that the shop owner who had employed the deceased at a daily wage of Rs.200/- having been deposed and cross-examined at length. The only ground on which the deceased's employment on a daily wage has been rejected, Mr. Ingale would submit, is that the MACT found the shop owner to be non-compliant with applicable labour law and did not demonstrate evidence of procedural compliance with requirements imposed on employers.

7. Mr. Sandip Jinsiwale, Learned Counsel appearing on behalf of Respondent No. 4 (New India Assurance Co. Ltd., the insurance company), would fairly state that the facets of the wrong multiplier factor by erroneous reference to the age of the parents (as opposed to the age of the deceased), and the facet of future prospects are now well covered by judgments of the Supreme Court. Mr. Jinsiwale would, however, defend the Impugned Judgment insofar as it returned findings that the Appellants had not proved the fact that the deceased had been working at a daily wage of Rs. 200/-.

8. Mr. Jinsiwale would submit that the MACT had rightly adopted the conventional notional income of Rs.3,000/- per month

since the employment was not proved, and had rightly based the compensation on this basis. By reference to the cross-examination of Mr. Surgonda Balgonda Patil, the owner of the garment store where the deceased was said to have worked on daily wage, Learned Counsel would submit that it is unbelievable that someone would be running a garment store since 1969, claiming to employ 15 employees, and still would do so without compliance with employment laws. In the cross-examination, he would submit, Mr. Patil has professed ignorance of the need to register with labour authorities and to ensure compliance with applicable labour laws. According to him, there is no evidence in the form of signed receipt of the wages from the deceased, or any appointment letter issued to the deceased. Consequently, he would submit that the Impugned Judgment may be modified insofar as it relates to the multiplier factor, future prospects and the like, but all such computations must be made without disturbing the premise that the monthly income of the deceased ought to be a notional sum of Rs.3,000/-.

9. Mr. Nilesh Wable, Learned Counsel for the Respondent Nos.1 to 3 adopted the arguments of Mr. Jinsiwale, and supported the same.

10. Having heard the Learned Counsel at length and upon perusal of the record it becomes clear that the only issue to be dealt with in terms of the difference between the parties is whether it could be reasonably inferred that the deceased was a daily wager earning a sum of Rs.200/- per day (which would lead to a monthly income of Rs.6,000/-). The Appellants submit that since the deceased was a daily wager, factoring in the days when the shop would be closed, or other non-attendance at work, it would be reasonable to compute that the fair estimate would be a working period of 20 days per month, which would bring the monthly income to Rs.4,000/-.

11. Towards this end, it is evident, that the employer Mr. Patil, had indeed been examined at Exhibit 49 and he has confirmed that he was paying the deceased a sum of Rs.200/- per day. It is also apparent from the books of account of the employer that between 2nd October, 2012 and 31st October, 2012 the deceased had indeed been given cash wages of Rs.200/- per day. The extract from the ledger also shows the respective voucher number in the books of account maintained by the employer who was running a garment store in the name of Prakash Vastra Niketan since it appears that the deceased had indeed been earning a sum of Rs.200/- per day. The employer, himself aged 70, has

taken the trouble to present himself for participation in the proceedings and subjected himself to being examined and cross-examined. It is also evident from the material on record that Prakash Vastra Niketan, had a MVAT TIN Number and a CST TIN Number, which are registration numbers assigned by the state and central sales tax authorities. Therefore, it can be nobody's case that the said store did not exist and that the entire record is a sham to somehow project an income stream for the deceased.

12. The material on record indeed suggests that the daily wage of the deceased inspires a ring of truth. In my opinion, non-compliance by an employer with labour law compliance requirements applicable to his establishment, cannot be determinative of whether the deceased was being paid a daily wage of Rs.200/- for purposes of compensation in motor accident claims. There is nothing on record to suggest any other motivation or connection for a 70-year old employer to take the trouble of participating in the proceedings only to lead false evidence, and that too for negligible amounts. It is a matter of public social knowledge that in the unorganized sector, where daily wage earners are engaged, there may not be an issuance of an employment or appointment letter, attendance register and the like. In fact, not only has the employer

brought on record his ledger of payments made to the deceased, but also there is nothing to suggest any motivation for his presenting an inflated picture. While the daily wages of the deceased are pegged at Rs.200/-, it would stand to reason that the employer would have no axe to grind, to lead evidence to inflate the earnings of the deceased. Consequently, the defence of the Impugned Judgement by the insurer does not commend itself to acceptance.

13. The standard of proof to be brought to bear in proceedings such as these is one of “preponderance of probability” and not a standard of “beyond reasonable doubt”. The standard that the Impugned Judgment appears to apply, namely, the non-compliance with employment laws by the employer can be extrapolated to suggest that there was no employment of the deceased, is not convincing, going by the material on record.

