
(2014) 12 BOM CK 0097

In the Bombay High Court

Case No : First Appeal No. 83 of 2009 and Cross Objection No. 8 of 2009

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Vidya Barad

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 140, 279, 304A, 338

Citation : (2015) 1 ABR 568 : (2016) ACJ 434 : (2015) 2 BomCR 559

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : E. Afonso, Advocate for the Appellant; S.S. Kakodkar, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard learned counsel for the parties.

2. The above First Appeal and cross-objection are directed against the Judgment and Award dated 11/03/2008 passed by the learned Presiding Officer of Motor Accident Claims Tribunal for Taluka of Salcete at Margao (M.A.C.T., for short) in Claim Petition No. 93/2000. The appellant was the respondent no. 3 (Insurance Company) in the said Claim Petition whereas respondents no. 1, 2 and 3 (Cross Objectors) were the Claimants therein. Respondents no. 4 and 5 were respectively the driver and owner of Mini Bus No. GA-02/T-4348 which was insured with the appellant. Parties shall herein after be referred to as per their status in the said Claim Petition.

3. The claimants had filed the said petition under Section 166 of the Motor Vehicles Act, 1988 ("M.V. Act", for short) for grant of total compensation of Rs. 26,10,000/-on account of death of the husband of claimant no. 1 and father of claimants no. 2 and 3, in a motor vehicular accident.

4. Case of the claimants, in short, was that:

Vinay kumar, the husband of claimant no. 1 and father of claimants no. 2 and 3,

since deceased, was 44 years old, working for Zuari Industries Limited, as a Senior Manager (Utilities) and earning gross salary of Rs. 5,32,424.50/-for the period from 01/04/1999 to 28/11/1999 and Rs. 2,27,693.98/-for the period from 31/04/1998 to 31/03/1999. The deceased was an Income Tax Payee and had paid the income tax out of his income. The deceased was driving Maruti Van bearing no. GA-02/A-9460 and was proceeding along with his wife and children (claimants) from Utorda towards Margao on 28/11/1999. On reaching near Kadamba Bus Stand, Margao, around 16.15 hours, the minibus bearing no. GA-02/T-4348, driven by the respondent no. 1, rashly and negligently and at a fast speed, came from opposite direction to the wrong side and dashed against the vehicle driven by the deceased as a result of which the deceased sustained serious injuries and died as a result of the same whereas the claimants also sustained injuries. The deceased was a Mechanical Engineer and had all the chances of an assured career progression.

5. The respondents no. 1 and 2 filed their written statement. They alleged as follows:

The respondent no. 1 was driving the said minibus from Curtorim to Margao city on the said day and, after the passengers had alighted at the old bus stand, he had proceeded to the new bus stand i.e. Kadamba Transport Corporation bus stand and on reaching near the entrance of K.T.C. bus stand, he had stopped the said minibus since the vehicles were coming from opposite direction due to which he could not take the bus inside the K.T.C. terminal. Suddenly the respondent no. 1 saw the Maruti van driven by the deceased on the right side of the road as one proceeds from Cortalim to Margao, which came at a fast speed and in a rash and negligent manner towards the minibus and in the process dashed against the left side mudguard of the minibus driven by the respondent no. 1 which was in a standing position. The accident was an outcome of the rash and negligent driving of the deceased.

6. The respondent no. 3 also filed written statement. The respondent no. 3 denied the case of the claimants. It also denied the income of the deceased as stated by the claimants and also denied that the respondent no. 1 was rash and negligent and pleaded the same facts regarding the occurrence of accident, as pleaded by the respondents no. 1 and 2. The respondent no. 3 denied its liability to indemnify the registered owner of the minibus.

7. Accordingly, issues were framed by the M.A.C.T., as per the rival contentions of the parties. The claimants examined six witnesses in support of their case. AW1 was the claimant no. 1 herself, AW2 was one Smt. Dorothy Rodrigues, an eyewitness, AW3, Shri Cedrick Fernandes was also an eyewitness, AW4, Shri Santosh Dessai, was at the relevant time, Police Sub Inspector of Margao Town Police Station, AW5, Dr. Avinash Pujari had conducted the postmortem examination on the dead body of the deceased Vinay Barad and AW6, Shri Girish Naik Dessai was the Senior Manager (Finance) working for Zuari Industries Limited. The respondent no. 1 examined himself as RW1.

