

(2014) 03 BOM CK 0111

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No's. 1611, 60, 823, 1678 of 2013, First Appeal No. 2992 of 2013 and CA No's. 8400 of 2012 and 13273 of 2013, First Appeal No. 1233 of 2012 and CA No. 8466 of 2012

Reliance General Insurance
Company Limited and Others

APPELLANT

Vs

Syeda Aleemunbee, Syed Razaq
and Rehmat Khan and Others
etc. etc.

RESPONDENT

Date of Decision: March 3, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A 166

Citation: (2014) 6 ALLMR 590 : (2014) 4 BomCR 734 : (2015) 1 MhLJ 90

Hon'ble Judges: K.U. Chandiwal, J

Bench: Single Bench

Advocate: S.S. Patil in First Appeal No. 1611/2013, Mr. V.N. Upadhye in First Appeal Nos. 60/2013 and 1233/2012 and CA No. 8466/2012, Mr. Avinash S. Deshpande, in First Appeal No. 2992/2013 and CA Nos. 8400/2012 and 13273/2013, Mr. Sayeed Tauseef Yaseen, in First Appeal No. 823/2013 and Mr. P.C. Mayure in First Appeal No. 1678/2013, for the Appellant; H.I. Pathan, Advocate for Respondent Nos. 1 and 2 in First Appeal No. 1611/2013, Mr. R.B. Dhakane, for Resp. Nos. 1 and 2 in First Appeal No. 60/2013, Mr. Yuvraj V. Kakde, for Resp. Nos. 1 to 3, Mr. K.M. Chandaliya, h/for Mr. S.G. Karlekar, in First Appeal No. 2992/2013, Mr. A.S. More, for Resp. Nos. 1 and 2, Mr. S.B. Choudhari, for Resep. No. 3 in First Appeal No. 1233/2012, Mr. A.B. Gatne, for Resp. No. 1, Mr. P.K. Lakhota, S.B. Joshi and Mr. S.S. Patnurkar, Advocates for Resp. No. 3, Mr. A.A. Joshi, for Resp. No. 4. in First Appeal No. 823/2013 and Mr. A.S. Usmanpurkar, for Resp. Nos. 1 and 2 in First Appeal No. 1678/2013, for the Respondent

Judgement

K.U. Chandiwal, J.

Heard. Admit. Heard finally. In this group of appeals, respective appellants, i.e. either the claimants or the insurance companies have questioned legality of

multiplier fixed by the respective Motor Accident Claims Tribunals, under the Motor Vehicles Act. Facts in each of the appeals are at variance to a larger extent, but, since common question of law, referred to above, is involved, they are taken up together, heard and disposed of by this common judgment.

FIRST APPEAL NO. 1611/2013(MACP NO. 44/2009).

2. Smt. Syeda Aleemunbee, sought compensation for death of Syed Shabbir. An amount of Rs. 6,21,500/- with interest @ 9% was awarded on 22.09.2011. Same is challenged by the appellant/insurance company on the ground of quantum. The appellant/insurance company feels that age of parents of the deceased at the time of accident was in the age-group of 40-45 years. The trial court should have applied multiplier of 15 and it should have deducted half of the amount towards personal expenses as the deceased was a bachelor, instead of 1/3rd. The income of the deceased should have been notionally treated at Rs. 3,000/- per month instead of holding the same to be Rs. 4,500/-.

FIRST APPEAL NO. 60/2013(MACP NO. 693/2008):

3. Anna Vithoba Udmale, asserted that deceased Ashok was a pedestrian, suffered an accident on 26.08.2008 at around 8.30 a.m. by dash of a tractor bearing No. RJ-06-RA-0529.

4. Compensation of Rs. 3,32,000/- was awarded. The grievance is, since the deceased was a bachelor, for computation of compensation, multiplier applicable to the ages of parents, should have been applied.

FIRST APPEAL NO. 2992/2013(MACP NO. 211/2009)

5. The appellant/insurance company, insurer of Skoda Car has challenged the Award On 11.2.2009, 20 years old deceased Omey, along with his friend, was proceeding on motor-cycle. Skoda make Car bearing registration No. MH-20-BC-6600, in high and excessive speed dashed him. He succumbed on the spot while pillion rider Aashutosh Sasane was seriously injured. The learned Member of the MACT awarded Rs. 4,94,000/- against owner of the Car, and also directed the insurance company to pay the amount and recover from the owner. The Tribunal did not consider income of the deceased and accepted it as Rs. 4,500/- per month. Multiplier of 18 was applied as age of the deceased was 20 years. The learned Member had deducted half of the amount from yearly earning towards personal expenses.

