
(2016) 10 BOM CK 0070

In the Bombay High Court

Case No : First Appeal No. 738 of 2015 with Civil Application No. 1196 OF 2015 in First Appeal No. 738 of 2015.

United India Insurance Company Ltd. Through its Regional office, Bharti Vidyapeeth Bhavan, L.B. Shastri Road Near Alka Talkies, Pune No. 2 - Appellant @HASH Sobha Amarsingh Rajput age: 50 years, Occn. Household

Date of Decision : 19-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) 4 ACC 407 : (2016) 2 AnWR 571 : (2017) 1 TAC 27

Hon'ble Judges : Dr. Shalini Phansalkar Joshi, J.

Bench : Single Bench

Advocate : Mr. Ketan Joshi, Advocate, for the Applicant in F.A. No. 738 of 2015; Mr. Devendranath S. Joshi, Advocate, for the Applicant in F.A. No.750/2016 and in F.A. 756 of 2016; Mr. Rajeev Carvalo a/w Mr. Rupesh M. Geeta a/w Mr. Anand Chovatia, Advocates, for the

Final Decision : Disposed Off

Judgement

Dr. Shalini Phansalkar Joshi, J. - (i) What could be the just and reasonable amount of compensation which the Claims Tribunal constituted under Section 165 of the Motor Vehicles Act, 1988 (for short called as, "M.V. Act") can award?

ii. Which are the relevant parameters to be considered by the Claims Tribunal in that regard?

iii. In case of death of an unmarried person, whether multiplier to be applied is to be based on the age of the deceased or age of the claimants?

iv. Whether the future prospects of the income of the deceased need to be considered in arriving at the pecuniary loss of the dependents, and if yes, how to assess the same?

These are some of the pertinent questions, that are raised for consideration, in these three appeals.

2. In view of some of the conflicting decisions of this Court and the Hon'ble Apex Court, on these issues, learned counsels for the respective parties have advanced elaborate submissions to assist this Court to come to its just decision and to resolve the issue to some extent.

3. As these are the common questions of law raised in these three appeals preferred by the respective Insurance Companies and as the facts of these appeals are also, more or less, the same, with minor differences in the particulars here or there, these appeals are heard together and are being decided together by this common judgment.

4. All the appeals are admitted and with the consent and on the request made by learned counsels for the parties, they are heard finally at the stage of admission itself.

5. Facts relevant for the purpose of deciding these appeals are as under:-

First Appeal No. 738 of 2015

In this appeal, United India Insurance Company, takes an exception to the Judgment and Award dated 20th August, 2014, passed by the Motor Accident Claims Tribunal at Pune in M.A.C.P. No.967 of 2011. By the impugned Judgment and Award, the Tribunal has directed the appellant-Insurance Company and respondent No.3-the owner of the vehicle, to pay, jointly and severally, amount of Rs. 50,69,000/- to the 1st and 2nd respondent - the claimants, by way of compensation with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation of the entire amount.

6. In this appeal, the claimants are the parents of the deceased Vijaysingh Amarsingh Rajput, who was a divorcee having no issue and running the age of 32 years at the time of accident. He was working as "Executive" in Zensar Technologies Ltd. since 2010 and getting salary of Rs. 40,000/- per month, in addition to the incentives. On 16.8.2011, at about 9 a.m. he was proceeding from Alandi Road towards his office of Zensar Technologies at Kharadi on his motorcycle, bearing NO.MH-2/FT- 2020, in a moderate speed and by observing all traffic rules. Near Dighi Octroi Check-Post, one petrol tanker, bearing No. MH-12-BJ-6447, came from opposite direction in a high speed and gave dash to the motorcycle of the deceased. The wheel of the tanker passed over the head of the deceased. As a result, the deceased succumbed to the injuries on the spot itself. Respondent No.1 and 2 in this appeal, who are the parents of the deceased, hence filed the claim petition against respondent No.3-the owner of the tanker, and appellant-Insurance Company, claiming compensation amount of Rs. 60,00,000/- on all admissible heads.

7. In support of their case, respondent No.1?mother of the deceased, examined herself and stated on oath that, at the time of accident, deceased was earning income of Rs. 40,000/- per month. He was working as "H.R. Executive" in Zensar Technologies Ltd. since December, 2010. Prior to that, he was working in WNS

Global and SARK Enterprises. He has also received various awards. Respondent Nos.1 and 2-claimants have also examined one Mr. Yogesh Gothankar to prove that the deceased was working in Zensar Technologies Ltd. as "H.R. Executive" and his last drawn salary was Rs. 37,990/-. Pay Slip and Pay Certificate of the deceased were proved, accordingly, vide Exhibit Nos.43 and 44.

8. On the basis of this evidence, considering the salary of deceased, after deductions towards income tax, the Tribunal has added 50% amount of his income towards future prospects and having regard to the age of the deceased, as that of 40 years, applied multiplier of "12". The Tribunal, thus, awarded total compensation of Rs. 50,69,000/-, including the amount of Rs. 25,000/-, each, towards loss of love and affection and funeral expenses, to the claimants along with interest at the rate of 7.5% per annum from the date of application till realisation of the entire amount.

FIRST APPEAL NO.750 OF 2016

9. In this appeal, the Judgment and Award dated 9.7.2015 passed by Motor Accident Claims Tribunal, Mumbai, in M.A.C.P. No.866 of 2011, is challenged by the New India Assurance Company Ltd. The deceased in this appeal is a young girl of 22 years, by name, Avani Nagindas Rachh. On 9.3.2011, she met with fatal accident while she was riding on the pillion seat of motorcycle No. MH-03-2767, which was driven by her friend Kartik Avlani along Premier Road from Kurla-Vidyavihar side at moderate speed. One Motor Tanker, bearing MH-04/CU- 7789, was the offending vehicle.

10. Respondent Nos.1 and 2 herein are the parents of deceased Avani. They had filed claim petition before the Tribunal seeking compensation to the tune of Rs. 15,00,000/- under all the permissible heads. In support of their claim, they had relied upon the fact that, at the time of accident, deceased Avani was the student of third year C.A. and working as "Article Assistant" with M/s N.G. Thakkar & Company. She was getting monthly stipend of Rs. 7,000/- and, thus, was having very bright future prospects.

The evidence of one Mr. Natwar Gokuldas Thakkar was led to prove income of the deceased along with her Salary Certificate (Exhibit-38) and Bank Statement (Exhibit-40). On the basis thereof, the Tribunal held income of the deceased Avani to be proved as Rs. 7,000/- per month and considering the future prospects of her earning as "C.A.", the Tribunal worked out multiplicand of Rs. 84,000/- per annum, included therein 50% towards future prospects, and having regard to the age of deceased as 22 years at the time of accident, applied multiplier of "18". Thus, the Tribunal awarded total compensation of Rs. 11,07,900/-, including funeral expenses of Rs. 25,000/- and Rs. 20,000/- towards loss to the estate, with interest thereon at the rate of 7.5% per annum from the date of petition till realisation of the amount.

