

(2009) 12 BOM CK 0051

In the Bombay High Court

Case No : First Appeal No. 1457 of 2009

Smt. Kalpana Vilas Shinde, Kumar Vivek Vilas Shinde and
Kumar Mandar Vilas shinde

APPELLANT

Vs

Shri Jagadish Vishnu Avsarkar (Dead) Legal heir Smt.
Shubhangi Jagadish Avsarkar and The National Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Citation : (2011) ACJ 778 : (2010) 3 BomCR 824

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

**Advocate : S.G. Thorat, for the Appellant; Arati B. Barve, for the Respondent
No. 2, for the Respondent**

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—The original claimants, being not satisfied with the amount of compensation awarded by the Motor Accident Claims Tribunal, Kolhapur in Motor Accident Claim No. 901 of 2003, have preferred the present appeal.

2. Facts, which are not in dispute are that the deceased Vilas Shinde was the husband of the appellant No. 1 and father of the appellant Nos. 2 and 3, who were aged about 9 and 3 years respectively at the time of accident. Said Vilas Shinde was proceeding alongwith one Jagadish Avsarkar by car bearing No. MH-04/AW 8607 belonging to Jagadish from Wada to Vikramgad. When the car reached near village Koikani Pada, Jagadish lost the control over the car and, therefore, car went off the road and first dashed to one iron poll and then to a tree. The accident occurred because of the high speed and rash and negligent driving by said Jagadish. In the said accident, Jagadish as well as Vilas died on the spot. Car was insured with the respondent No. 2.

3. Date of birth of the deceased was 27.7.1968 and was aged about 35 years at

the time of his death. He was serving as a tracer in the Construction Division of Panchayat Samiti at Jawahar. In the normal course, he would have retired on attaining age of 58 years, i.e., the age of superannuation. According to the appellants, after the implementation of Vth Pay Commission, his salary was fixed in the scale of Rs. 3,200-85-4900 and the gross salary for the month of April, 2003 was Rs. 7,228/-. Taking into consideration the loss of salary and the period he would be in service had this accident not occurred and loss of dependency, appellants claimed an amount of Rs. 9,28,776/-as compensation.

4. The Tribunal held that in due course, his basic salary would have gone up from Rs. 4,500/-to Rs. 4,900/-and similarly D.A. would have also gone up proportionately. Therefore, the Tribunal assessed the gross income at Rs. 7,800/-. It appears that the trial Court firstly reduced the gross income by 1/3rd and again deducted 1/3rd of the amount towards the personal expenses. Thus, the net loss of dependency was taken at Rs. 3,920/-per month and Rs. 47,240/-per annum . He applied multiplier of 16. Having done so, he arrived at total amount of Rs. 7,52,640/-. Thereafter, he again deducted 25% on account of uncertainties of life in view of the judgment of Kerala High Court in Sathee Devi and Another Vs. P. Maluk Mohammed and Anrs., . That case was decided by the Kerala High Court on 21.6.1989.

5. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Supreme Court had considered several methods of calculating loss of dependency and application of multiplier and deductions on different grounds. After having considered all the different methods, the Supreme Court held that multiplier system is the best and directed that maximum multiplier of 16 should be applied. Deductions in the income could be made on account of personal expenses of the deceased before determining the contribution of the deceased towards maintenance of his dependents. Once this system was adopted, there was no need of any further deduction towards any uncertainty of life, etc. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Supreme Court reiterated principles laid down in Susamma Thomas (Supra), however, the Supreme Court raised maximum multiplier from 16 to 18 taking into consideration the multiplier used in the Second Schedule to the Motor Vehicle Act, 1988. The Supreme Court in New India Assurance Co. Ltd. Vs. Charlie and Another, considered Susamma Thomas (Supra) and Trilok Chandra (Supra) and further clarified. Taking into consideration all these developments, in recent judgment delivered on 15th April, 2009 in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court has emphasised on uniformity and standardisation of the compensation to be awarded, taking into consideration the income of the deceased, his age, possibility of future prospects, number of dependents on the deceased in respect of future prospects, Their Lordships observed in Sarla Verma (Supra) as follows in paragraph 24:

24. In Susamma Thomas this Court increased the income by nearly 100%, in

Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words actual salary should be read as actual salary less tax). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure there from should be made only in rare and exceptional cases involving special circumstances.

