N. Surender Rao and Others Vs B. Swamy and Another

Court: Andhra Pradesh High Court

Date of Decision: Dec. 5, 2013

Citation: (2014) 1 ALT 512 : (2014) 1 AnWR 243

Hon'ble Judges: M. Satyanarayana Murthy, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: Ramakrishna Reddy, for the Appellant; Ramakrishna Reddy, Counsel, for the Respondent

Judgement

M. Satyanarayana Murthy, J.
Dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-I

Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad, in O.P. No. 2076 of 2009, dated 29.10.2012, the present

Appeal is preferred by the appellants-claimants, u/s 173 of the Motor Vehicles Act, (For short, "the Act), seeking enhancement of compensation

to Rs. 25,00,00/- as claimed before the Tribunal in O.P. No. 2076 of 2009. The appellants herein were the petitioners and the respondents herein

were the respondents before the Tribunal in O.P. No. 2076 of 2009. For the sake of convenience, the parties hereinafter will be referred to as

appellants and respondents.

2. The appellants filed the claim petition before the Tribunal u/s 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs. 25,00,000/-

under various heads, for untimely death of N. Abinav, who happened to be son of first and second appellants and brother of third appellant, in a

road accident that occurred on 29.03.2008 at about 11:30 p.m. while the deceased Abinav was returning after attending his college annual day

celebrations on his Honda Activa motor cycle bearing No. AP-13-G-7343 slowly on the left side of the road and when he reached near

Jeedimetla bus stop, one Endeavor Car bearing No. AP-29Q-0009 proceeding towards Hyderabad from Medchal, being driven in a rash and

negligent manner, hit the motorcycle of the deceased Abinav, due to which he fell down and sustained grievous injuries all over his body,

succumbed to the injuries while shifting to Balaji Hospital, Hyderabad. The deceased Abinav was aged 19 years, hale and healthy studying III

Year B. Tech., and on account of untimely death of Abinav, the appellants being the parents and sister lost their future dependency.

3. The accident occurred due to rash and negligent act of the driver of Endeavor Car bearing No. AP-29Q-0009. The first respondent being the

owner and the second respondent being the insurer of the Endeavor car are jointly and severally liable to pay the compensation. Hence, the claim

of Rs. 25,00,000/-.

4. The first respondent though initially contested the matter remained ex-parte. The second respondent filed written statement denying the material

allegations inter-alia contending that accident not occurred due to rash and negligent driving of the driver of Endeavor car No. AP-29Q-0009 and

the driver of the alleged vehicle was not holding valid and effective driving license at the time of accident to drive the vehicle and as such the first

respondent violated the terms and conditions of the policy, committed breach of the policy condition; as such the second respondent is not liable to

pay any compensation and called upon the appellants to put strict proof of the age and educational qualifications of the deceased Abinav and that

the claim is on high side. Further, it is contended that the accident occurred only due to rash and negligent riding of the Honda Activa motor cycle

by the deceased Abinav and prayed to exonerate the second respondent from payment of any compensation by dismissing the petition.

5. During the course of enquiry, on behalf of the appellants, P.Ws. 1 to 3 were examined and Exs. A-1 to A-15 and Exs. X-1 to X-5 were

marked. On behalf of the second respondent, none were examined but got marked Ex. B-1, Insurance policy.

6. Upon hearing arguments of both the counsel and considering the material available on record, the Tribunal awarded a total compensation of Rs.

8,84,000/- together with interest at the rate of 75% p.a. from the date of petition till the date of realization, against both the respondents.

Dissatisfied with the compensation amount awarded by the Tribunal, appellants-claimants preferred this Appeal challenging the inadequacy of

compensation on various grounds mainly contending that:

(a) The Tribunal did not appreciate the oral and documentary evidence and wrongly taken the earnings of the deceased on lower side and

awarded meager compensation erroneously;

(b) The Tribunal erroneously took the average age of the parents of the deceased Abinav and ought to have taken the age of the deceased Abinav;

(c) The Tribunal would have added 50% as future prospects but did not consider the same on wrong appreciation of law;.

(d) The Tribunal erroneously deducted 50% towards personal and living expenses of the deceased.