FIRST APPEAL NO.756 OF 2016

11. This appeal pertains to the same fatal accident that took place on 9.3.2011, in which deceased Avani, in First Appeal No.750 of 2016, has lost her life. The deceased in this case, namely, Kartik Avlani was her friend, with whom she was proceeding on his motorcycle as pillion rider from Kurla to Vidyavihar. The said motorcycle was given dash by a Motor Tanker, bearing No MH-04/CU-7789. His parents, i.e. respondent Nos. 1 and 2 herein, have filed Claim Petition No.867 of 2011 before M.A.C.T., Mumbai, by submitting, inter alia, that the deceased, at the time of accident, was Commerce Graduate and had completed his Diploma Course in N.S.C. and B.S.C. He was working in Truestone Investment Advisors Pvt. Ltd and was engaged in share market and drawing Rs. 25,000/- as salary per month. His Income Certificate, issued by the employer, was filed on record. The Manager of M/s. Truestone Investment Advisors Pvt. Ltd., Mr. Ranjan J. Sonawane, was also examined to prove that the deceased was drawing salary of Rs. 25,000/- per month; out of which, Rs. 12,500/- was his Basic Pay and Rs. 12,500/- was towards Performance Bonus. The Bank Statement of the deceased to that effect was also produced on record vide Exhibit-14.

12. Relying on this evidence, the Tribunal came to the conclusion that, at the time of accident, deceased was earning salary of Rs. 12,500/- per month and, hence, considering his future prospects, added amount of 50% to annual earning of the deceased and applied multiplier of "18", considering the age of the deceased at the time of accident as between 21 to 25 years, and awarded total compensation of Rs. 20,70,000/-, including the amount of Rs. 25,000/- towards funeral expenses and Rs. 20,000/- towards loss to estate, along with interest at the rate of 7.5% per annum from the date of application till realisation.

13. The claimants in all these three appeals have not challenged the Awards. Respective Insurance Companies, i.e. the appellants herein, however, have challenged the Awards only on two counts. In the first place, it is submitted that, while deciding the appropriate multiplier, the Tribunal has considered age of the deceased and not the age of the claimants, which was higher. It is submitted that, as the compensation amount is paid to the legal heirs of the deceased on account of their dependency on the income of the deceased, the multiplier should always be fixed having regard to the age of the claimants and not the age of the deceased; when the claimants are the parents of the deceased and the deceased is a bachelor. It is submitted that, in all these three cases, the deceased were bachelors and unmarried, whereas the claimants were parents. Hence, the age of the claimants, which was on higher side, should have been considered for deciding the multiplier.

14. In support of this submission, learned counsels for the appellants have relied upon various authorities of this Court and that of Hon'ble Apex Court and also drawn attention of this Court to the conflicting decisions by submitting that the compensation amount has to be just and reasonable. What is just and reasonable will always depend on the facts of each case. In case of unmarried bachelor person, it is submitted that, the age of the parents is the correct criteria

for deciding the multiplier, as they can be the dependent on the income of the deceased only upto their life-time. Hence, adopting age of the deceased as criteria for deciding multiplier will be totally against the spirit and object of the law meant for awarding compensation. It is urged that, the compensation cannot be a bonanza or a source of profit, which it can become, if the age of the deceased is considered for deciding the multiplier. According to learned counsels for the appellants-Insurance Companies, there are decisions and decisions, taking diverse and conflicting views, but, ultimately, each case needs to be decided on its facts. In the instant cases, it is urged that the proper way to decide just compensation amount is to consider the age of the claimants and not the age of the deceased, while arriving at the correct multiplier.

15. Per contra, learned counsels for the respondents-claimants have also, relying upon various authorities, submitted that, as per the settled position of law, the age of the deceased and not the age of the claimants is to be the deciding factor for arriving at the multiplier. According to them, the Tribunal has rightly followed the said view and, hence, no interference is warranted on this point.

16. The second point, on which learned counsels for the appellants have challenged the impugned Awards, is the 50% additional amount included by the trial Court in the annual earnings of the deceased towards future prospects. According to learned counsels for the appellants-Insurance Companies, as the deceased Avani, in First Appeal No.750 of 2016, and deceased Kartik, in First Appeal No.756 of 2016, were not in the permanent employment, the Tribunal has committed a grave error in making addition of 50% amount to the annual income of Avani and Kartik towards future prospects.

17. On these two grounds, learned counsels for the appellants-Insurance Companies have submitted that interference of this Court is warranted.

18. Per contra, learned counsel for the respondents-claimants have supported the Awards on all the counts by submitting that, they fall within the four corners of the law laid down by the Hon"ble Apex Court from time to time.

Selection of Multiplier

19. It need not be stated that the Tribunal, constituted under the Motor Vehicles Act, 1988, as provided in Section 168, is required to make an Award determining the amount of compensation, which is to be in the real sense "damages", which, in turn, appears to it to be "just and reasonable". The Hon"ble Supreme Court in case of State of Haryana and Anr v. Jasbir Kaur and Ors., (2003) 7 SCC 484, in paragraph No.7 of its judgment, has observed as under :-

"7. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza: not a source of profit; but the same should not be a

pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

20. Therefore, in order to achieve the uniformity and certainty in the award of compensation, the Hon"ble Apex Court has, in the celebrated decision of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs) and Ors., (1994) 2 SCC 176, evolved and accepted well established multiplier method of computation of compensation amount by observing that,

"The multiplier method is logically sound and well established method for ensuring a just compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases".

21. It was further held that,

"The multiplier method involves ascertainment of loss of dependency or multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, "regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last".

22. According to the Hon"ble Supreme Court, "the multiplier represents the number of years" purchase, on which the loss of dependency is capitalized".

23. While arriving at this decision, the Hon"ble Apex Court also took note of the two decisions of the House of Lords viz. Davies v. Powell Duffryn Associated Collieries Ltd., 1942 1 All ER 657 and Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 to confirm that the multiplier method, being sound and well established, needs to be adopted invariably for deciding the just and reasonable amount of compensation.

24. This decision of the Apex Court in *Susamma Thomas (supra)* was further upheld and confirmed in the case of *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.*, 1996 (4) SCC 362 by the Division Bench of three-Judges. It was held that,

"Multiplier method for calculating the amount of compensation is the sound and most reasonable method and it has also been an accepted method for determining and ensuring payment of just compensation. It is necessary to reiterate that the said method should be applied uniformly so as to bring certainty to the awards made all over the country".

25. However, in paragraph No.18 of its judgment, in this decision, the Hon'ble Supreme Court was pleased to point out that the calculation of compensation and the amount worked out in the "Second Schedule" suffer from several defects. After pointing out such defects in calculation of the amounts, as given in the "Second Schedule", it was held by the Hon'ble Apex Court, in this judgment, as follows :

"18. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in *Davies* case".

[emphasis supplied]

26. The entire emphasis of learned counsels for the appellants in these appeals is on these observations of the Hon'ble Apex Court that, "selection of multiplier cannot in all cases be solely dependent on the age of the deceased, especially if the deceased is a bachelor, then, as held in this judgment, the age of parents is also relevant."

27. It is submitted that, in the case of *Susamma Thomas (supra)*, it was held in unequivocal words that choice of the multiplier is determined by the age of the deceased or that of the claimants, whichever is higher, and in the case of *Trilok Chandra (supra)*, it is categorically held that, in case of death of a bachelor, age of parents is a relevant factor for determining the multiplier. It is submitted by learned counsels for the appellants that, this legal position is also in tune to the law laid down in the case of *Susamma Thomas (supra)* that the choice of

multiplier is to be determined by the age of the claimants or the age of deceased, whichever is higher. It is submitted that, as in the case of bachelor, the parents are the only claimants, their age is bound to be higher. Hence, their age is relevant for determining the multiplier and not the age of the deceased, who is a bachelor.