14. As regards the two facets of the multiplier factor and future prospects, and other attendant issues emanating from the law declared in *Sarla Verma* and *Pranay Sethi*, a quick word would be in order. In *Sarla Verma*, the Supreme Court (in paragraph 40) tabulated the multipliers indicated in various judgments of the Supreme Court

rendered until then, to stipulate that the multiplier table as set out in *U.P. SRTC Vs Trilok Chandra*³ and clarified in *New India Assurance Co. Ltd. Vs Charlie*⁴ would be the appropriate multiplier to be applied in claims for compensation under Section 166 of the Motor Vehicles Act, 1988. In this table, where the age of the deceased is between 15 and 20 years the multiplier scale stipulated is '18'. In paragraph 42 of ***Sarla Verma***, the Supreme Court explicitly stipulated that the multiplier of 18 must be applied where the age of the deceased is between 15 and 20 years.

15. Despite noticing ***Sarla Verma***, the MACT was evidently in error by not applying the aforesaid explicit declaration of law in that very judgement. So also, in Paragraph 31 of ***Sarla Verma***, the Supreme Court further stated that in regard to bachelors, 50% may be deducted as personal and living expenses. We note that the Impugned Judgment has indeed adopted the aforesaid discount of 50% but on the base derived from a notional income of Rs.3,000/- per month and applying a multiplier of '13' instead of '18'.

16. The following declarations by the Supreme Court in ***Sarla Verma*** are extracted below:-

³ (1996) 4 SCC 362

⁴ (2005) 10 SCC 720

18. Basically only three facts need 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 dependants.

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.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

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.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency” to the family.

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

[Emphasis Supplied]

17. In ***Pranay Sethi***, not only is the ratio in ***Sarla Verma*** endorsed but also how to compute attendant facets of the compensation has been spelt out. For completeness, the following extracts from ***Pranay Sethi*** would be noteworthy:-

59. In view of the aforesaid analysis, we proceed to record our conclusions:

59.1. The two-Judge Bench in Santosh Devi 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, 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.

59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. 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.

[Emphasis Supplied]

18. Each side has submitted a chart showing the working of how the just and reasonable compensation must be computed in a compliant manner. The core difference between the two is whether the income should be taken at Rs.3,000/- per month or Rs. 4,000/- per month. In all other respects, the parties appear to have no difference, and have

entered the same figures and adopted the same approach.

19. Consequently, since I am of the view that the Appellants have succeeded in demonstrating that the daily wage of the deceased in the period just preceding his demise was Rs. 200/-, this Appeal is *disposed of* in the following terms:-

- i) The loss of income attributable to the deceased may be taken at Rs.4,000/- per month. The figure of Rs. 6,000/- per month, which would be the amount derived for a full month of working at a daily wage of Rs.200/-, is not being adopted. Discounting for non-attendance and the like, it would be appropriate to assume 20 working days in a month, leading to a monthly income of Rs.4,000/-;
- ii) Consequently, the annual income could be Rs.48,000/-;
- iii) Future prospects at 50% of the amount is allowed, as contained in the tables provided by both sides, but on the base income amount of Rs.48,000/- per annum, which would lead to a further addition of Rs.24,000/-, taking the total annual amount to Rs.72,000/-;

- iv) A personal deduction of 50% on such amount would lead to the base compensation amount working out to Rs.36,000/-;
- v) Now, applying the multiplier factor of '18' (correcting it from '13'), the amount of Rs. 36,000/- would lead to a compensation amount of Rs. 6,48,000/-;
- vi) The parties are agreed that the non-pecuniary elements, would lead to the following additions:-
 - a) loss of estate of Rs.18,000/-;
 - b) funeral expenses at Rs.18,000/-;
 - c) filial consortium at Rs.48,000/-;
- vii) Consequently, the total amount of compensation computed would work out to Rs. 7,32,000/-. Reducing the amount of Rs.2,54,000/- already paid by the insurer, the balance amount payable to the Appellants shall be Rs. 4,78,000/-.

20. Such additional amount of Rs. 4,78,000/- towards enhanced compensation shall be paid by Respondent No.4, who has carried the

burden of defending the Impugned Judgment, within a period of three weeks from today. The Impugned Judgement has granted interest at the rate of 8% per annum, effective from the date of the filing of the claim petition until actual realisation. Such interest rate shall also apply to the enhanced amount. Consequently, interest on the differential shall be payable from the date of the claim i.e. 16th January, 2013 until actual payment.

21. It is made clear that for purposes of disposing of this First Appeal, it is not necessary to enter upon the *inter se* rights among the Respondents in terms of the insurance policy. Any such *inter se* adjustments among them may be pursued subject to applicable law, but after the Appellants have been paid.

22. The Appeal is ***finally disposed of*** in the aforesaid terms. There shall be no order as to costs.

23. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]