

N. Jayasree & Ors. Vs. Cholamandalam Ms. General Insurance Company Ltd.

Civil Appeal No. 6451 of 2021 arising out of S.L.P. (C.) No. 14558 of 2019
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Full judgment text

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S. Abdul Nazeer, J.

1. Leave granted.

2. This appeal is directed against the judgment dated 09.08.2017 passed by the High Court of Kerala at Ernakulam in MACA No. 1560 of 2013. Through the impugned judgment, the High Court scaled down the amount of compensation payable to the present appellants and thereby modified the award dated 26.04.2013 passed by the Motor Accident Claims Tribunal, Kottayam (for short 'MACT') in OP(MV) No.843 of 2011.

3. The appellants filed the aforesaid claim petition before the MACT seeking compensation on account of the death of N. Venugopalan Nair in a motor vehicle accident which occurred on 20.06.2011. Appellant no.1 is the wife of the deceased, appellant nos. 2 and 3 are his daughters and appellant no.4 is his motherinlaw.

4. There is no dispute as to the occurrence of the accident and the liability of the respondentinsurer to pay the compensation. In view of this admitted position, it is unnecessary to narrate the factual aspects of the accident.

5. The deceased was aged 52 years at the time of the accident. The MACT took the annual salary of the deceased as Rs.8,87,148. To this, the MACT applied a multiplier of '11'and deducted onefourth (1/4th) of the income towards his personal expenses for the purpose of calculation of the compensation under the head of loss of dependency.

A total sum of Rs.73,18,971/(Rupees seventythree lakhs eighteen thousand nine hundred seventyone only) was awarded towards loss of dependency. The MACT awarded a total sum of Rs. 74,50,971/(Rupees seventyfour lakhs fifty thousand nine hundred seventyone only) towards compensation with interest @ 7.5 per cent per annum from the date of the claim petition till the date of realization. Thus, the amount awarded to the appellants is as under:

6. However, the High Court held that appellant no.4 was not a legal representative of the deceased. Further, the High Court held that the MACT ought to have applied split multiplier for the assessment of the dependency compensation. The High Court fixed monthly income of the deceased as Rs.40,000/(Rupees forty thousand only) and deducted onethird (1/3rd) of the income towards his personal expenses.

It applied multiplier '7'for calculating dependency compensation for the postretiral period and, for the preretirement period, a multiplier of '4'was applied. Accordingly, the High Court awarded compensation of Rs.23,65,728/(Rupees twentythree lakhs sixtyfive thousand seven hundred twentyeight only), towards loss of dependency for preretiral period and a sum of Rs.22,40,000/(Rupees twentytwo lakhs forty thousand only) towards loss of dependency for postretiral period.

A sum of Rs.1,00,000/(Rupees one lakh only) was awarded towards loss of consortium, Rs.25,000/(Rupees twentyfive thousand only) towards funeral expenses, and Rs.80,000/(Rupees eighty thousand only) towards loss of love and affection. In total, a sum of Rs.48,39,728/(Rupees fortyeight lakhs thirtynine thousand seven hundred twentyeight only) was awarded as compensation by the High Court.

7. We have heard the learned counsel for the parties. Learned counsel for the appellants submits that the High Court was not justified precluding appellant no.4 as legal representative of the deceased. She is the motherinlaw of the deceased and was living with the deceased and his family members. Therefore, she was entitled to be treated as a legal representative for the purpose of determination of compensation.

Accordingly, 1/4th of the income of the deceased should have been deducted towards his personal expenses.

Further, it was contended that the High Court was not justified in applying a split multiplier having regard to the judgment of this Court in *Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.*¹ and the subsequent Constitution Bench judgment of this Court in *National Insurance Company Limited vs. Pranay Sethi and Ors.*² It was also argued that the deceased was a meritorious person who possessed the qualification of M.Sc. M.Phil. His monthly salary was Rs.83,831/which is evident from the materials on record. The High Court took his monthly income as Rs.40,000/for the purpose of calculation of loss of dependency without any justification. In view of the above, the High Court was not justified in scaling down the amount of compensation awarded by the MACT.

8. On the other hand, learned counsel for the respondent submits that the deceased was aged 52 years at the time of the accident. He would not have earned the same monthly income after his retirement. In view of the same, the High Court applied a split multiplier for calculating the loss of dependency. It was also argued that appellant no.4, who is the motherinlaw of the deceased, cannot be treated as his legal representative. Further, it was contended that the High Court was justified in taking the monthly salary of the deceased as Rs.40,000/and deducting 1/3rd of the income towards the personal expenses, fair compensation has been awarded towards loss of dependency.

9. In view of the above, the questions for consideration before us are: (I) whether the High Court was justified in precluding the motherinlaw of the deceased (appellant no.4) as his legal representative? (II) whether the High Court was justified in applying a split multiplier? (III) based on the findings on the preceding questions, what is the amount of compensation that should be awarded to the appellants? (I) whether the High Court was justified in precluding the motherinlaw of the deceased (appellant no.4) as his legal representative?