And finally prayed to allow the Appeal setting aside the impugned award granting total compensation of Rs. 25,00,000/-, which is inclusive of

compensation already awarded, together with subsequent interest on the total amount of compensation.

7. During the course of arguments, learned counsel for the appellants mainly contended that in case of death of a bachelor, the age of the deceased

shall be taken for application of multiplier but not the age of his parents placing reliance on the judgments of the Hon''ble Apex Court in P.S.

Somanathan and Others Vs. District Insurance Officer and Another, , Reshma Kumari and Others Vs. Madan Mohan and Another, and Amrit

Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, .He further contended that in case of death of an Engineering student the

Tribunal has to undertake some guess work and fix the monthly income. In such a case, the Tribunal is not supposed to deduct 50% towards

personal expenses but erroneously deducted 50% towards personal and living expenses of the deceased, though he was a bachelor, and

committed an error and finally prayed to allow the Appeal awarding a total compensation of Rs. 25,00,000/- as claimed before the Tribunal.

8. Per contra, learned standing counsel for the second respondent contended that in case of death of a bachelor, the age of the surviving

dependants, whichever is higher alone shall be taken basing on the capitalization method placed reliance on the judgment of the Hon''ble Apex

Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others,

9. Considering rival contentions and perusing the material available on record the points that arise for consideration in this Appeal are:

1. Whether the average age of the parents of the deceased Abinav or the age of the deceased Abinav shall be taken into consideration for

application of multiplier?

2. Whether deduction of 50% towards personal and living expenses of deceased Abinav is in accordance with law?

3. Whether the appellants are entitled to compensation of Rs. 25,00,000/-?

10. POINT No. 1: As the respondents did not prefer any Appeal questioning the quantum of compensation or occurrence of accident due to the

rash and negligent driving attributed to the deceased Abinav, the finding recorded by the Tribunal that the accident occurred due to the rash and

negligent driving of the driver of the Endeavor car bearing No. AF-29-Q-0009 attained finality. Hence, we ourselves restrained to decide the core

issue of application of relevant multiplier in this Appeal.

11. There are two divergent opinions on this aspect; one line of decision was that the age of the deceased bachelor alone shall be taken from the

principles laid down by the Apex Court in Sarla Verma''s case onwards, earlier to that the line of decision was that either the age of the deceased

or the dependants of deceased whichever is higher shall be taken for application of multiplier. The principles laid down in the decisions will be

discussed in detail in the later paragraphs.

12. The first and foremost contention of learned counsel for the appellants is that in case of death of bachelor, the age of the bachelor alone shall

be taken, not the age of his parents, but the Tribunal placing reliance on the judgment of Hon''ble Apex. Court in National Insurance Company

Ltd. Vs. Shyam Singh and Others, took the average age of both father and mother and applied the multiplier. Now, the procedure adopted by the

Tribunal is questioned contending that the average age of the parents shall not be taken for application of multiplier and age of deceased bachelor

Abinav alone shall be taken into account for application of multiplier and if such multiplier is adopted, the compensation to be awarded to the

appellants will exceed Rs. 25,00,000/-. In support of his contention, learned counsel for the appellants directly placed reliance on the judgments of

the Hon''ble Apex Court in P.S. Somanathan and Others Vs. District Insurance Officer and Another, wherein the Hon''ble Apex Court referring to

various judgments in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,) Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, , held as follows:

21. For the purpose of calculating the multiplier, the High Court held that mother was the real legal representative and others could not claim to be

the legal representatives of the deceased, and accordingly applied the multiplier of 5, whereas the Tribunal had calculated compensation by

considering a multiplier of 16.

22. This Court is of the opinion that the law as has been laid correctly in the case of Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, in a very well considered judgment, is to be followed.

13. The learned counsel for the appellants also relied on the judgment of Apex Court in Amrit Bhanu Shali and Others Vs. National Insurance Co.

Ltd. and Others, wherein it was held as follows:

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependant. There may be a number of

dependants of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of

compensation.