28. Learned counsels for the appellants has then placed reliance on the judgment in the case of *Municipal Corporation of Greater Bombay v. Laxmi Iyer*, (2003) 8 SCC 731 to submit that, in this case also, the Hon''ble Apex Court was pleased to hold that, where the claimants are the parents of the deceased, it is not the age of the deceased alone, but that of the parents/dependents as well, which is relevant. Thus, it is submitted that, in this case, the Division Bench of the Hon''ble Apex Court has followed the law laid down in the case of *Trilok Chandra* (supra).

29. It is submitted that the law laid down in the case of *Susamma Thomas* (supra) and *Trilok Chandra* (supra) was followed in the case of *New India Assurance Company Ltd. v. Charlie and Anr.*, (2005) 16 SCC 720 and it was reiterated that the multiplier method involves ascertainment of the loss of dependency. The "Second Schedule" to the Act suffers from many defects. Hence, the same is to serve as a "Guide", but cannot be an "Invariable Ready Reckoner". As to the choice of multiplier, it was reiterated that, it is to be determined by the age of the deceased or that of the claimants, whichever is higher.

30. Learned counsels for the appellants have then relied upon the decision of the Division Bench of three-Judges of the Hon''ble Apex Court in *New India Assurance Company Ltd. v. Shanti Pathak (Smt) and Others*, (2007) 10 SCC 1. In this case, the deceased was a bachelor, running the age of 25 years, at the time of accident. Taking into consideration his age, both, the Tribunal and the High Court applied the multiplier of "17". The Hon''ble Supreme Court, however, accepted the contention of the appellant-Insurance Company and having regard to the age of the claimants/parents, which was 65 years, applied the multiplier of "5". Thus, it is submitted that, in this case also, the choice of multiplier was based on the age of the claimants and not the deceased, thereby following the law laid down in the case of *Susamma Thomas* (supra) and *Trilok Chandra* (supra), though no express reference was made to that decision.

31. Learned counsels for the appellants have then relied upon the Division Bench judgment of the Hon''ble Apex Court in *Ramesh Singh and Anr. v. Satbir Singh and Anr.*, (2008) 2 SCC 667. In this case, the deceased was a bachelor, running the age of 22 years, at the time of accident. The claimants were the deceased's father and mother; running the age of 55 and 52 years respectively. The Tribunal and the High Court have considered the age of the parents for choice of multiplier of "8". Father of the deceased had challenged the choice of multiplier in the Hon''ble Supreme Court by contending, inter alia, that, since the age of the deceased was only 22 years, the multiplier of "16", or, at-least, "11" should

have been applied. In this respect, heavy reliance was placed on the "Second Schedule" of the Act. After giving conscious consideration to the submissions advanced before it, the Hon"ble Supreme Court was, however, pleased to hold that these contentions are devoid of any merit. It was held that,

"Considering the law laid down in *New India Assurance Co. Ltd v. Charlie* (supra), it is clear that the choice of multiplier is determined by the age of the deceased or the claimants whichever is higher".

32. It was further held that, the "Second Schedule" to the Act is to be used not only for referring to the age of the victim, but also other factors relevant therefor, as the complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. It was held that,

"Selection of multiplier, as observed in the case of *U.P. S.R.T.C. v. Trilok Chandra*, cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident, leaving behind aged parents who would not survive long enough to match with a high multiplier provided by the Second Schedule, then the court has to offset such high multiplier and balance the same with the short life expectancy of the claimants".

[Emphasis Supplied]

33. Accordingly, it was held that, the Courts below had rightly struck the balance by applying the multiplier of "8", based on the age of the parents, which was 55 years.

34. Learned counsels for the appellants have then relied on another landmark decision of the Hon"ble Apex Court in the case of *Sarla Verma (Smt) and Ors. v. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121. In this case, the Hon"ble Supreme Court has quoted with approval following paragraph Nos. 17 and 18 of the judgment in *Trilok Chandra* (supra), wherein it has been observed that :-

"17.Section 163A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas* case.

18.Besides, the selection of multiplier cannot in all cases be solely

dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.....What we propose to emphasise is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

35. The Hon"ble Supreme Court then found that there are different operative multipliers adopted by the Tribunals and observed as under :-

"41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163A of MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable."

36. Thus, the Hon"ble Apex Court has, in this decision, then prepared a new "Table" for selection of appropriate multiplier, taking into consideration the law laid down in Susamma Thomas (supra), Trilok Chandra (supra) and Charllye (supra) and further held that, the multiplier to be used should be as mentioned in Column No.(4) of the "Table", which starts with an operative multiplier of "18" for the age group of "15 to 20" years and "21 to 25" years, which would be reduced by one unit for every five years upto the age group of "46 to 20" years and then would be reduced by two units for every five years.

37. According to learned counsel for the appellant Shri. Ketan Joshi, though it is true that, in the new "Table" prepared by the Hon"ble Apex Court in this decision, selection of multiplier is based on the age of the deceased, however, this decision does not expressly deal with the issue in question, "as to whether the age of the deceased is to be the determining factor for choice of multiplier, or, the age of the claimants-parents?". According to them, this issue was never raised for consideration in this authority, as the deceased was a married man and claimants were his widow, three minor children, parents and grand-father. Hence, according to them, this decision only reconciles the different multipliers, otherwise given in earlier cases of Susamma Thomas, Trilok Chandra and Charlie (supra). But, it does not touch the legal position laid down in the case of Trilok

Chandra (supra) that, selection of multiplier cannot, in all cases, be solely dependent on the age of the deceased and the age of the parents, in case the deceased is a bachelor, is also relevant in the choice of multiplier. Moreover, according to learned counsels for the appellants, the decision in this case is of two-Judges Bench, whereas, the decision in the case of Trilok Chandra (supra) is three-Judges Bench and it is also followed by another three-Judges Bench in Shanti Pathak (supra) and two-Judges Bench in Charlie (supra) and Shakti Devi (supra) and hence it must be relied upon to hold that, in case of death of a bachelor, the relevant factor for choice of multiplier is the age of the parents and not the age of the deceased.

38. To substantiate this submission, learned counsels for the appellants have also placed reliance on the decision of the Hon''ble Supreme Court in the case of Shakti Devi v. New India Insurance Co. Ltd and Anr., (2010) 14 SCC 575. In this case, a mother, who has lost her 22 years old son in a motor accident, has approached the Hon''ble Supreme Court, being aggrieved by the inadequate compensation awarded to her. While redressing her grievance, the Hon''ble Supreme Court once again held that, the multiplier method should remain the only method, as it has been for assessing the compensation under the Act. It was further held that, the multiplier method involved capitalisation of the loss of dependency (i.e. multiplicand) by an appropriate multiplier. For deciding the multiplier, the Hon''ble Apex Court then relied upon the "Table" prepared in the case of Sarla Varma (supra) and applied the multiplier as mentioned in Column No.4. It was held that,

"Insofar as the multiplier is concerned, the Tribunal applied the multiplier of 8. The learned counsel for the appellant argued that the multiplier 18 should have been applied in view of the age of the deceased to be of 22 years. The argument is devoid of any substance. In a case where age of the claimant is higher than the age of the deceased, the age of the claimant and not age of deceased has to be taken into account for the capitalisation of the of the lost dependency. It is so because the choice of multiplier is determined by the age of the deceased or that of the claimant whichever is higher".

[Emphasis Supplied]

39. Accordingly, in this decision, considering the age of the claimant on the date of accident as about 54-55 years, as per the "Table" prepared in the case of Sarla Varma (supra), the multiplier of "11" was applied.

