IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.654 OF 2002

Pushpadevi Wd/o Madanlal Bagadiya
Aged about 52 years, Occ: Household,
R/o Gorkashan Road, Akola,
Tq. and Distt. Akola.

...APPELLANT

...V E R S U S...

1. The Oriental Insurance Co. Ltd.,
through its Divisional Manager,
At Old Cotton Market, Akola.

2. Abdul Wafa S/o Abdul Raheman,
Aged about 46 years, Occ: Driver,

3. Faiz Mohammad Asif Ali Khan,
Age – Adult, Occ: Businessman

Nos.2 and 3, R/o Bazar Patinka,
House No.424, 3rd Floor, Block No.23,
Ansari Road, Fort, Nizampura, Bhiwandi,
Dist. Thane.

...RESPONDENTS

Shri S.A. Mohta, Advocate for Appellant.
Shri Lalit Limaye, Advocate for respondent no.1.

CORAM:- M.W. CHANDWANI, J.
DATE :- 19.08.2024.

ORAL JUDGMENT:

1. This appeal preferred under Section 173 of the Motor Vehicles Act, 1988 assails the judgment and order dated 06.05.2002 passed by the Motor Accident Claims Tribunal, Akola

(hereinafter referred to as "Tribunal" for short) in M.A.C.P. No.112/2001.

2. By the impugned award dated 06.05.2002 the Tribunal granted compensation of Rs.2,15,000/- alongwith interest at the rate of 9% p.a. from the date of the claim petition i.e. 26.04.2001 to the appellant/claimant on account of death of her son Nareshkumar Madanlal Bagadiya aged about 23 years in vehicular accident on 01.12.1990.

The factual matrix of the case appears in the impugned award as under:

3. On 01.12.1990, deceased was riding the motorcylce and proceeding towards the side of S.T. Stand. Offending vehicle i.e. Truck bearing registration no.MCY-758, which was ahead of the motorcycle, gave a dash to the motorcycle. The driver of the said offending truck was driving the vehicle in rash and negligent manner. While deceased was overtaking the offending vehicle, the driver of the truck turned the towards the right side. In the said accident, the deceased died on the spot. The claim petition came to be filed claiming monthly income of deceased as Rs.7,000/- from the proprietorship of Gajanan Enterprises. The petitioner claimed compensation of amount of Rs.10,00,000/-. Respondent no.1 – Insurer came up with a case of no fault on the part of the truck and prayed for dismissal of the petition.

4. The learned Tribunal after hearing the claim petition on merits relied on the version of the claimant and held that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner, which is the cause of accident and allowed the petition granting compensation of Rs.2,15,000/- by holding that there is a monthly loss of Rs.1,500/- to the claimant. On that premise the yearly loss of income to the claimant was arrived at Rs.18,000/- per annum and by applying multiplier of 11, considering the age of the claimant, the aforesaid compensation was directed to be paid to the appellant, a widow. Feeling aggrieved with the said quantum of compensation, the basis of calculation and multiplier, the appeal came to be filed by the claimant.

5. The challenge to the impugned award is on the ground that the Tribunal has held the yearly income of the deceased at the rate of Rs.54,000/- to Rs.60,000/- and erroneously considering the monthly income which he would be providing to the claimant, the compensation was granted to the claimant. It is the contention of the appellant that the multiplier was to be applied by considering the age of the deceased but the Tribunal wrongly applied the multiplier considering the age of the claimant which is against the settled principle of law. Relying on the decision of *Munna Lal Jain and Another Vs. Vipin Kumar Sharma and others*[1], the learned counsel for the appellant submitted that it is the age of the deceased which has to be considered for applying the multiplier.

6. Learned counsel for respondent no.1 submitted that the learned Tribunal has rightly considered the compensation at the rate of Rs.1500/- per month to the claimant since, the deceased would have provided support of Rs.1500/- per month. It is further submitted that the claim petition was decided as per prevailing laws at the relevant time in the year 2002 by applying the multiplier considering the age of claimant, therefore, he supported the award and sought dismissal of the appeal.