14. In the facts of the decision cited supra, Amrit Bhanu Shali (father) and Sarlaben (mother) were held to be the dependents of deceased Ritesh

Bhanu Shali. Therefore, the Tribunal held that the appellants 1 and 2 have the right to get compensation. On the date of accident the appellant No.

3, Mamta, was not married but by the time the case was heard by the Tribunal, the appellant No. 3, Mamata, had already been married. In those

circumstances, she was found to be not depending upon the deceased Ritesh Bhanu Shali. Therefore, the age of the parents, being dependants of

deceased, was taken into consideration and applied multiplier. The Apex Court found that application of multiplier basing on the age of the mother

of deceased Ritesh Bhanu Shali is erroneous and applied multiplier 17 basing on the age of the deceased Ritesh Bhanu Shan, who was aged 26

years.

15. In another judgment of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , the Hon''ble Apex Court held as

follows:

34. If the multiplier as indicated in column (4) of the Table read with para 21 of the Report in Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, , 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 Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another,) for the selection of multiplier in claim applications made u/s 166'' in the cases of death. We do

accordingly. If for the selection of multiplier, column (4) of the Table in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and

Another,) is followed, there is no likelihood of the claimants who have chosen to apply u/s 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 u/s 163A. As regards the cases where the age of the victim

happens to be up to 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 Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, should be followed. This is to

ensure that claimants in such cases are not awarded lesser amount when the application is made u/s 166 of the 1988 Act, in all other cases of

death where the application has been made u/s 166, the multiplier as indicated in column (4), of the Table in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, should be followed.

40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made u/s 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the

Claims Tribunals shall select the multiplier as indicated in column (4) of the Table prepared in Smt. Sarla Verma and Others Vs. Delhi Transport

Corporation and Another, read with para 21 of that judgment.

(ii) In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163A 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 Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, should be followed.

(iii) As a result of the above, while considering the claim applications made u/s 166 in death cases where the age of the deceased is above 15

years, there is no, necessity for the claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 9 of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation

and Another, for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow para 11 of the judgment in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another,

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards

prescribed in paras 14 and 15 of the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,) subject to the

observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

16. In view of the judgments of the Hon''ble Apex Court in P.S. Somanathan and Others Vs. District Insurance Officer and Another, Amrit Bhanu

Shali and Others Vs. National Insurance Co. Ltd. and Others,) for application of multiplier, the age of the deceased bachelor shall alone be taken

but not the age of the (dependants of the) deceased bachelor. But, in the judgment of the Hon''ble Apex Court in Reshma Kumari and Others Vs.

Madan Mohan and Another, , the Apex Court succinctly held that when the age of the deceased is 15 years and above, the Tribunal shall select

the multiplier as indicated in column No. 4 of (the Table prepared in) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

read with para 24 (sic. 21) of that judgment.

17. When we advert to the table in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier to be

applied to the present case, taking into consideration the age of the deceased Abinav shall be 18. In the facts of Reshma Kumari and Others Vs.

Madan Mohan and Another, the deceased was only 15 years boy and where the age of the victim happened to be 15 years the Apex Court is of

the opinion that irrespective of Section 166 or Section 163A of the Act claim for compensation has been made, multiplier of 15 and assessment as

indicated in column (4) of Second Schedule subject to correction as pointed out in column (6) of the Table in Smt. Sarla Verma 2010 (1)

An.W.R. 402 (SC) : 2009 (4) SCJ 91 (supra) should be followed. This is to ensure that claimants in such cases are not awarded lesser amount

when the application is made u/s 166 of the Act. In all other cases of death where the application has been made u/s 166, the multiplier as

indicated in column (4) of the table in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, should be followed.