40. Learned counsels for the appellants have, in this respect, also placed reliance on somewhat recent decision of the Hon''ble Apex Court in the case of National Insurance Company Ltd. v. Shyam Singh and Ors., (2011) 7 SCC 65, where Hon''ble Supreme Court has followed the three-Judges Bench decision of Trilok Chandra (supra) and held that, the age of the claimants was relevant factor for selection of multiplier and it cannot, in all the cases, be solely dependent on the age of the deceased. In this decision, reliance was also placed on the decision in

the case of Ramesh Singh v. Satbir Singh (supra) to hold that, choice of the multiplier is determined by the age of the deceased or the claimants, whichever is higher. Accordingly, in this case, though the age of the deceased was only 19 years, the multiplier of "8" selected by the Tribunal, taking the average age of the parents of the deceased as 55 and 56 years, was held to be proper and correct. It was held that, "the dictum laid down in Ramesh Singh v. Satbir Singh (supra) was applicable to the present case on all fours".

41. Learned counsels for the appellants have then made reference to the two-Judges Bench decision of the Hon"ble Apex Court in the case of P.S. Somanathan and Ors. v. District Insurance Officer and Anr., (2011) 3 SCC 566. In this case, the deceased was a bachelor of 33 years. His mother was the claimant and running the age of 67 years. The Tribunal adopted the multiplier of "16", depending on the age of the deceased. The High Court reduced the same to "5", considering the age of the claimant-mother. The Hon"ble Supreme Court has then, after considering and relying upon the decisions in Susamma Thomas (supra), Trilok Chandra (supra) and Sarla Verma (supra), observed in paragraph Nos.16 and 17 of its Judgment as under :-

"16. The High Court unfortunately took a very technical view in the matter of applying the multiplier. The High Court cannot keep out of its consideration the claim of the daughter of the first claimant, since the daughter was impleaded, and was 49 years of age. Admittedly, the deceased was looking after the entire family. In determining the age of the mother, the High Court should have accepted the age of the mother at 65, as given in the claim petition, since there is no controversy on that. By accepting the age of mother at 67, the High Court further reduced the multiplier from 6 to 5, even if we accept the reasoning of the High Court to be correct. The reasoning of the High Court is not correct in view of the ratio in Sarla Verma. Following the same, the High Court should have proceeded to compute the compensation on the age of the deceased. Thus, the finding of the High Court is contrary to the ratio in Sarla Verma, which is the leading decision on this question and which we follow.

17. This Court, therefore, cannot sustain the High Court judgment and is constrained to set aside the same. The award of MACT is restored."

42. According to learned counsels for the appellants, in this decision though the Hon"ble Apex Court has held that, following the ratio in the leading decision of Sarla Varma (supra), High Court should have proceeded to compute the compensation on the age of the deceased, there is absolutely no discussion for differing with the view taken by three judges Bench decision in Trilok Chandra (supra), though the said decision was referred in this case. Hence, according to learned counsels for the appellants, the law laid down in Trilok Chandra decision cannot be said to be distinguished or overruled in any way.

43. Learned counsels for the appellants have then drawn attention of this Court to the decision of two-Judges Bench of the Hon"ble Apex Court in the case of

Amrit Bhanu Shali and Ors. v. National Insurance Co. Ltd and Ors., (2012) 11 SCC 738 to submit that, in this case, the Hon"ble Supreme Court has again changed the course of the law by holding that, "the selection of the multiplier is based on the age of the deceased and not on the basis of the dependents".

44. According to learned counsels for the appellants, in this case though the earlier decisions were referred, there was no detail discussion of those decisions to differ therefrom.

45. In my considered opinion, therefore, it will be useful to refer to the facts of this decision. In this case, the deceased was a bachelor of the age of 26 years. The claimants were his parents. The Tribunal applied the multiplier of "17" relying on the decision in Sarla Varma (supra). Both the claimants and the Insurance Company challenged the Award before Chhattisgarh High Court. The High Court applied the multiplier of "13" by observing that;

"The impugned award of the Tribunal is liable to be modified as we feel that looking to the age of the deceased as 26 years, the multiplier of 13 was to be applied according to decision of the Hon"ble Apex Court in Sarla Verma, but the learned Tribunal has applied multiplier of 17. Therefore, without changing the annual income and other amounts as awarded by the Tribunal on other heads, in our opinion the multiplier of 13 would be appropriate in the instant case"

46. When the matter reached before the Hon"ble Apex Court, in paragraph Nos. 15 and 16 of its judgment, the Hon"ble Apex Court was pleased to observe as under :-

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation.

16. In Sarla Verma (supra) this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

47. According to learned counsels for the appellants, in this judgment, the above referred earlier decisions, including that of the decision of three-Judge Bench in Trilok Chandra (supra) was not considered or discussed while holding that the selection of multiplier is to be based on the age of the deceased. Hence, this decision cannot have any binding force of law. According to him, as the law laid down in the earlier three-Judges Bench decision of the Hon"ble Supreme Court in Trilok Chandra (supra) was ignored in this case by the two-Judges Bench, the legal position laid down in Trilok Chandra (supra) that, the selection of multiplier

is to be based on the age of the parents, when deceased is a bachelor, will prevail.

48. Learned counsels for the appellants have then referred to another landmark decision of the three-Judges Bench of the Hon''ble Apex Court in the case of Reshma Kumari and Ors. v. Madan Mohan and Anr., 2013 STPL (Web) 262 SC. In this case, two specific questions were referred for decision as under :-

"1.1 Whether the multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short "the 1988 Act) should be scrupulously applied in all cases?

And

1.2 Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?"

49. While deciding this Reference and after taking into consideration all its earlier decisions, the Hon''ble Supreme Court was pleased to observe, in paragraph Nos.31, 32 and 33 of its judgment, as under:-

"31. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, "just" means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously "just compensation" does not mean "perfect" or "absolute" compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.

32. Almost a century back in Taff Vale Railway Co. v. Jenkins, the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the Dependents of the deceased, who had been breadwinner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

33. This Court in C.K. Subramania Iyer and Ors. v. T. Kunhikuttan Nair and Ors. : 1970 (2) SCR 688, reiterated the legal philosophy highlighted in Taff Vale Railway for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so

determined is the ultimate guiding factor."

50. Then, relying on the decision in the case of *Susamma Thomas* (supra), the Hon"ble Supreme Court held that,

"In our view the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the Tribunals and Courts. We are of the opinion that the statement to that effect made in the case of *Susamma Thomas* (supra) is equally applicable to the fatal accident claims made under Section 166 of the Act."

51. As to the selection of the multiplier, in paragraph No.36 of the Judgment, after considering the "Table" and the law laid down in *Sarla Verma*'s case (supra), which makes it necessary to consider the age of the deceased, the Hon"ble Supreme Court was pleased to observe that, "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*". According to the Hon"ble Supreme Court,

"If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in *Sarla Verma* is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in *Sarla Verma* for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in *Sarla Verma* is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in *Sarla Verma* should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in *Sarla Verma* should be followed".

52. In paragraph No.42, the Hon"ble Supreme Court then held that, "the standards fixed by this Court in *Sarla Verma* on the aspect of deduction for personal living expenses must ordinarily followed unless a case for departure is made out."

53. Ultimately, in paragraph No.43.4 the Hon"ble Supreme Court laid down in

categorical terms that, "the Claims Tribunal shall follow the steps and guidelines stated in paragraph No.19 of Sarla Verma for determination of compensation in cases of death."