10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In *Sarla Verma*¹, this Court has laid down as under:

"16. "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the wellsettled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

11. In *Sarla Verma*¹ it was further held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be onethird (1/3rd) where the number of dependent family members is between 2 and 3, onefourth (1/4th) where the number of dependent family members is between 4 and 6, and onefifth (1/5th) where the number of dependent family members exceeds six.

12. In the instant case, the appellants have contended that the motherinlaw of the deceased was staying with the deceased and his family members since a long time. Taking into consideration the number of dependents of the deceased including his motherinlaw (four in number), the MACT had deducted one fourth (1/4th) of the income towards his personal expenses. However, the High Court has held that appellant no.4 being the motherinlaw of the deceased, cannot be reckoned as a dependent of the deceased. The High Court, therefore, determined the number of dependents as 3 and accordingly deducted onethird (1/3rd) of the income of the deceased towards his personal expenses.

13. Section 166 of the MV Act provides for filing of an application for compensation. The relevant portion of the said Section is as under:

"166. Application for compensation. -

(1) An application for compensation arising out of an accident of the nature specified in subsection (1) of section 165 may 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:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

14. The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative' may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

15. Indicatively for the present inquiry, the Kerala Motor Vehicle Rules, 1989, defines the term 'legal representative' as under:

"Legal Representative" means a person who in law is entitled to inherit the estate of the deceased if he had left any estate at the time of his death and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased."

16. In our view, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families.

Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.

17. It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependents because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case.

18. In the instant case, the question for consideration is whether the fourth appellant would fall under the expression 'legal representative' for the purpose of claiming compensation. In *Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Anr.*³ this Court while considering the entitlement of the brother of a deceased who died in a motor vehicle accident to maintain a claim petition under the provisions of the MV Act, held as under:

"13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110A to 110F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy.

It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110A of the Act have to be done in accordance with wellknown principles of law.

We should remember that in an Indian family brothers, sisters and brothers'children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents.

We express our approval of the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhagujri* 4 and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110A of the Act if he is a legal representative of the deceased."

19. In *Hafizun Begum (Mrs) vs. Mohd. Ikram Heque and Ors.*⁵ it was held that:

"7. 12. As observed by this Court in *Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique*⁶ the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person.

It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai*³ a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

20. In *Montford Brothers of St. Gabriel and Anr. vs. United India Insurance and Anr.*⁷ this Court was considering the claim petition of a charitable society for award of compensation on account of the death of its member. The appellantsociety therein was a registered charitable society and was running various institutions as a constituent unit of Catholic church. Its members, after joining the appellantsociety, renounced the world and were known as 'brother'.

In this case, a 'brother'died in a motor vehicle accident. The claim petition filed by the appellantsociety seeking compensation on account of the death of aforesaid 'brother'was rejected by the High Court on the ground of its maintainability. This Court after examining various provisions of the MV Act held that the appellantsociety was the legal representative of the deceased 'brother'. While allowing the claim petition it was observed as under:

"17. A perusal of the judgment and order of the Tribunal discloses that although Issue 1 was not pressed and hence decided in favour of the appellant claimants, while considering the quantum of compensation for the claimants, the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependents or earning?

For answering this issue, the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or an organisation may suffer considerable loss due to the death of a voluntary worker.

The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court in *Sudama Devi v. Jogendra Choudhary*⁸, which held that the term "legal representative" is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure."

21. Coming to the facts of the present case, the fourth appellant was the motherinlaw of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the motherinlaw to live with her daughter and soninlaw during her old age and be dependent upon her soninlaw for her maintenance.

Appellant no.4 herein may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a "legal representative" under Section 166 of the MV Act and is entitled to maintain a claim petition. (II) Whether the High Court was justified in applying a

split multiplier?

22. The deceased was aged 52 years at the time of the accident. He was working as an Assistant Professor and getting a monthly salary of Rs.83,831/(Rupees eightythree thousand eight hundred thirtyone only). The evidence on record shows that he was a meritorious man having the qualifications of M.Sc, M.Phil. He was a firstclass holder in M.Sc. He was a Selection Grade Lecturer in Mathematics and was a subject expert.

He was also included in the panel of Mahatma Gandhi University and was appointed as Examiner in the Board of Examiners for CBCCSS Programme in Mathematics. Subsequently, he was appointed as Deputy Chairman of the Examiners Board. Evidence on record also shows that there is acute shortage of lecturers in Mathematics for appointment in colleges and retired Mathematics Professors are appointed in so many colleges. It is common knowledge that the teachers, especially Mathematics teachers, are employed even after their retirement in coaching centers. They may also hold private tuition classes. This would increase their income manifold after retirement.

23. In *Sarla Verma*¹, this Court has held that while calculating the compensation, the courts should take into consideration not only the actual income at the time of the death but should also make additions by taking note of future prospects. It was further held that though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid disparate yardsticks being applied or disparate methods of calculation being adopted.

24. In *Reshma Kumari & Ors. vs. Madan Mohan & Anr.*⁹, a threeJudge Bench of this Court has approved the judgment in *Sarla Verma*¹.

25. In *Pranay Sethi*², this Court has not only approved the aforesaid observations made in *Sarla Verma*¹ but also held as under:

"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 selfemployed 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."