FIRST APPEAL NO. 1233/2012(MACP NO. 77/2010):

6. M/s. Oriental Insurance Company Ltd. questions the Award moved by Pandharinath Narsing Bhore u/s 166 of Motor Vehicles act, concerning accidental death of Amol (deceased)23 years old bachelor. The deceased was riding the motor-cycle bearing No. MH-24/K-2666 in moderate speed and by correct side. A jeep was driven rashly and negligently and it tried to overtake the motor cycle of

deceased gave dash to the motor cycle. Deceased fell down on the road and sustained multiple grievous injuries succumbed to injuries on the spot.

7. In the Award, multiplier of 18 was applied treating notional income of deceased to Rs. 36,000/- per annum, deducted 50% for personal expenses. The insurance company feels that the claimants (parents) were 60-65 years; the multiplier should have been in consonance to claimants" ages.

FIRST APPEAL NO. 823/2013 (MACP NO. 1/2010)

8. Sayeedabee Jamalkhan Pathan, original claimant, has challenged the Award recorded by learned Chairman of the Motor Accident Claims Tribunal, Beed for Rs. 1,35,000/- . The grievance is, the dependency is wrongly calculated @ Rs. 2,000/- per month. The age and monthly earning of the deceased should have been considered. Deduction of 50% of amount of salary towards personal expenses was without assigning any reason. The multiplier should have been 18 instead of 5. The Tribunal erroneously held that the deceased was also responsible for the accident though the evidence indicate the driver of offending truck was also responsible.

FIRST APPEAL NO. 1678/2013(MACP 85/2010)

9. The claimants Gurjeet Kaur and others have challenged the Award dated 20.3.2013 recorded by the learned Member of MACT. Deceased-Jaspreetsingh, 24 years old, a bachelor, was pillion rider on motor cycle bearing No. MH-22-K-2274, he was dashed by a travel bus bearing No. MH-36-0944. The claim was for Rs. 10,00,000/-. The parents of the deceased asserted to be dependent on the deceased. Compensation of Rs. 1,90,000/- was granted with interest @ 6% p.a. Tribunal applied multiplier of 11, claimants feel that the Tribunal should have applied the multiplier of 18, corresponding to age of the deceased.

10. Mr. Gatne, learned Counsel for the insurance company, lead arguments, he persuasively urged for holding,-a) application of multiplier should be corresponding to the ages of the parents or claimants; b) multiplier in the case of death of a bachelor should be varied; and c) in case of death of a bachelor, deduction of personal expenses should be 50% and not 1/3rd.

11. Mr. Gatne says, the celebrity judgment in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, should be properly construed.

12. To explain his point, he has placed reliance to the judgment in the matter of National Insurance Company Ltd. Vs. Shyam Singh and Others,. In the said case, the parents were 56-58 years while the deceased was 19 years old, multiplier of 8 was applied, that has been affirmed in the appeal.

He says the complicated question of facts and law, arising in accidental cases, cannot be answered all times by relying on mathematical equations pointed in the matter of Smt. Sarala Verma.

13. Mr. Gatne has placed reliance to the judgment in the matter of Ramesh Singh and Another Vs. Satbir Singh and Another, where the deceased was 22 years old; father was 41 years old. The Tribunal held age 55 and applied multiplier as 8. He has referred to the judgment in the matter of Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, . The selection of multiplier should be general, but for bachelor, it should be different.

14. Respective counsel have relied on M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, (decided on 3rd October, 2013). Mr. Gatne says, this judgment does not refer to Reshma Kumari and Others Vs. Madan Mohan and Another, consequently, it will not have a decisive value for this Court

15. The Counsel for claimants have relied to the judgment in the matter of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, where the deceased was 26 years. In the said case, the Apex Court in paragraph 14, formulated two questions, viz. a) What should be the deduction for the personal and living expenses of the deceased-Dinesh Bhanushali, to decide the question of contribution of the dependent members of the family; and b) what is proper selection of multiplier for deciding the claim? It is observed in para 17,-"The selection of multiplier is based on age of the deceased and not on the basis of age of dependent. There may be number of dependents of the deceased, whose age may be different and, therefore, the age of dependent has no nexus with the computation of compensation."

16. In Para 15 in Amrut Bhanushali's case, reference was given of Sarala Verma's case, earlier judgment reported in 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, , Trilok Chandra's matter was also quoted.

17. Mr. Gatne further says, this judgment has not considered the earlier judgment of the Supreme Court and particularly of Trilok Chandra's case.

18. In Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , the deceased was unemployed and the Supreme Court applied the multiplier of 10.