54. According to learned counsels for the appellants, though in this case Hon''ble Apex Court has directed to follow the law laid down in Sarla Verma (supra), there is no discussion on the controversy as to in case of death of a bachelor, where parents are the claimants, whether the choice of multiplier should be based on the age of the deceased or the age of the claimants. According to them, decision in this case also, therefore, does not disturb the law laid down in Trilok Chandra's case (supra) that, the age of the claimants, which is higher in such cases, is the determining factor.

55. Learned counsels for the appellants have further referred to the decision of Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) STPL (Web) 421 SC. This was a decision of three-Judges Bench of the Hon''ble Supreme Court, wherein the Hon''ble Apex Court was constrained to observe that,

"There is never ending dispute on computation of compensation under the Motor Vehicles Act. In the absence of any statutory and a straight jacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formula's shown by the courts are only guidelines for the computation of the compensation. That precisely is the reason, the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances" etc. while suggesting the formula".

56. In this case, the deceased was 30 years old bachelor and on his accidental death, claim petition was filed by his parents. While relying upon the decisions in case of Sarla Verma (supra) and Santosh Devi v. National Insurance Company Ltd., (2012) 6 SCC 421, in paragraph No. 12, it was observed by the Hon''ble Supreme Court as under:

" Whether the multiplier should depend on the age of the dependents 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 (supra). 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 dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average age is to be taken."

[Emphasis Supplied]

57. In this Judgment, the Hon''ble Supreme Court then, in paragraph No.13, quoted with approval paragraph No. 19 of the judgment in Sarla Varma (supra) as follows:-

"In Sarla Verma (supra), at paragraph 19, a two Judge Bench dealt with this

aspect in Step 2. To quote:

19. xxx xxx xxx

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."

58. Accordingly, in this case, it was held that, the multiplier depending on the age of the deceased, which was between 26 to 30 years, would be "17".

59. Learned counsels for the appellants have then also pointed out to the decision of learned Single Judge of this Court (Coram: A.S. Oka, J.), in the case of *The Oriental Insurance Company Ltd. v. Umaji @ Umakant Irappa Ghodkumbe and Ors.* in First Appeal No. 828 of 2011 dated 8th July, 2011. In this case, the deceased was a bachelor of 25 years. The claimants were his parents, of the age of 40 and 45 years. Hence, High Court considered their average age in between 40 to 45 years. The learned Single Judge then took note of the two conflicting decisions; one in the case of *Shakti Devi v. New India Insurance Co. Ltd.*, JT 2010 (12) SC 106, holding that, "where the age of the claimant is higher than the age of the deceased, the age of the claimant and not the age of the deceased is to be taken into account for the capitalisation of the lost dependency. It is so because the choice of multiplier is determined by the age of the deceased or that of the claimant, whichever is higher."

60. Another decision taking conflicting view, as noted by the learned Single Judge, was in the case of *P.S. Somanathan and Ors. v. District Insurance Office*, JT 2011 (2) SC 242, holding, in a similar situation, that,

"the multiplier will have to be determined on the basis of the age of the deceased and not on the basis of the respective ages of the parents".

61. The learned Single Judge then, in paragraph No.8 of the Judgment, held that, in view of the law laid down by the Full Bench of this Court in *Kamleshwar Ishwardas Patel v. Union of India and Ors.*, (1995) (2) Bom C.R. 40, when there are two conflicting views of the Co-ordinate Benches of the Hon'ble Apex Court, it is not necessary to follow the later view. It was further held that,

"The choice of multiplier has direct nexus with the dependency. If the age of the deceased is 25 years and if he is survived by widow, who is younger to him, then there will be justification for applying full multiplier of 18. If the deceased was unmarried and applicants are parents, there is no logic in applying multiplier of 18. Hence, I am inclined to follow the view in the case of *Shakti Devi* (supra)".

[Emphasis Supplied]

62. Thus, in this case, following the "Table", given in the case of Sarla Varma (supra), for the age group of 40 to 45 years, the multiplier of "14" was selected by the learned Single Judge of this Court, taking the age of the parents-claimants as the base and not the age of the deceased, which was 25 years.

63. According to learned counsel for the respondents-claimants, as this decision is earlier to the decision of the Hon"ble Apex Court in the cases of Reshma Kumari (supra) and Munna Lal (supra), which have given quit as to the controversy relating to the selection of multiplier holding that it is depending upon the age of the deceased, this decision of the learned Single Judge of this Court can no more be called as laying correct position of law.

64. Learned counsel Shri. Devendranath Joshi, appearing for the appellant-New India Assurance Company in two other appeals, has relied upon another decision of the Division Bench of this Court in the case of Bajaj Alliance General Insurance Co. Ltd. v. Bipin Mehta and Ors. in First Appeal No. 632 of 2015 dated 27.11.2015. In this decision, reliance was placed on the decision of Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180, wherein while dealing with a similar situation, where the deceased was a bachelor of 19 years age and the claimants were the parents, keeping in mind the age of the parents, the multiplier of "13" was adopted.

65. Further reliance was also placed on the decision of the Hon"ble Apex Court in the case of National Insurance Company Ltd. v. Shyam Singh and Others, (2011) 7 SCC 65 and the decision of Ramesh Singh v. Satbir Singh (supra), wherein it was held that, "after considering the age of the parents of the deceased, appropriate multiplier would be determined properly depending upon the age, whichever is higher". Accordingly, in this case, as the age of the parents, at the time of accident, was 54 and 51 years; whereas the age of the deceased was 20 years, the Division Bench of this Court applied the multiplier of "11", holding that the Tribunal has erred in applying the multiplier of "17" by considering the age of the deceased.

66. According to learned counsel for the respondents-claimants, however, in this case, the later decisions of the Hon"ble Apex Court in Reshma Kumari (supra) and Munna Lal, (supra) were not cited or discussed. Even in the case of Ashwinbhai Modi (supra), on which reliance was placed in this decision, the decisions in Reshma Kumari (supra) and Munna Lal (supra) were not cited or considered.

67. Learned counsels for the appellants have then also referred to the decision of the another learned Single Judge of this Court (Coram: K.U. Chandiwal, J.) in the case of Reliance General Insurance Company Ltd. v. Syeda Aleemunbee, w/o SD. Razaq, and Ors., 2015 (1) Mh. L.J. 90, taking a contrary view that, in case of death of a bachelor, the age of his parents alone would not be a determining factor, but the age of the bachelor would be relevant for multiplicand. In this decision, after referring to all the above-said conflicting decisions on the point, it

was held that :-

"27. Reading the later judgment of larger bench, emanating from Reshma Kumari; Rajesh Rajbir Singh and Sufi Devi, it cannot be said that larger bench was oblivious to the judgment of Trilok Chandra equally by three Judges. Again, it is difficult to conceive that Sarla Verma's case does not refer to multiplier for death of a bachelor.

28. It is well settled, judicial process demands that a Judge move within the framework of relevant legal rules and the coveted modes of those for ascertaining them. The judicial robe has its inbuilt discipline, which mandates, for a High Court to adhere in tune with the precedent of Supreme Court and in particular of the larger benches. This is more so, if there are divergent views by Hon"ble Judges of the Supreme Court, on identical issues."

68. In paragraph No.35 of its Judgment, learned Single Judge was pleased to hold that,

"In Sarla Verma matter, though judgment is rendered by Division bench, it has been consistently referred by Hon"ble Supreme Court (by Bench of three Judges). In none of later judgments there is a whisper or an iota of dissidence to the view expressed in the matter of Sarla Verma. One should not be oblivious in the matter of Sarla Verma, multiplier was considered in the wake of death and dependency. It naturally embrace in pitch a case of death of a bachelor. There cannot be a distinction and carving out case of a bachelor to a married. However, in respect of personal expenses, the principle would be certainly varying as, there are minimum personal expenses to a bachelor than to a married person. One has also to assess workability of the precedent in particular facts of the case."