18. The main contention of second respondent is that in case of death of a bachelor the age of the parents alone has to be taken into consideration

for application of multiplier for the reason that during the life time of the parents, they are entitled to enjoy the income of the deceased bachelor and

the question of enjoying any benefits after death of parents though the bachelor was alive does not arise. If for any reason, bachelor''s age is taken

into consideration, it amounts to conferring undeserved benefit to the claimants (appellants herein) and the claims in motor accident cases cannot be

a boon but it is only a solace for loss of dependency on account of untimely death of a bachelor. Hence, the age of the dependants or the age of

deceased, which ever is higher shall be taken to adopt appropriate multiplier. Thus the capitalization method alone shall be applied for adopting the

multiplier and drawn the attention of this Court to a decision of the Apex Court in General Manager, Kerala State Road Transport Corporation,

Trivandrum Vs. Mrs. Susamma Thomas and others, which is popularly known as Susamma Thomas case, wherein the Apex Court discussed the

principles laid down in various judgments of England Picket v. British Rail Engineering Limited 1980 ACJ 261 (HL, England), Baker v Bolton (10)

(1808) 1 Camp 493, Davies v. Powell Duffryn Associated Collieries Limited (1942) AC 601. Among the judgments of England cited supra by the

Apex Court Davies (1942) AC 601(supra) is worthy of reference, where Lord Wright held as follows:

The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future

pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.

19. Lord Wright adopted the principle applicable also under the Indian Act in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami

and Others, where the Apex Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing, on the

one hand, the loss to the claimants of the future pecuniary benefit and, on the other, any pecuniary advantage which from whatever source comes

to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. Therefore, the multiplier

should be based on the pecuniary loss expected to suffer on account of untimely death, his Lordship also referred the multiplier laid down in

Halsbury''s Laws of England in Volume 34, para 98, states the principle thus:

(98) Assessment of damages under the Fatal Accidents Act, 1976 - The courts have evolved a method for calculating the amount of pecuniary

benefit that dependants could reasonably expect to have received from the deceased in future. First, the annual value to the dependants of those

benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the

estimated amount of his own personal and living expenses.

The assessment is split into two parts, The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the

number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that

multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have elapsed between

the death and the trial is deducted from a multiplier based on the number of years that the expectancy would probably have lasted; central to that

calculation is the probable length of the deceased''s working life at the date of death.

20. In any view of the matter the method of capitalization is only based on the dependants as supposed to incur for assessment of damages, to

compensate the dependants it has to take into account the total pecuniary loss expected to suffer and if the compensation awarded by the Court if

invested in any bank, where the interest accrued thereon would be sufficient to the loss of earnings is the main consideration.

21. In another judgment of the Apex Court reported in H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, it was held in Para

6 that in case of death of a bachelor or un-married, the age of their mother alone shall be taken to adopt the appropriate multiplier relying the

earlier judgment of Supreme Court in National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, as follows:

6. Learned counsel then submitted that under Second Schedule to the Act providing compensation based on a formula, the multiplier which was

applicable was 15 and not 13 as age of mother of victim Vazeer was 45 years in which case the correct multiplier should have been 15 and not 13

whereas in the case of victim Rafeeq, as age of his mother being 40 years, the correct multiplier should have been 16 and not 14. On the other

hand, learned counsel appearing on behalf of the respondents submitted that compensation has been awarded in accordance with the Second

Schedule. It is well settled that life expectancy of the deceased or the beneficiaries whichever is shorter is an important factor. Reference in this

connection may be made to the decision of this Court in the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, . In

the case of National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, , it was observed that ""the appropriate method of assessment of

compensation is the method of capitalization of net income choosing a multiplier appropriate to the age of the deceased or the age of the

dependants whichever multiplier is lower."" According to the Second Schedule, if the age is above 40 years but not exceeding 45 years, the

multiplier applicable is 15 and if the age is above 35 years but not exceeding 40 years, the multiplier would be 16 but the High Court has taken the

multiplier as 13 and 14 instead of 15 and 16 respectively. In the case of compensation to the parents of Vazeer, the multiplier 15 should have been

adopted instead of 13 and the compensation should not have been reduced from Rs. 3,13,000/- to Rs. 1,71,000/- but the same should have been

reduced to Rs. 1,95,000/-. In the case of compensation to the parents of Rafeeq, the correct multiplier should have been 16 and not 14 and the

High Court was not justified in reducing the compensation from Rs. 3,49,000/- to Rs. 1,83,000/- which should have been reduced to Rs.