8. Upon consideration of the entire evidence on record, the learned M.A.C.T. held that the accident occurred due to the negligence of the deceased as well as of the respondent no. 1 and that contributory negligence of the deceased was to the extent of 30% whereas that of the respondent no. 1 was 70%. The learned M.A.C.T. held that the average net income of the deceased with assured carrier progression was Rs. . 35,000/-per month and the compensation after deducting 1/3rd towards the personal expenses of the deceased worked out to Rs. 42,00,000/-, which was reduced to Rs. 29,40,000/-considering the uncertainties of life. A sum of Rs. 1,00,000/-was awarded to the claimant no. 1 being widow towards pain and suffering. A sum of Rs. 5,000/-was awarded towards loss of consortium to the claimant no. 1. A sum of Rs. 2,000/-towards the funeral expenses was also awarded and it was held that the claimants were entitled to receive total compensation of Rs. 30,47,000/-and on account of the negligence of deceased and respondent no. 1 in the proportion of 30:70, the compensation was proportionately reduced to Rs. 21,32,900/-. The applicants were awarded interest at the rate of 9% per annum from the date of application till the date of payment. The amount awarded under Section 140 of the M.V. Act was ordered to be adjusted.

9. Aggrieved by the findings of the learned M.A.C.T., the respondent no. 3 has filed the First Appeal No. 83/2009 whereas not being satisfied with the finding that there was contributory negligence and with the quantum of compensation, the claimants have filed cross-objection no. 8 of 2009.

10. Mr. Afonso, learned Counsel for the respondent no. 3, submitted that the panchanama of scene of accident and the sketch read with the evidence of RW1, sufficiently proved that the respondent no. 1 was about to take turn to enter Kadamba Bus Stand and that is why he could never be fast. He submitted that the evidence of RW1 revealed that he had actually stopped. He submitted that the evidence proved that the negligence was totally on the part of the deceased. In the alternative, learned Counsel urged that the contributory negligence ought to have been held to be in the proportion of 50:50. The learned Counsel submitted that the learned M.A.C.T. had made some error while calculating the compensation and the same needs to be corrected and if the correction is done, the compensation would come down. He therefore urged that the compensation awarded to the claimants to be reduced to that extent. The learned Counsel relied upon the following judgments:

(i) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

(ii) Laurinda Gomes & Ors. v. Janu Hari Gaude & another [First Appeal no. 307 of 2007 with Cross-objection no. 19 of 2008]

11. On the other hand, Mr. Kakodkar, learned Counsel for the claimants, submitted that the evidence adduced by the claimants had remained intact in cross-examination and the same was sufficient to prove that the deceased was in the right lane whereas the minibus driven by the respondent no. 1 was in a

wrong lane on the Highway. He submitted that even the investigation by police had concluded that it was the respondent no. 1 who was rash and negligent and, therefore, he was charge sheeted. Learned Counsel submitted that the standard of proof in the claim petition is on the touchstone of preponderance of probabilities. He submitted that the claimants had examined two independent eyewitnesses, in addition to the claimant no. 1 who was the injured herself and as compared to the evidence of RW1, the evidence of all the eyewitnesses of the claimants was more reliable. He therefore submitted that the accident had occurred due to the total negligence of the respondent no. 1. According to him, therefore, the M.A.C.T. erred in holding that there was contributory negligence of the deceased. He further submitted that there was no dispute that the deceased was working as Senior Manager for Zuari Industries Limited and even otherwise the same had been proved by AW6. The annual income of the deceased at the relevant time was proved to be Rs. 5,32,424.50/-. He urged that the income tax deducted from the said salary income of the deceased was Rs. 69,159/-. He thus contended that the net income of the deceased was Rs. 4,63,265.50/-. The learned Counsel further submitted that the evidence on record duly established that the deceased was only about 44 years old and, therefore, had bright future. He submitted that addition of 30% to the monthly income of the deceased was bound to be made. He submitted that no such addition was made by the learned M.A.C.T. The learned Counsel pointed out that the M.A.C.T. deducted 1/3rd towards personal expenses of the deceased. He submitted that there are three dependents of the deceased and, therefore, deduction ought to have been 1/4th. He further pointed out that the learned M.A.C.T. did not apply the multiplier which was actually applicable i.e. 14. He submitted that towards loss of consortium, a sum of Rs. 1,00,000/-ought to be awarded and towards funeral expenses Rs. 25,000/-had to be awarded. He therefore submitted that the impugned judgment and award is required to be modified by enhancing the compensation. The learned Counsel relied upon the following judgments:

- i. Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others,
- ii. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,
- iii. Santosh Devi Vs. National Insurance Company Ltd. and Others,
- iv. Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another,
- v. Rajesh and Others Vs. Rajbir Singh and Others,

12. I have perused the original record and proceedings. I have considered the arguments advanced by the learned Counsel for the parties and the judgments relied upon by them.