19. Mr. Gatne has placed reliance to the judgment in the matter of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, . He read paras 64, 66 and 69 to emphasize that Court should not blindly place reliance to the judgment in the matter of Sarla Verma's case, by-passing earlier three-judges judgment and particularly in the matter of Trilokchandra. He says, the Hon'ble Supreme Court has diverted its views.

20. Mr. Gatne's interpretation falls to ground as in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it is pointed, the best method is multiplier method, known as "Devis formula". In the said case,

dependency, multiplicand, life span was also considered. Multiplier is selected for loss of further income. Claimants received total lump sum amount and interest components used to be seen, including consortium. Financial position may be restored to the time of death. By amendment in Motor Vehicles Act, multiplier method is affirmed by the legislature.

21. Learned Counsel for Insurance company reiterate, that in the matter of Sarala Verma, applicability of multiplier in case of death of a bachelor has not been dealt with, which requires to be considered by this Court. The multiplier system, referred in Para 42 in Sarla Verma's case, should not be applied as a rule for bachelor. Bachelors spend more for self and after marriage, he spends on his family.

22. Mr. Gatne says the legal position was also considered in The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, where the parents were 47 and 43. Deceased was 18. The multiplier applied was 10, which was a rational multiplier.

23. Learned Counsel for claimants in the respective appeals confined to their grievance. However, in general, they have asserted that the judgment in the matter of M. Mansoor dated 3rd October, 2013, Para 14 thereof, and Amrit Bhanushali dated 4.4.2012, Para 17 indicating relevance to age of deceased and not to the age of parents/dependents, needs to be acted upon. They have also relied to judgments in Rajesh and Others Vs. Rajbir Singh and Others; and Reshma Kumari and Others Vs. Madan Mohan and Another,

24. In the matter of Reshma Kumari and Others Vs. Madan Mohan and Another, larger Bench considered the legal position and observed, a standard method for selection of multiplier is surely better than crisscross of varying the methods. Therefore, as regards determination of compensation in death claim, it is highlighted that there is move in India to standard method of selection of multiplier, addition to be made to the income of deceased towards his future prospects and deduction to be made from income of the deceased towards his personal and living expenses. The table in Sarla Verma's case for selection of multiplier in claim application made u/s 166 in the cases of death is approved. If for selection of multiplier in column of 4 of table in Sarla Verma's case is followed, there is no likelihood of the claimants who have chosen to apply u/s 166 of MV Act bring the award lesser amount on proof of negligence on the part of the driver of the motor vehicle than to apply u/s 163A of the said Act. The Apex Court in the said matter held,-"steps and guidelines stated in Para 19 in the matter of Sarla Verma, must be followed.

25. In judgment of three-judges bench in the matter of Rajesh and Others Vs. Rajbir Singh and Others, the Apex Court (decided on April 12, 2013) added,-"method of compensation for future prospects in case of self employed persons or persons with fixed wages and observed, that the actual income of deceased must be enhanced

for the purpose of computation of compensation,-1) by 50%, where his age was below 40 years; 2) by 30% where he belongs to age group of 40-50 years; and 3) by 15% where he was between the age group of 50-60 years. However, no such addition/enhancement is permissible, where the deceased exceed age of 60 years.

26. 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 Trilokchandra 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.

27. It is well-settled, judicial process demands that a judge move within the frame-work 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.

28. In respect of insurance policies, novation, recession and alterations of the contract can be done only with the agreement of both the parties and not unilaterally. This principle should not be overlooked.

29. The Supreme Court in Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others, observed,-" we are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this court and that judicial discipline populate them to follow it regardless of their view about its correctness. At the most they should have ordered that matter be heard by a Bench of three learned Judges.

30. This principle need not be bypassed by this Court. The Court would preferably adopt the principle of "Reading down" or "reading into" the relevant provision. This is to be associated with precedents on the subject. Accepting submissions from Insurance company would amount to rewriting script of Sarla Verma's case. This would even invite to overlook Judgments of Larger Bench. In the situation, I do not agree to picture painted by Insurance company.

31. At the time of computing the compensation, dependency of the claimant has a paramount factor. What is required to be awarded as compensation must be felt to be just, which has within its bracket, the consideration of equitability fairness, reasonableness in tune with peripheral field. There is no doubt that it should not be a forensic distribution. The pecuniary loss to the aggrieved party would depend upon data provided in respective claim petitions, which even otherwise cannot be ascertain accurately. It is to be done with some estimation and at times even by conjectures. The very nature of proceeding under Motor Vehicles Act are summary in its character. The Hon"ble Supreme Court has held, " the determination of question of compensation depends on several imponderables in the assessment of this imponderables, there is likely to be margin of error. The power of the tribunal in

awarding compensation u/s 166 of MV Act.