2,07,000/-. Thus, we hold that the parents of Vazeer are entitled to total compensation to the tune of Rs. 1,95,000/- and that of Rafeeq to the tune

of Rs. 2,07,000/-

22. In another judgment of the Apex Court in National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others, it was held as follows:

6. In view of these deficiencies in the judgment we should have granted special leave. But then it is a hard case where a young life, the bread

winner of a family, is snuffed out ere its prime as a result of the tragic accident. The claimants aver that the deceased was earning Rs. 1,500/- per

month. Even if we assume as a rough and ready estimate of Rs. 750/- per month or Rs. 9,000/- per year as the loss of dependency - which may

not be an unreasonable estimate - and capitalize it on a multiplier of 15 (which would be the appropriate multiplier having regard to the age of the

deceased) the resultant figure will be Rs. 1,35,000/-. To this should be added the usual awards for Loss to the Estate and Loss of Consortium

which are generally in conventional figures ranging from Rs. 5,000/- to Rs. 10,000/- on each count. If Rs. 7,500/- on each count is added, the

quantification of Rs. 1,50,000/- arrived at by the High Court could be justified; though on a reasoning entirely different from any discernible or

manifest from the appellate judgment of the High Court.

23. In another judgment of the Apex Court in National Insurance Co. Ltd. Vs. Gurumallamma and Another, it was held as follows:

6. The second schedule provides for the amount of compensation for third-party fatal accident/injury cases claims. It provides for the age of the

victim and also provides for the multiplier for arriving at the amount of compensation which became payable to the heirs and legal representatives

of the deceased depending upon his annual income.

10. Parliament in laying down the amount of compensation in the Second Schedule, as indicated hereinbefore, in its wisdom, provided for payment

of some amount which should be treated to be the minimum. It took into consideration the fact that a person''s potentiality to earn is highest when

he is aged between 25 and 30 years and that is why in case of permanent disability multiplier of 18 has been specified. The very fact that even if

the deceased had an income of Rs. 3,000/- per month, he being aged about 15 years would receive a sum of Rs. 60,000/- but if his income was

Rs. 40,000/- per annum, his legal heirs and representatives would receive a sum of Rs. 8,00,000. In the case of any non-earning person, the

notional income has been fixed at Rs. 15,000/- per annum.

12. In view of the aforementioned finding, we are of the opinion that it is not necessary for us to take into consideration, the decisions cited at the

Bar suggesting that in a case of death of an unmarried person and wherein the claimants are the parents of the deceased, the age of the deceased

shall be an irrelevant factor for applying the multiplier specified in the Second Schedule.

24. In another judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., , it was held as

follows:

15. What thus emerges from the above decisions is that the Court must adhere to the system of multiplier in arriving at the proper amount of

compensation, and also with a view to maintain uniformity and certainty. Use of higher multiplier has been deprecated and it is emphasized that it

can not exceed 18. The multiplier, as would be evident from the observations quoted earlier, may differ in the peculiar facts and circumstances of a

particular case as according to the example cited where bachelor dies at the age 45, the age of his dependent parents may be relevant for selecting

a proper multiplier. Meaning thereby that a multiplier less than that what is provided in the schedule could be applied in special facts and

circumstances of a case.

25. Similarly, in a decision of this Court in New India Assurance Co. Ltd. Vs. Mohd. Ahmed Qureishi and Others, this Court held that when the

deceased was a bachelor, age of the dependents alone shall be the determining factor to apply the multiplier.

26. In view of the legal position, which the second respondent-Insurance Company relied upon is anterior to the judgment of the Apex Court in

Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, there is a sea change after the advent of Sarla Verma''s case. In the

judgments relied upon by the learned Standing Counsel for the second respondent, no specific guidelines were issued to any of the Tribunals or

subordinate Courts for taking the age of the parents of the deceased bachelor. However, the rationale behind those principles laid down by various

Courts in the decisions referred supra is that a human being is expected to live till certain age in normal course of events and parents would die

earlier than the children in view of the principle that ''younger survived the elder''. Thus, the normal life expectancy of a human being is to be fixed

before applying the multiplier taking the age of the parents or the deceased bachelor, that apart, the loss to the parents on account of untimely

death of a bachelor would be only during life time of the parents, after their death, they are supposed to suffer any loss. For instance, if the parents''

die earlier to son, the loss would be only during the life time of the parents but not beyond that, therefore the Tribunal has to fix a reasonable age of

life expectancy of a human being and assess the loss during the life time of an individual adopting the multiplier of capitalization method. In view of

the guidelines laid down Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,) for the age group of 15 to 20 and 21 to 25

years, multiplier applicable is 18 and reduced by one unit by every 5 years and held in Para 42 therein as follows:

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying General

Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, U.P. State Road Transport

Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, , which starts with, an

operative multiplier of 18 {for the age groups of 15 to 20, and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30

years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for

every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

27. At the same time, in a recent judgment of the Apex Court in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others,

Reshma Kumari and Others Vs. Madan Mohan and Another, the Apex Court laid down certain guidelines in para Nos. 17,34 and 40, which we

extracted herein above in earlier paras. The learned counsel for the second respondent totally relied on the judgment of the Apex Court in New

India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, wherein it was held as follows:

4. Before the High Court it was contended by the appellant that the multiplier to be adopted is to be determined on the age of the claimants and

not on the age of the deceased, which was to be taken as the basis for working out the compensation. The High Court did not find any substance

in this plea. It was held that no permission had been granted to the insurer to contest its claim. It was submitted that it is a clear case of contributory

negligence and the quantum of compensation should be suitable divided. The High Court did not find any substance in this plea also.

28. Thus, the principle laid down by the Apex Court in the decision cited supra is totally contrary to the principle laid down by the Apex Court in

Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, These two judgments relate to co-ordinate Benches of the Apex

Court but whereas in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others,) it was held as follows:

16. Admittedly both the parents, appellant No. 1 Amrit Bhanu Shali (father) and appellant No. 2 Sarlaben (mother), have been held to be

dependants of deceased Ritesh Bhanu Shali and, therefore, the Tribunal held that the appellant No. 1 and the appellant No. 2 have the right to get

the compensation. On the date of the accident the appellant No. 3, Mamta, was not married but by the time the case was heard by the Tribunal the

appellant No. 3, Mamta, had already been married. In these circumstances, she is not found to be dependant upon the deceased. Thus, both the

parents being dependants, that is, father and the mother, the Tribunal rightly restricted the personal and living expenses of the deceased to 50 per

cent and contribution to the family was required to be taken as 50 per cent as per the decision of this Court in the case of Sarla Verma, 2010 (1)

An.W.R. 402 (SC) : 2009 (4) SCJ 91.

29. In a recent judgment of the Apex Court in Radhakrishna and Another Vs. Gokul and Others, , when the same question came up for

consideration, the Apex Court totally ignored the multiplier etc., though the facts of the above case are almost similar to the -present facts of the

case.

30. The judgment in Reshma Kumari and Others Vs. Madan Mohan and Another, is a judgment of Full Bench consisting of 3 Judges, whereas the

other judgments are of two judges but the judgment relied upon by the learned counsel for the second respondent i.e. New India Assurance

Company Ltd. Vs. Smt. Shanti Pathak and Others, is also a judgment of Full Bench of the Apex Court. However, there is little distinction between

these two judgments, though they are judgments of co-ordinate benches, in the judgment relied upon by learned counsel for the second

respondent, no specific guidelines were laid down but the ratio laid down therein was the age of the parents in case of death of a bachelor shall be

taken to adopt the multiplier. This is only a ratio decidendi, whereas in the recent judgment in Amrit Bhanu Shali and Others Vs. National

Insurance Co. Ltd. and Others, he Apex Court laid down certain guidelines which become a precedent. When a recent judgment of the co-

ordinate Bench laid down certain guidelines, the judgment which laid down guidelines is the binding precedent and it has to be followed but not the

earlier judgment where no guidelines were laid down and placed reliance on the guidelines laid down by the Apex Court in Dalbir Singh and

Others Vs. State of Punjab, wherein it was held as follows:

22. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding

precedent, much less "law declared" within the meaning of Article 141 so as to bind all Courts within the territory of India. According to the well-

settled theory of precedents every decision contains three basic ingredients:

(i) Findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or

perceptible facts;

(ii) Statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) Judgment based on the combined effect of (i) and (ii) above.