13. The first point that arises for my determination is whether the accident occurred due to the total fault of the deceased or of the respondent no. 1 or whether there was contributory negligence and if yes in what proportion.

14. In the case of "Bimla Devi and others" (supra), the Hon"ble Supreme Court

has held that the claimants have to establish their case merely on touchstone of preponderance of probabilities and standard of proof beyond reasonable doubt could not be applied. AW1, the claimant no. 1 was herself an eyewitness to the accident. In her affidavit-in-evidence she stated that on 28/11/1999 her late husband, claimants no. 2 and 3 and herself started their journey from Utorda to go to their residence at Borda, Margao and that they were occupying Maruti Omni car (van) bearing no. GA-02/A-9460 which was driven by her late husband. They had started from Utorda at about 3.30 p.m. She stated that her husband was driving the van at a slow speed and at about 4.15 p.m. they reached near the Kadamba Bus Stand Margao on the road between Old Market, Margao to Panaji (NH-17), when the minibus coming from the opposite direction driven at a fast speed, rashly and negligently, came to the wrong side and there was head-on collision between the minibus and the van and the minibus gave forceful dash to the Maruti Omni Car. She stated that at the place of accident, at the relevant time, there were two roads from Kadamba Bus Stand to Old Market: one road being used by the vehicles to proceed towards Old Market direction whereas the other road being used by vehicles proceeding towards Panaji direction. She stated that the buses which were coming from Margao towards bus stand were proceeding on the road being used by vehicles proceedings towards Panaji and by taking a turn used to enter the bus stand. Similarly, the buses which were proceedings from Kadamba Bus Stand towards Margao were using the road proceeding to Old Market, Margao direction. She stated that there was only one entry and exit road connecting to main road (NH-17) for the buses to enter and exit Kadamba Bus Stand. She stated that at the time of accident, they had already crossed the said road meant for entry and exit, the width of which was about 10 metres. She stated that the width of the other road which was used for going towards Panaji direction was also 10 metres. She stated that there were no dividers but the roads were separated by a small strip of Kacha road of the width of about 50 cms from the road from Kadamba Bus Stand to Old Market Circle. According to AW1, the said minibus instead of proceeding from the road going towards Panaji direction, suddenly entered the road proceedings toward the Margao side that is on the wrong side and, therefore, the accident took place. AW1 further stated in the affidavit-in-evidence that their car sustained heavy damages and they all had to be pulled out from the car by breaking the doors and her husband died due to the injuries sustained. She stated that the dash was so forceful that the front damaged portion of the car including steering wheel had pressed her husband's body and their vehicle had gone back in reverse direction by about 2-3 metres from the point of impact. She stated that all the claimants had sustained injuries and had to be shifted to Goa Medical College--Bambolim. She produced on record the panchanama, the sketch of accident, F.I.R., Postmortem report of the deceased, etc. In her cross-examination, AW1 stated that it was a Sunday and they were present for a party at Utorda organized by Zuari Industries Ltd., on a beach. She however denied the suggestion that alcoholic drinks were freely flowing during the said party and that her husband had taken excessive drinks at the party and therefore could not keep control over

the said vehicle while driving the same. She admitted that her husband used to take drinks sometimes not at home but out side. She denied the suggestion that her husband was rash and negligent in driving the vehicle and that he had given the dash to the minibus. A perusal of F.I.R. produced by AW1 revealed that the offence was registered against the respondent no. 1 under Sections 279, 338 and 304A of I.P.C.