69. The learned counsels for the appellants has then pointed out another decision of the learned Single Judge of this Court, (Coram: Mridula Bhatkar, J.), in the case of New India Assurance Co. Ltd. v. Pranali Sandeep Madavi and Ors. in First Appeal No. 1383 of 2013, delivered on 21.11.2015, wherein after considering the decisions in Susamma Thomas (supra) and Shanti Pathak (supra), the learned Single Judge relied upon the authorities of Reshma Kumari (supra) and Munna Lal Jain (supra) and held that, the multiplier is to be based on the age of the deceased and where age of the deceased is between 26 to 30 years, then multiplier is "17".

70. Learned counsels for the appellants have then pointed out that the judgment of Reshma Kumari (supra), on which reliance is placed, in all these decisions for taking a view that the age of the deceased is relevant for the choice of multiplier, is referred to the Larger Bench in the case of National Insurance Company v. Pushpa and Ors., (2015) 9 SCC 166 Hence, the legal position as such cannot be said to have crystallized or become final.

71. Thus, according to learned counsels for the appellants, in view of these

conflicting decisions of the Hon''ble Apex Court and this Court, now this Court has to resolve the issue. Learned counsel for the appellant Shri. Ketan Joshi has then cited number of authorities, like, Kamalesh Kumar Patel (supra), Jabalpur Bus Operators v. State of M.P., 2003 (4) MHPT 226, Rattiram v. State of M.P., 2012 (4) SCC 516 and Hindustan Organic Chemicals Ltd. v. Hindustan Organic Chemical Ltd. Employees' Union, 2009 (3) (Mh. LJ 468 on the law of precedent to decide, as to which decision, whether earlier or later, should be followed whenever there are conflicting views of the Coordinate Benches of the Apex Court. According to learned counsel for appellant, as there are conflicting views of learned Single Judges of this Court also on this issue, as referred above, this Court should set this controversy at rest.

72. It is further submitted by learned counsel for the appellant that, as the decision in the case of Reshma Kumari (supra) is now referred to a Larger Bench by the Hon''ble Apex Court, this Court can take its own decision as to which multiplier should be applied in these three appeals; whether the age of the deceased or the age of the parents?

73. For the purpose of deciding this controversy, in my considered opinion, this long line of aforesaid decisions make it clear that, in the case of Susamma Thomas (supra), it has been clearly held that the choice of multiplier is to be determined by the age of the deceased or that of the claimants, whichever is higher. In the subsequent three-Judges Bench decision in Trilok Chandra's case, this position has further been clarified and in unequivocal terms, it is held that, selection of multiplier cannot, in all the cases, be solely dependent on the age of the deceased. In case of death of a bachelor, age of the parents is relevant factor for determining the multiplier. In the case of Ramesh Singh (supra), a justification for doing so was also laid down to the effect that, if a young man is killed in the accident, leaving behind aged parents, who would not survive long enough, to match with a high multiplier, provided by the "Second Schedule", then, the Court has to off-set such high multiplier and balance the same with the short expectancy of the claimants.

74. The decision in the case of Susamma Thomas (supra) that the choice of multiplier is to be determined by the age of the deceased or that of the claimants, whichever is higher, and the decision of three-Judges Bench in the case of Trilok Chandra (supra) that selection of multiplier cannot, in all the cases, be solely dependent on the age of the deceased and in case of death of a bachelor, the age of the parents is relevant, is consistently followed by the Hon''ble Apex Court in several other decisions, like, New India Assurance Co. Ltd. v. Charlie; New India Assurance Co. Ltd. v. Shanti Pathak and further strengthen in Ramesh Singh v. Satbir Singh; Shakti Devi v. New India Assurance Co.; National Insurance Co. v. Shyam Singh; and Ashwinbhai Modi v. Ramchandra Ramkaran Sharma (supra). This Court has also followed the same view in the Division Bench decision, in the case of Bajaj Alliance General Insurance Co. v. Bipin Mehta (supra) and by learned Single Judge in the case of Oriental

Insurance Co. v. Umaji @ Umakant (supra).

75. Though the decisions in Munna Lal (supra) and Reshma Kumari (supra), following the decision given in Sarla Verma (supra), held that, along with other factors, the age of the deceased and his income is relevant, neither the decision in Sarla Verma (supra), nor the decisions in Reshma Kumari (supra) or Munna Lal (supra) deal with the actual controversy, "as to what should be the multiplier in case of death of a bachelor, when parents are the claimants?". They deal with the selection of multiplier in general cases, where the deceased is normally a married person and the claimants are his/her spouse and children. It is pertinent to note that, the "Table" laid down in the case of Sarla Verma (supra) does not make any distinction between the death of a bachelor and the death of a married person, as the said point was never raised for consideration in those cases before the Hon"ble Apex Court. The reason may be because in Susamma Thomas (supra), it was already laid down that, "selection of multiplier would depend on the age of the deceased or the age of the claimants, whichever is higher". Therefore, what should be the multiplier in case of death of a bachelor was already set at rest in the decision of Susamma Thomas (supra). As the age of the parents is always higher than the age of the deceased, the age of the parents is relevant for choice of multiplier. In the case of Susamma Thomas (supra), it was already laid down that the age of the parents will be relevant for deciding multiplier in case of death of a bachelor. This legal position is not expressly dealt with in the decisions of Sarla Verma (supra), Munna Lal (supra), Reshma Kumari or others.

76. As a matter of fact, the decision in Sarla Verma (supra), which is followed in other decisions, mainly deal with the issue, "as to whether "Second Schedule" given in the Act, which is meant for deciding claims filed under Section 163-A of the Act, should be followed scrupulously?" and "whether there are any errors in the said "Table"?" "If so, how to assess the just amount of compensation?; how much amount to be deducted towards personal expenses of the deceased?; how to assess future prospects of the income of the deceased?" No doubt, in that context, the judgment of Sarla Verma (supra) also dealt with the selection of multiplier and the Amendment introduced by the Amendment Act 54 of 1994, inter alia, inserting Section 163-A containing a special provision as to payment of compensation on structured formula basis, as indicated in the "Second Schedule" to the Act. While dealing with these issues, it may be true that, in paragraph No.19, while laying down three steps for determining compensation in a uniform and consistent manner, the Hon"ble Apex Court stated that, "having regard to the age of the deceased and period of his active career the appropriate multiplier should be selected and multiplier should be chosen from the Table provided in "Second Schedule" with reference to the age of the deceased". However, this observation is made in the context of laying down general principles or guidelines for arriving at just amount of compensation and not in particular reference of dealing with a situation where the deceased is a bachelor and the claimants are the parents.