However, for the purposes of the doctrines of precedents ingredient No. (ii) is the vital element in the decision. This indeed is the ratio decidendi. It

is not every thing said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge"s decision binding a party is the

principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. Even where

the direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not Bound to draw the same reference

as drawn in the earlier case.

31. In view of the principle laid down by the Apex Court in the decision cited supra, to treat the judgment as law or a precedent, it must satisfy the

ingredient No. 2, which is a vital element in the decision. This indeed is the ratio decidendi. It is not everything said by a Judge when giving

judgment that constitutes a precedent.

32. Thus, finding that the age of the dependents or the deceased whichever is higher is to be taken into consideration is though a ratio which forms

part of a precedent but in view of the later judgment where certain directions were made by three judges is a precedent which laid down law.

Therefore, the judgment of the Apex Court in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, s the law declared by

the Supreme Court and a binding precedent and if that is applied to the present facts of the case, multiplier applicable to the age group of the

deceased alone shall be taken for adopting appropriate multiplier for arriving at compensation to be paid to the dependants of the deceased

bachelor. Hence, we hold that the age of the deceased 19 alone shall be taken for adopting multiplier in view of the law as on today, since earlier

judgments are not binding precedents but they are only consisting of a ratio decidendi. Accordingly, this point is answered in favour of appellants.

33. POINT Nos. 2 and 3: The Tribunal basing on the principle laid down by this Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union

and Another,) rightly came to the conclusion in deciding the income of the deceased Abinav, who was an Engineering graduate, at Rs. 12,000/-

p.m. and accordingly this Court accepts the income of deceased Abinav at Rs. 12,000/- p.m. in a decision of the Apex Court in Fakeerappa and

Another Vs. Karnataka Cement Pipe Factory and Others, while considering the appropriateness of 50% deduction towards personal and living

expenses of the deceased made by the High Court, the Apex Court observed as follows:

7. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It

would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the

contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the

deduction.

34. Further, the Apex Court Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,) held as follows:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors,

normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even

otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be

cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant

and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as

dependents, because they will either be independent and earning, or married, or be dependant on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be

treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is

large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters

or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

35. Hence, in view of the principles laid down by the Apex Court i Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others,)

and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal rightly deducted 50% of the income of deceased

Abinav towards his personal expenses. However, erroneously applied the multiplier taking into consideration the average age of parents of

deceased wrongly relying on the principle laid down by the Apex Court in Ramesh Singh and Another Vs. Satbir Singh and Another, , even though

no guidelines were laid down therein and as such it is not a binding precedent. Hence, in view of the principles laid down by the Apex Court in

Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the relevant multiplier applicable to the age group of deceased 15

to 20 is "18" and if the same is multiplied with the annual income of the deceased after deducting 50% of his personal expenses i.e., with Rs.

72,000/-, the compensation under the head of loss of dependency comes to Rs. 12,96,000/-. The appellants also claimed compensation under the

heads of loss of estate and funeral expenses, wherein the Tribunal awarded a meagre amount of Rs. 15,000/- and Rs. 5,000/- under the two

heads. In view of the principles laid down by the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, the appellants are entitled to an

amount of Rs. 1,00,000/- under the head of loss of estate and an amount of Rs. 25,000/- under funeral expenses. Thus, in all the appellants are

entitled to an amount of Rs. 14,21,000/-.

36. In the result, the Appeal is allowed, in part, enhancing the compensation awarded by the Tribunal from Rs. 8,84,000/- to Rs. 14,21,000/-. Out

of the compensation awarded by this Court, first appellant, being father of deceased, is entitled to an amount of Rs. 5,00,000/-, second appellant,

being mother of deceased, is entitled to Rs. 8,00,000/- and third appellant, being younger sister of deceased is entitled to Rs. 1,21,000/-

respectively. Appellants herein are permitted to withdraw their respective share of compensation amount after deducting the amount, if any

withdrawn earlier. The rate of interest awarded by the Tribunal is unaltered. In consequence, the Miscellaneous Petitions, if any, pending in this

Appeal, shall stand closed. No order as to costs.