15. AW2, Smt. Dorothy Rodrigues, in her affidavit-in-evidence stated that she saw the accident which occurred on 28/11/1999 at about 4.15 p.m. near Kadamba Bus Stand, Margao from a distance of about 10 metres while standing in the shed of the bus stop facing the main road that is Panaji-Margao Road. She also explained the position of the road, at that time. She stated that the Maruti Van no. GA-02/A-9460 facing old Market side was driven at a speed of about 30-40 kilometres per hour and the minibus bearing registration no. GA-02-T-4348, facing Panaji direction, which was driven rashly and negligently and at a fast speed, came to the wrong side of the road that is road meant to proceed towards Old Market, Margao and there was head-on collision between the Maruti Van and minibus and the minibus gave forceful dash and damaged the front portion of the car completely and the body of the husband of the claimant no. 1, who was driving the van was also pressed and that all the claimants who were occupants of the car were seriously injured. She stated that she knew the claimant no. 1 prior to the accident as she was the customer of the parlour where she was working. In her cross-examination, AW2 stated that she was working in "All Care Beauty Parlour" at Margao near Kunde's Petrol Pump since last 19 years and that she knew the claimant no. 1 since about two years prior to the accident. She stated that the claimant no. 1 had requested her to be witness in her case sometime in the year 2000 for the first time and that about a month prior to the date of her deposition, AW1 had refreshed her request. AW2 stated that the claimant no. 1 requested her because she had seen the accident. She stated that she was waiting at the bus stand for her brother to pick her up from the bus stand, on his scooty. She stated that she had gone to Panaji to visit her relations and had got down at the K.T.C. bus stand. She stated in her cross-examination that it did not occur to her that she should report the accident at the Police Station. However, she denied the suggestion that she did not report the matter to the police since she had not seen the accident. She stated that the position of the vehicles has been correctly shown in the sketch and that after the impact the Maruti Van was pushed back and was completely damaged. She denied the suggestion that she was a planted witness.

16. AW3, Shri Cedrick Fernandes in his affidavit-in-evidence fully corroborated the affidavit-in-evidence of AW2. In his cross-examination, AW3 stated that the deceased was sometime visiting his shop where he was working as an Office Assistant for a person dealing in the sale of tyres near Metropole at Margao. He stated that the deceased had purchased tyres from the said shop for his Maruti Van. On being shown the sketch of the accident, AW3 stated that he was standing opposite the K.T.C. Bus Stand, Margao waiting to board the Panaji

bound bus. He pointed out the spot where he was standing and it was then marked by the Court under alphabet "X" on the sketch. According to AW3, the entry point on K.T.C. bus stand was more or less opposite the point of his position on the road. He also stated that position of the vehicles has been correctly shown in the sketch.

17. AW4, Santosh Dessai, was then attached to Margao Town Police Station as Assistant Police Sub Inspector. He received the information of accident, registered the M.V. Accident and conducted the panchanama of the scene of accident and drew the sketch showing the position of the vehicles as they were at the spot. The said panchanama and sketch are at Exhibit-44 colly. He collected Hurt Certificates of all the three claimants and these medical certificates are at Exhibit-46 Colly. He arrested the respondent no. 1 and filed charge sheet against him. In his cross-examination, AW4 stated that the minibus driver stated to him that he had entered the other lane and had told him that he was entering the K.T.C. Bus Stand. He stated that neither Smt. Dorothy Rodrigues from Varca nor Shri Cedrick Fernandes from Borda had come to the police station to report that they had seen the accident. He stated that the driver of minibus did not say that the driver of Maruti Van was heavily drunk. He stated that he had referred the minibus driver for alcohol test but the test was negative.

18. RW1, the respondent no. 1, stated in his deposition that on the date of accident he was proceeding from Old Market, Margao towards K.T.C. bus stand and was driving minibus no. GA-02-T-4348 with some passengers sitting inside. He stated that he had halted the minibus in the middle of the road in order to take right turn to enter K.T.C. bus stand. According to him, position of the minibus has been correctly shown in the panchanama and sketch which are at Exhibit-44 colly whereas the position of the Maruti Van as shown in the sketch was after the impact as it had moved backwards. He stated that there were no road dividers at the point where his minibus is shown in the sketch. He stated that all the buses entering the bus stand either from Panaji or from Margao town side were entering through the opening which was more towards Panaji side. He stated that he had halted at the dividing line of the road to enter the K.T.C. bus stand when the Maruti van came from Panaji side at a very fast speed and dashed against the cleaner's side of the minibus. He stated that the position of the van was changed by the people available at the spot and that he went to the police station where his statement was recorded. He stated that a Criminal Case was filed against him by the police and he was given benefit of doubt by the Magistrate and acquitted. He produced the judgment of acquittal which is at Exhibit-67. In his cross-examination, at one stage RW1 stated that there were no two separate lanes to the road opposite K.T.C. bus stand in the year 2000, separated by a kaccha portion in between the two lanes but at the other stage he admitted that on account of the said dividers, there were two lanes to the said road, one leading out of the city and the other entering the city. He denied the suggestion that he had halted the bus at the road divider before entering the K.T.C. bus stand and that he had given the dash to the on going Maruti van. He

stated that there was road space of about half a metre from the divider to the left side of his bus and beyond the divider was the other lane of the road. He stated that the said lane beyond the divider was proceeding towards Panaji side. According to RW1, any person entering K.T.C. bus stand from Margao side had to take a turn at the same point where he had halted his bus. He admitted that it was the sole point to enter K.T.C. bus stand from Margao side.