26. In *K.R. Madhusudhan and Ors. vs. Administrative Officer and Anr.*¹⁰, this Court was considering a case where the High Court had applied split multiplier for the purpose of calculation of compensation towards loss of dependency and held as under:

"8. In *Sarla Verma*¹ judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances.

9. We are of the opinion that the rule of thumb evolved in *Sarla Verma*¹ is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same."

27. In *Puttamma and Ors. vs. K.L. Narayana Reddy and Anr.*¹¹, this Court was again considering a case where split multiplier for the purpose of calculation of dependency compensation was applied. It was held thus:

"32. For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in *Sarla Verma*¹ prepared a table for the selection of a multiplier based on the age group of the deceased/victim. The 1988 Act, does not envisage application of a split multiplier.

33. In *K.R. Madhusudhan v. Administrative Officer*¹⁰ this Court held as follows: (SCC p. 692, paras 1415)

"14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor.

The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method.

34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in *Sarla Verma*¹ as affirmed in *Reshma Kumari*⁹."

28. From the above discussion it is clear that at the time of calculation of the income, the Court has to consider the actual income of the deceased and addition should be made to take into account future prospects. Further, while the evidence in a given case may indicate a different percentage of increase, standardization of the addition for future prospects should be made to avoid different yardsticks being applied or different methods of calculation being adopted.

In *Pranay Sethi*², the Constitution Bench has directed addition of 15% of the salary in case the deceased was between the age of 50 to 60 years as a thumb rule, where a deceased had a permanent job. In view of the above, the High Court was not justified in applying split multiplier in the instant case. (III) What is the amount of compensation that should be awarded to the appellants?

29. That takes us to the award of compensation. We have already noticed that the deceased was working as Assistant Professor at Devaswom Board Pampa College, Paruamala, and was drawing a monthly income of Rs.83,381/which is clear from his salary certificate (Ex.A5) issued by the Principal of Devaswom Board Pampa College, Paruamala. The salary slip received by the deceased for the month of May 2011 (Ex.A6) also shows that his monthly salary was Rs.83,381/.

These documents have been marked in evidence through the Principal of the said College who was examined as PW1. Thus, annual income of the deceased comes to Rs.10,00,572/. This Court in *Sarla Verma*¹ has made it clear that the Annual Income of the deceased minus the income tax should be taken into account at the time of his death for the purpose of calculation of loss of dependency. The deceased had to pay Rs.1,13,424/towards income tax per annum. After deducting the said amount the actual income of the deceased comes to Rs.8,87,148/.

30. The deceased was aged 52 years at the time of his death and had a permanent job. Having regard to the judgment in *Pranay Sethi*², an addition of 15% of his actual salary should be added towards future prospectus. Therefore, 15% of his actual salary comes to Rs.1,33,072/

31. Since the deceased was 52 years at the time of his death, the applicable multiplier is '11'. As we have held that appellant no.4, the mother-in-law of the deceased is also a dependent and a "legal representative" under Section 166 of the MV Act, the total number of dependents left behind by the deceased is four. Hence, 1/4th of the income (actual salary + future prospects) should be deducted towards his personal expenses. Thus, the total compensation payable towards loss of dependency is as under:

32. In *Pranay Sethi*², this Court has awarded a total sum of Rs.70,000/(Rupees seventy thousand only) under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. It was held that the said sum should be enhanced at the rate of 10% in every three years. It was held thus:

"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."

33. The judgment in *Pranay Sethi*² was rendered in the year 2017. Therefore, the claimants are entitled for 10% enhancement. Thus, a sum of Rs.16,500/each is awarded towards loss of estate and funeral expenses.

34. A threejudge Bench of this Court in United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors¹², after considering Pranay Sethi², has awarded spousal 12 (2020) SCC Online SC 410 : AIR 2020 SC 3076 consortium at the rate of Rs.40,000/(Rupees forty thousand only) and towards loss of parental consortium to each child at the rate of Rs.40,000/(Rupees forty thousand only). The compensation under these heads also needs to be increased by 10%. Thus, the spousal consortium is awarded at Rs.44,000/(Fortyfour thousand only), and towards parental consortium at the rate of Rs.44,000/each (Total Rs.88,000/) is awarded to the two children.

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

36. The appellants are also entitled to interest on the said amount at the rate of 7.5% per annum from the date of the claim petition till the date of its realization. The respondent is accordingly directed to deposit the above amount with accrued interest thereon at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting amounts, if any, deposited by the respondent, within eight weeks from today.

37. Resultantly, the appeal is allowed in the aforesaid terms. Parties are directed to bear their respective costs. 38. Pending applications, if any, shall also stand disposed of.

1 (2009) 6 SCC 121

2 (2017) 16 SCC 680

3 3 (1987) 3 SCC 234

4 AIR 1977 Guj 195

5 (2007) 10 SCC 715

6 1989 Supp (2) SCC 275

7 (2014) 3 SCC 394

8 AIR 1987 Pat 239

9 (2013) 9 SCC 65

10 (2011) 4 SCC 689

11 (2013) 15 SCC 45

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