6. Their Lordships considered the multipliers adopted in *Susamma Thomas*, *Trilok Chandra* and then further clarified in *Charlie* (Supra) and approved multiplier adopted in *Charlie*. Having done all this exercise, Their Lordships also gave a complete chart in paragraph 40 of the said judgment. Thus, it is now settled that if the deceased had permanent job and was below 40 years of age, as a rule of thumb, an addition of 50 % of actual salary income of the deceased may be added towards the future prospects. In respect of deductions on account of personal and living expenses of the deceased, the Supreme Court held that if the number of dependent family members is two or three, personal and living expenses of the deceased could be taken at 1/3rd of the total income. This could be reduced if the number of family members was more and similarly, it could also be increased to 50% if the deceased was bachelor.

7. Taking into consideration uniform and standardised method approved by the Supreme Court in *Sarla Verma*, facts of the present case may be considered. Admittedly, the deceased was having a permanent job as a tracer with the Panchayat Samiti at Jawahar, District: Thane. As his date of birth was 27.7.1968 and the accident had taken place on 10.5.2003, he was slightly less than 35 years of age at the time of his death. Appellant No. 1 was wife aged about 28 years and the appellant Nos. 2 and 3 are the minor sons aged about 9 and 3 years respectively. These three persons only were depending on the deceased. In view of the number of dependents, 1/3rd of the income of the deceased could be deducted towards his personal and living expenses. Taking into consideration his age, multiplier of 16 could be applied as the Supreme Court has approved multiplier of 16 if the deceased was aged between 31 to 35 years. As he was below 40 years of age and had a permanent job, 50% of actual salary last drawn may be added towards his future prospects during the career. His salary certificate for April, 2003, Exhibit 33 reveals that his basic pay was Rs. 4,500 and he was entitled to D.A. of Rs. 2,003. He was also being paid an amount of Rs. 675/-towards some incentive and Rs. 50/-as risk allowance and this made his

gross salary as Rs. 7,228/-. There were several deductions, however, only deduction, which can be allowed, was the professional tax of Rs. 175/-. Other deductions were either his contribution towards the provident fund or payments of loan taken by him or towards the interest. All these deductions could not be considered for reducing the gross salary. However, incentive allowance and the risk allowance could be available to him if he was doing a particular type of job. However, if he would not be doing the particular type of job during particular posting, he could not get those allowances. His permanent income would be basic pay plus D.A. Total of these two is Rs. 6503/-from which an amount of Rs. 175/ towards professional tax could be deducted. Thus, his net income could be taken at Rs. 6,328/-per month. 50% of this amount, equivalent to Rs. 3,164/- could be added to the actual income taking into consideration his future prospects in the career. Total of both comes to Rs. 9,492/-per month. One third of the same will have to be deducted towards the personal and living expenses of the deceased. Therefore, the actual loss of the dependency comes to Rs. 6,328/-per month or Rs. 75,936/-per annum. If the multiplier of 16 is applied, total loss would come to Rs. 12,14,976/-to which amount of Rs. 10,000/-on account of loss of consortium could be added. Some expenses towards the funeral expenses could also be added. Thus, total amount could be Rs. 12,30,000/-(Rounded off) for the claimants. However, they claimed compensation of Rs. 9,28,776/-which is less than what could have been awarded to them. Therefore, taking into consideration the legal position as now settled by the Supreme Court in Sarla Verma and the facts of the case, the trial Court was not justified in awarding compensation of Rs. 5,12,230/-only. In view of this, appeal deserves to be allowed and the appellants are entitled to compensation as claimed by them.

8. For the aforesaid reasons, appeal is allowed. Impugned award to the extent of quantum of compensation is hereby set aside and it is hereby directed that the respondents shall pay compensation of Rs. 9,28,776/-with interest @ 8% p.a. from the date of petition till realisation of the amount. This amount will be inclusive of compensation on the principal of No Fault Liability. Respondent No. 2 being insurer shall deposit compensation amount within 8 weeks from this date. After the amount is deposited before the trial Court, amount of Rs. 3 lac each shall be kept in fixed deposit with some nationalised bank in the name of the appellant Nos. 1, 2 and 3. Fixed deposit in the name of the appellant No. 1 shall be for a period of five years while, fixed deposits in the name of the appellant Nos. 2 and 3 shall be matured on attaining majority. However, the appellant No. 1 shall be entitled to receive interest quarterly on all the fixed deposits. Balance amount of compensation shall be paid to the appellant No. 1 by Account Payee cheque.