19. The learned M.A.C.T. observed that the testimony of RW1 could not convince it to believe that there was absolute rashness and negligence at the instance of the deceased and no negligence at his instance. The learned M.A.C.T. held that the violence of impact between the two vehicles would also gain momentum to conclude that there was contribution at the instance of the deceased too in the accident, as otherwise, it would not justify fatal injuries to him and serious injuries to the other occupants, if he was driving at the speed of a speed of barely 35-40 kilometres per hour. The learned M.A.C.T. therefore held that upon analyzing the evidence brought on record by the claimants and the respondent read with the police papers, it is clear that the minibus driver was negligent in negotiating the intersection to enter the K.T.C. Bus stand, but, there was also negligence on the part of the deceased to some extent though at the same time, not qualifying as "head-on collision". The learned M.A.C.T. held that the Magistrate in criminal case had given benefit of doubt to the respondent no. 1 and that the judgment of criminal Court cannot bind the Tribunal since the degree of proof in criminal proceedings is beyond all reasonable doubt unlike in the petitions under the M.V. Act, where the degree is even lesser than the preponderance of probabilities as in civil cases. However, the learned M.A.C.T. held that the contributory negligence of the deceased and the respondent no. 1 was in the proportion of 30:70. The panchanama of the scene of accident mentions that the front mirrors, bumper and front show of the minibus was damaged. Similarly, the entire front portion along with engine of the Maruti Van was damaged. The damages to both the vehicles were on the front side, which supports the version that there was head-on collision. In my considered view, since according to the witnesses of the claimants there was head-on collision between the two vehicles, which fact is totally supported by the panchanama of the scene of accident, the contributory negligence was in the proportion of 50:50. I therefore hold that the learned Magistrate erred in holding that the negligence was in the proportion of 30:70. I am inclined to agree with the contention of the learned Counsel for the respondent no. 3 that the contributory negligence was equal that is in the proportion of 50:50.

20. The next point for determination is as to what is the just and reasonable compensation to be awarded to the claimants.

21. AW1 in her affidavit-in-evidence stated that before the accident, her husband was working as Senior Manager (Utilities) in Zuari Industries Limited and his gross salary for the period from 01/04/1999 to 28/11/1999 was Rs. 5,32,424.50/-. She stated that previously her husband was Senior Shift Officer

and his salary for the period from 01/04/1998 to 31/3/1999 as Senior Shift Officer was Rs. 2,27,693.98/-. She stated that her husband was income tax payee and for the period from 01/04/1999 to 31/03/2000 he had paid income tax of Rs. 68,798/-and for the period from 01/04/1998 to 31/03/1999 he had paid income tax of Rs. 16,019/-. She stated that the deceased had good prospects in Zuari Industries Limited and had a stable job with promotional aspects. She stated that at the time of accident her husband was 44 years old and was healthy and had long life to go. She further stated that her children were minor and taking education and she had to incur lot of expenditure towards maintenance, education and marriage. She stated that due to the death of her husband there is loss of income to them.

22. AW6, Shri Girish Naik Dessai was working as Senior Manager, Finance and Accounts for Zuari Industries Limited. He deposed that Vinay Barad was employed with them as trainee engineer in 1979 and in the year 1999 he was a Senior Manager (Utility).He identified the T.D.S. Certificates pertaining to the deceased which were then marked as Exhibit-53 colly. The said T.D.S. Certificates show gross salary earned by the deceased from 01/04/1998 to 31/03/1999 and from 01/04/1999 to 31/03/2000. AW6 stated that the gross salary of the deceased was Rs. 2,27,693.98/-for the period of 01/04/1998 to 31/03/1999 and in the next succeeding financial year it was Rs. 5,32,424.50/-. He also confirmed that in the normal course, the deceased would have risen to the rank of a Chief Manager in the said company. He added that there would have been a difference in his gross salary by Rs. 2,000/-per month if promoted as a Chief Manager. He stated that the retirement age in their company was 58 years. The testimony of AW6 has gone unchallenged and is bound to be fully relied upon. The T.D.S. Certificates showing income of the deceased have also gone unchallenged and, therefore, are bound to be relied upon. The accident had occurred on 28.11.1999. Thus, at the relevant time of death of the deceased, he was earning gross salary of Rs. 5,32,424.50/-which was for the accounting year 01/04/1999 to 31/03/2000. In the case of "Sarla Verma" (supra), the Hon"ble Supreme Court, in paragraph 24, has held as under:

"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 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 deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations 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 therefrom should be made only in rare and exceptional cases involving special circumstances."

23. In the claim Petition as well as in the affidavit-in-evidence of AW1, it was specifically stated that the deceased was about 44 years old at the time of accident. The certificate of birth of the deceased is also produced which is part of Exhibit-30 colly which shows that he was born on 16/01/1955. Therefore, it is amply proved that the deceased was 44 years old at the time of accident. In view of the judgment of the Apex Court in the case of "Sarla Verma" (supra), therefore addition of 30% had to be made to the actual salary, less the tax. The learned M.A.C.T. has not done the said addition of 30% to the actual salary of the deceased, after deducting tax. After deducting the amount of tax i.e. Rs. 69,159 from the total yearly income of Rs. 5,32,424.50, the remainder is Rs. 4,63,265.50/-. By adding 30% to this amount, towards future prospects, the total income becomes Rs. 6,02,245/-

24. In paragraph 30 of the judgment in the case of "Sarla Verma" (supra), the Hon"ble Supreme Court has held thus:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."

25. Since the age of the deceased was 44 years, the deduction towards personal and living expenses ought to have been 1/4th since the claimants are three in number and the claimants no. 1 is widow whereas claimants no. 2 and 3 are minor and students and, therefore, all three were dependents. The learned M.A.C.T. has, however, deducted 1/3rd on account of personal expenses. Deducting 1/4th from the sum of Rs. 6,02,245/-, the remainder is Rs. 4,51,684/- which is the multiplicand.

26. As per the judgment of Supreme Court in "Sarla Verma"(supra), the multiplier to be used for persons in the age group of 41-45 years is 14. In the case of "Santosh Devi" (supra), the Hon"ble Supreme Court has accepted the multipliers mentioned in the case of "Sarla Verma"(supra). Using the multiplier of 14, the total loss of dependency becomes Rs. 63,23,576/-

27. In the case of "Rajesh and others "(supra), the Hon"ble Three-Judges Bench of the Supreme Court after referring to all the earlier judgments including that in "Sarla Verma"(supra), has held thus:

"20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi Vs. National Insurance Company Ltd. and Others, . We may therefore, revisit the practice of awarding compensation under conventional heads:

- (i) loss of consortium to the spouse;
- (ii) loss of love, care and guidance to children;
- and
- (iii) funeral expenses.

It may be noted that the sum of Rs. 2,500/-to Rs. 10,000/-under those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it was held that compensation for loss of consortium should be in the range of Rs. 5,000/-to Rs. 10,000/-. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world, more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least Rs. 1,00,000/-towards loss of consortium."

28. In paragraph 21 of the same case of "Rajesh and others " (supra), the Hon"ble Supreme Court has held that the compensation towards funeral expenses should be Rs. 25,000/-.

29. Adding Rs. 1,00,000/-and Rs. 25,000/-towards loss of consortium and funeral expenses, respectively to the sum of Rs. 63,32,576/-, the total compensation works out to Rs. 64,48,576/-. Since the contributory negligence is held to be in the proportion of 50:50, the compensation proportionately gets reduced to Rs. 32,24,288/-.

30. The Appeal is therefore dismissed whereas the Cross Objection is partly

allowed. The claimants are entitled to receive total compensation of Rs. 32,24,288/-and the respondents shall, jointly and severally, pay to the claimants the said amount along with interest at the rate of 9% per annum from the date of filing of claim petition till the date of final payment. The amount already paid under section 140 of the M.V. Act shall be adjusted against the final compensation. The amount of Rs. 1,00,000/-awarded towards loss of consortium shall be exclusively paid to the claimant no. 1.

31. The Appeal and the Cross Objection stand disposed of accordingly.