77. It is significant to note that, though this Judgment in Sarla Verma (supra), also refers to the decision in Trilok Chandra's judgment, it does not expressly deal with the particular situation and the legal position laid down in Trilok Chandra that, in case of death of a bachelor, the age of claimants, and not the age of the deceased, is relevant. Thus, the judgment in Sarla Verma (supra) is conspicuously silent as to the eventuality, which is dealt with in the cases of Trilok Chandra, Charlie, Shakti Devi, Ashwinbhai and several others referred above, where the deceased is a bachelor and the parents are the claimants. It also does not disturb, in any way, the legal position laid down in Susamma Thomas (supra) that, "the selection of multiplier would depend on the age of the deceased or the claimants, whichever is higher". The reason for the same may be because in the case of Sarla Verma (supra), the Hon"ble Supreme Court was dealing with a situation where the deceased was a married man, who has left behind his widow, three minor children, parents and grand-father. Hence, the Hon"ble Apex Court, in this case, was not dealing with the eventuality whether the deceased is a bachelor and parents alone are the claimants. Hence, as the legal issue covered in Trilok Chandra (supra) was not before the Hon"ble Apex Court in Sarla Verma (supra), there is no opinion as such expressed in this on the issue of choice of multiplier when parents are alone the claimants. Even in the subsequent decisions, like, Reshma Kumari (supra) or Munna Lal (supra) also, this issue was not raised for consideration, as the deceased in those cases were married persons and claimants were the widow and the children.

78. The learned Single Judge of this Court in the case of The New India Assurance Company v. Pranali Sandeep Madvi (supra) has followed the decision in Reshma Kumari and Munna Lal; whereas, another learned Single Judge in the case of Reliance General Insurance Co. v. Sayeeda followed the decision in Sarla Verma (supra). However, once it is held that the Judgment in Sarla Verma does not expressly deal with the eventuality dealt with by three-Judges Bench in Trilok Chandra (supra), nor disturbs the legal position laid down in Susamma Thomas (supra) that, the selection of multiplier would depend on the age of the deceased or the claimants, whichever is higher, then, it follows that the law laid down in these two authorities has to be followed while deciding these three appeals, as, in all these three appeals, the parents alone are the claimants.

79. Moreover, though in the case of P.S. Somnathan v. District Insurance Officer (supra) and in the case of Amrit Bhanushali v. National Insurance Co. (supra), the two-Judges Bench of the Hon"ble Apex Court was dealing with a situation wherein parents alone were the claimants on account of death of unmarried son, in the later decision, the cases of Susamma Thomas (supra) and Trilok Chandra (supra) were neither referred, nor discussed and in the former decision, though these cases were referred, there is no discussion as to why the view taken in these two cases should be distinguished.

80. In view of this legal situation, in my humble view, the law laid down in the earliest decision of Susamma Thomas (supra), further clarified and confirmed in

the three-Judges Bench decision of Trilok Chandra (supra) and Ramesh Singh (supra), and followed in subsequent decisions while dealing with the similar situation, will prevail and hold the ground that choice of multiplier would depend on the age of the deceased or the age of claimants, whichever is higher. As in the case of death of a bachelor, age of the claimants, who are his parents, is higher, choice of multiplier would depend on their average age and not on the age of the deceased.

81. Even otherwise, it also appears to be logical and rationale that in case of death of a bachelor, it is not the age of the deceased, but the age of his parents, who are the claimants, should be relevant. After all, the very concept of payment of compensation implies that the dependents are paid damages to off-set the pecuniary loss likely to be suffered by them due to untimely death of the deceased. The assessment of damages, therefore, necessarily dependent on the question as to the life expectancy of the dependents. The life expectancy of the deceased may be higher, but if the life expectancy of dependents-claimants is not that much, which is obvious in case where claimants are the parents, amount of compensation cannot be assessed on the basis of life expectancy of the deceased. Otherwise, as rightly submitted by learned counsels for the appellants, the amount of compensation may become a bonanza or source of profits. As held by the Hon''ble Supreme Court, if the amount of compensation has to be just and reasonable, it must match with the life expectancy of claimants and as the life expectancy of claimants, when alone parents are the claimants, is not as much as that of the deceased, their age becomes relevant for deciding the appropriate multiplier. The multiplier method necessarily represents the number of years'' purchase on which the loss of dependency is capitalized. If the parents, on account of their age, are not likely to survive long, so as to be dependent on the deceased till his own life-time, it necessarily follows that the age of the parents has to be the relevant criteria, and not the age of the deceased, for deciding the multiplier. The reason and logic in that way cannot part ways with the law. They are the very essence and the spirit of the law. Rational view cannot be divorced or sacrificed on technicalities.

82. Hence, in my considered opinion, in these appeals before me also, as the deceased were bachelors and the claimants are the parents and as the age of the parents is higher than the age of the deceased, choice of multiplier has to be made depending on the average age of the parents and not the age of the deceased.

83. Accordingly, in Appeal No. 738 of 2015, though the age of the deceased at the time of the accident was 32 years, as the age of the parents, who are the only claimants, is stated to be 50 years, their age being higher than the deceased, depending on their age, the appropriate multiplier would be "10".

84. In Appeal No. 750 of 2016, though the age of deceased Avani at the time of accident was 22 years, as age of her parents, who are the only claimants, was 57 and 48 years, taking their average age as 52 years, appropriate multiplier would

be "11".

85. In Appeal No.756 of 2016, though the age of deceased Kartik at the time of accident was between 21 to 25 years, as the age of his parents, who are the only claimants, was 55 and 53, taking their average age as 52 years, the appropriate multiplier would be "11".

Addition of Income towards Future Prospects

86. Now coming to the aspect of addition of income towards future prospects, the Tribunal has, relying on the decisions of the Hon"ble Apex Court, has added 50% income of actual income for calculation of the multiplicand in all the three claim petitions.

87. As to the law relating to additional income towards future prospects, as pointed out by learned counsels for the appellants, there are two again conflicting views of the Co-ordinate Benches of the Hon"ble Apex Court in the cases of Reshma Kumari (supra) and Ramesh Singh v. Satbir Singh (supra).

88. In the case of Reshma Kumari (supra), after relying upon the decision in the case of Sarla Verma (supra), it was held by the Hon"ble Supreme Court as follows :

"With regard to the addition to income for future prospects, in Sarla Verma, this Court has noted earlier decisions in Susamma Thomas, Sarla Dixit, 1996 (3) SCC 179 and Abati Bezbaruah : 2003 (3) SCC 148 and in paragraph 24 of the Judgment held as under:

"24.....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 therefrom should be made only in rare and exceptional cases involving special circumstances".

[Emphasis Supplied]

89. Whereas, in the decision of Santosh Devi v. National Insurance Company Limited and Ors., (2012) 6 SCC 421, while dealing with the issue of addition of additional income for the future prospects to a case where the deceased was neither a Government servant nor was a permanent employee, the Hon"ble Apex

Court was pleased to hold as under :

"14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also

get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

[Emphasis Supplied]

90. As against it, in the case of *Rajesh v. Rajbir Singh*, (2013) 9 SCC 54, a three Judges Bench of the Hon"ble Apex Court delivered the judgment on 12.04.2013 opining thus :

"8. Since, the Court in *Santosh Devi's* case actually intended to follow the principle in the case of salaried persons as laid down in *Sarla Verma's* case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In *Sarla Verma's* case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

91. In the case of *National Insurance Company Ltd. v. Pushpa* (supra), the Hon"ble Apex Court has, therefore, in view of these divergent opinions, thought it fit to refer the matter to the Larger Bench, so as to have an authoritative pronouncement as regards the manner of addition of income for future prospects. As a result, this issue is now pending before the Larger Bench of the Hon"ble Apex Court.