7. Relying on the decision of *Sarla Verma vs. Delhi Transport Corporation*[2], the Supreme Court in the case of *Munna*

1 **(2015) 6 SCC 347**
2 **(2009) 6 SCC 121**

Lal Jain (*supra*) it has been held that for assessing compensation the age of the deceased and income of the deceased have to be considered. The relevant para of judgment is reproduced here:

> *"11. The remaining question is only on multiplier. The High Court following Santosh Devi, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: (Reshma Kumari case, SCC P. 88, para 36)*
>
> *36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."*

8. Thus, considering the law laid down by the Supreme Court in the above referred decisions, the income as well as age of the deceased has to be considered while applying the multiplier. The Tribunal erroneously assessed the compensation on the basis of support required by the respondents instead of the income and also by applying the multiplier on the age of the claimant. Therefore, this finding is required to be set aside. Considering the average income shown in the returns of income, the income of the deceased is assessed as of Rs.6,000/- per annum.

9. Needless to mention that the decision of Supreme Court in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi and others* [1] is applicable to the facts of the present case wherein the Supreme Court in para 61(iv) held as under:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
> *..........*
> *..........*
> *(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."*

1 **2017 (16) SCC 680**

10. It is worthwhile to mention the decision of *Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors.*[1], wherein the Supreme Court has held that parents are also entitled for Filial consortium at rate of Rs.40,000/- apart from the compensation towards funeral expenses and loss of estate at the rate of Rs.15,000/- each. In the wake of this, the appellant shall be entitled for the following compensation :

1.	Monthly notional income of the deceased fixed by the Tribunal	Rs.	5,000/-
2.	Annual income of the deceased (Rs.5,000/- x 12)	Rs.	60,000/-
3.	Since the deceased was below the age of 40 years at the time of his death. **Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	24,000/-
		Rs.	84,000/-
4.	**Less** – ½ deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121	(-) Rs.	42,000/-
5.	Salary for multiplier	Rs.	42,000/-
6.	**Multiplier** of 18 as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121, applicable for the age groups of 15 to 20 and 21 to 25 years (Rs.42,000 x 18)	(x) Rs.	7,56,000/-
7.	**Add** : Loss of Consortium : Rs.40,000/- for each claimant as per the judgment of	(+) Rs.	40,000/-

1 ***(2018) 18 SCC 130***

	Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130 followed in United India Insurance Co. Ltd. vs. Satinder Kaur – AIR 2020 (SC) 3076		
8.	**Add** : Loss of Estate	(+) Rs.	15,000/-
9.	**Add** : Funeral Expenses	(+) Rs.	15,000/-
10.	**Total compensation payable to the claimant**	**Rs.**	**8,26,000/-**

11. At this stage, learned counsel for respondent no.1 submits that the appeal came to be dismissed in default on 02.07.2015 and restored after nine years on 17.04.2024, therefore, the claimant would not be entitled to the interest for the said period.

I find substance in the argument of learned counsel for respondent no.1 that the appellant was not diligent in prosecuting the appeal and the appeal came to be dismissed in default on 02.07.2015 and application for restoration came to be filed on 03.05.2017, therefore, the appellant shall not be entitled for the interest for this period.

12. In view of the above said discussion, the award passed by the impugned order is modified as under :

13. Respondent Nos.1, 2 and 3 are jointly and severally liable to pay compensation of Rs.8,26,000/- to the claimant with interest at the rate of 9% per annum from the date of claim petition i.e. 26.04.2001 till its realization except for the period from 02.07.2015 to 03.05.2017.

14. Rest of the impugned judgment and award of the Tribunal shall remain intact.

15. The appeal is partly allowed and disposed of in the aforestated terms with no order as to costs.

16. Award be drawn accordingly.

JUDGE

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