92. According to learned counsels for the appellants, as in none of these three appeals the deceased were on permanent employment or Government job with regular annual increase in their salary, the addition of 50% additional income towards future prospects, as made by the Tribunal, is totally unwarranted and needs to be set aside or modified. Whereas, according to learned counsel for the respondents-claimants, having regard to the young age of the deceased Avani and Kartik and the fact that Avani was studying C.A. and Kartik was earning Rs. 12,500/- towards Performance Bonus, the Tribunal has rightly awarded additional income of 50% towards their future prospects. In respect of deceased Vijaysingh, it is submitted that, as he was in permanent job as "H.R. Executive" in Zensor Technologies Ltd., Tribunal has not committed any error in awarding 50% additional income towards his future prospects also.

93. In my considered opinion, for the purpose of deciding these three appeals, it is not necessary to enter into this controversy, having regard to the fact that in this case neither the deceased Avani nor deceased Kartik or deceased Vijaysingh were, at the time of accident, self-employed persons, but were proved to be in service. Deceased Avani was proved to be working with M/s. N.G. Thakkar & Co., doing article-ship. It may be true that she was in third year of C.A., but, at the same time, she was getting salary of Rs. 7,000/- per month towards her job with M/s. N.G. Thakkar & Co. The relevant documentary evidence, like, her Salary Certificate (Exhibit-38) and Bank Statement (Exhibit-40), are also produced and proved on record by examining concerned officer from M/s. N.G. Thakkar & Co., Mr. Natvar Thakkar. His evidence also goes to show that deceased Avani was honest, hard-worker and she was having better prospect of completing her C.A. and thereby earning handsome income. This Court can also take judicial notice of the income normally drawn or earned by a Chartered Accountant.

94. In the case of Sanjay Verma v. Haryana Roadways, 2014 ACJ 692, relied upon by learned counsel for the respondents-claimants, while deciding the claim of the injured, who had suffered 100% disablement, the three-Judges Bench of the Hon"ble Apex Court, relying upon the decision in the case of Santosh Devi and Shakti Devi v. New India Assurance Co. Ltd. (supra), held that, as injured was 25 years of age, a self-employed person and having steady income, as per Income Tax Return, addition of 50% of the income, which he was earning, at the time of accident, was justified towards future prospects.

95. Learned counsel for the respondents-claimants has also relied upon the decision of two-Judges Bench of the Hon"ble Apex Court in the case V. Mekala v. M. Malathi and Another, (2014) 11 SCC 178, wherein claimant was a brilliant student of 16 years age, holding first rank in School, who had suffered 70% permanent disability in motor accident. Considering that she was a brilliant student, having good career prospects, her notional monthly income fixed by the High Court as Rs. 6,000/- was considered too meager by the Hon"ble Supreme Court and it was enhanced to Rs. 10,000/- per month as just and reasonable under the head of "loss of income". Then considering her loss of future prospects, 50% additional income was added under this head.

96. Therefore, in my considered opinion, in the instant case also, if one has regard to the bright future of a young budding talented girl, studying in third year of Chartered Accountant course, like, deceased Avani, her present income @ Rs. 7,000/- per month, being on lower side, it cannot be said that the Tribunal has committed any error in computing additional income of 50% towards her future prospects. As a matter of fact, this Court is of the opinion that, if her future prospect of income as "C.A." is considered, the compensation amount of Rs. 11,08,000/-, as awarded by the Tribunal, is not, in any way, excessive for the appellant-Insurance Company to have any grievance. In reality, having regard to her future prospects as a professional, like, Chartered Accountant, the amount of compensation, as awarded by the Tribunal, needs to be maintained, though, in

her case, this Court has reduced the multiplier from "18" to "11".

97. Similarly, in respect of First Appeal No.756 of 2016, the documentary evidence proves on record that deceased Kartik was a Commerce Graduate and has completed Diploma Course in N.S.C. and B.S.C. He was working with M/s. Truestone Investment Advisors Pvt. Ltd Company. He was also engaged in share market and drawing income of Rs. 25,000/-per month. All the necessary and relevant documentary evidence was produced on record to that effect in the form of his Salary Slip along with Bank Statement (Exhibit-40). The Manager from M/s. Truestone Investment Advisors Pvt. Ltd., Shri. Rajan J. Sonawane, was also examined to prove these documents. He has deposed that, out of Rs. 25,000/- per month, Rs. 12,500/- was paid as Salary, whereas, Rs. 12,500/- was paid towards Performance Bonus. The Tribunal has taken his monthly income from salary only as Rs. 12,500/- and considering his future prospects, added 50% of the same towards future prospects; and, after deducting 50% towards his personal expenses, arrived at the multiplicand of Rs. 1,12,500/-. In this case, however, in my opinion, this Court has to take into account the fact that in addition to salary, deceased Kartik was also earning Performance Bonus of Rs. 12,500/- per month, which income, Tribunal has not at all considered. Needless to state, that if at the young age of 23 years, he was earning Rs. 12,500/- per month towards Performance Bonus, in addition to his salary, his future prospects of earning enhanced income were bright.

98. In this view of the matter, even in his case also, the addition of 50% made by the Tribunal towards his future prospects can in no way be called as excessive, leaving aside the legal issue as to whether 50% additional income to be added or not to the actual income in case of a person, who is not in a Government employment. Hence, no interference is warranted so far as multiplicand of Rs. 1,12,500/-, which is arrived at by the Tribunal in his case. However, as the multiplier is now reduced from "18" to "11", the financial loss will also be reduced to Rs. 12,37,500/-. In that amount, Rs. 25,000/- towards funeral expenses and Rs. 20,000/- towards loss to estate, as awarded by the Tribunal, will have to be added. Thus, total compensation amount will be Rs. 12,82,500/-. Merely because his parents are having one more son, who is in service, is not sufficient to deny them just and reasonable compensation, which they were entitled on account of the untimely death of the deceased. It cannot be accepted that their dependency on the deceased was reduced as they have one another son.

99. In First Appeal No. 738 of 2015, again deceased is of the age of 32 years and in the permanent employment as "H.R. Executive" in M/s. Zensar Technologies Ltd., getting salary of Rs. 40,000/- per month. By adding 50% towards his future prospects, the Tribunal has deducted 50% towards his personal expenses; accordingly, calculated amount of compensation. Having regard to his future bright prospects, considering that, at the age of 32 years itself, he was an "H.R. Executive" in a Company like Zensar Technologies and drawing salary of Rs.

40,000/- per month, the multiplicand of Rs. 3,13,728/- arrived at by the Tribunal being just and reasonable, no interference is warranted therein. However, in his case, as the multiplier is reduced from "16" to "10", the just and reasonable amount of compensation would come to Rs. 31,37,280/- + Rs. 25,000/- towards funeral expenses and Rs. 25,000/- towards loss of estate; totally, Rs. 31,87,280/-. Thus, in this appeal, the compensation amount is reduced from Rs. 50,60,000/- to Rs. 31,87,280/-.

100. As a result, First Appeal No. 750 of 2016 stands dismissed.

101. First Appeal No. 756 of 2016 is allowed partly. The impugned Award, as passed by the Tribunal, is modified to Rs. 12,82,500/-, instead of Rs. 20,70,000/-. The rest of the Award regarding apportionment, interest and costs, is not disturbed.

102. First Appeal No.738 of 2015 is allowed partly. The impugned Award, as passed by the Tribunal, is modified to Rs. 31,87,280/-, instead of Rs. 50,60,000/-. The rest of the Award regarding apportionment, interest and costs, is not disturbed.

103. After paying the amount to the respondents-claimants as per the modified Awards, the Tribunal to return the excess amount deposited with it, to the appellant-Insurance Company, with proportionate interest thereon.

104. In view of disposal of these appeals, Civil Applications therein do not survive and the same are, accordingly, disposed of.