32. In Laxmi Devi and Others Vs. Mohammad Tabbar and Another, the Apex court dealt with applicability of multiplier relating to the age of deceased or that of the claimants, whichever is higher. This principle was curled down from earlier judgment of Hon'ble Supreme Court in V. Kashyap and Another Vs. Indian Airlines and Others.

These judgments will have a pivotal role in considering the multiplier and in particular in the case of a bachelor/deceased.

33. There cannot be a contest on legal position that a decision, rendered in ignorance of a binding precedent or ignorance of a constitutional provision, would be held to have been rendered per incurium. Judgment of constitution Bench of Hon'ble Supreme Court has binding effect. A decision of three-judges Bench of Hon'ble Supreme Court has also a binding effect than to a judgment of Hon'ble Lordships of Division Bench.

34. 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 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 fact of the case.

35. The legal position was explained by Hon'ble Supreme court in Constitution Bench Judgment in the matter of Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, following its earlier decision in the matter of Union of India (UOI) and Another Vs. Raghbir Singh (Dead) by Lrs. Etc.. In paragraph 12, the Apex court states as under,-

12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the above said decisions, we would like to sum up the legal position in the following terms:-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench

whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions:

(i) The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down herein above, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh and Ors. and Hansoli Devi and Ors.

36. The multiplicand system has been evaluated by long-drawn process based on factual aspects; variance in the judgments and consequently, observation in the matter of Trilok Chandra by three-judges Bench, has a binding precedent. Matter of Trilok Chandra, as could be seen, was even referred by the Hon"ble Supreme Court in the cases of Reshma Kumari; and Rajesh. In Reshma Kumari's judgment by three-judges has indicated as to how the loss of dependency; deduction towards personal expenses are to be carved out.

37. In the matter of [Santosh Devi Vs. National Insurance Company Ltd. and Others](#), these aspects were elaborately discussed and Hon"ble Supreme Court has observed,-"the expression "just compensation" has been explained in Sarla Verma's case.

38. In Santosh Devi's matter, legal position was again elaborated and Sarla Verma's case was further explained. Indeed, in the matter of Santosh Devi, the Hon"ble Supreme Court dealt with the case of a salaried person, as laid down in Sarla Verma's case and made it applicable also to self-employed and persons on fixed wages.

39. [M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another](#), the Hon"ble Supreme Court accepted that in the case of deceased being a bachelor and the claimants being parents, deduction of 50% has to be made. This was by following the principles enunciated in the matter of Sarla Verma.

40. In the light of foregoing discussion and the pronouncements of the Hon"ble Supreme Court, I hold,

- (a) In case of death of a bachelor, age of his dependents alone would not be a factor; but age of bachelor would be relevant for multiplicand;
- (b) In the case of death of a bachelor, for personal expenses, deduction, normally would be 50%; and not 1/3rd;
- (c) Loss of income; Future prospectus of deceased would be 50%, 30% and 15%, to be calculated to the actual income of the deceased, his age, which existed at the time of his death. Proper evidence of income, dependency, age of deceased would be paramount factor to be proved.

41. Applying the above scales, it is seen that multiplier and income in First Appeal Nos. 1611/2013; 60/2013; 2992/2013 and 1233/2013, do not call for interference.

42. In First Appeal No. 823/2013, the deceased was 24 years old and claimants urge for having monthly earning of Rs. 4,000/-.. Hence, the multiplicand of 18 needs to be added and the Award calls for enhancement. In this case, treating the annual earning of the deceased of Rs. 48,000/-(i.e. Rs. 4,000 x 12) and deducting 50% thereof comes to Rs. 24,000, added to it multiplier of 18 comes to Rs. 4,32,000/-; further added to it Rs. 15,000/- towards Funeral expenses and Rs. 10,000/- towards loss of company, the figure comes to Rs. 4,57,000/-. The Tribunal has already granted Rs. 1,35,000/-; so deducting Rs. 1,35,000/- from Rs. 4,57,000/- the final figure comes to Rs. 3,22,000/-. Thus, the claimants are entitled to receive Rs. 3,22,000/- as additional compensation.

43. In First Appeal No. 1678/2013, the deceased was unmarried, 20 years old. Learned Member of the Tribunal treated his annual income to be Rs. 15,000/- and applied the multiplier as 11. The Tribunal should have considered his income notionally at Rs. 36,000/- and deducting 50% thereof, it should have been treated to be Rs. 18,000/-, the multiplier, considering age group of 20, would be 18. Therefore, treating annual income to be Rs. 18,000/- and applying multiplier of 18 therein, the figure comes to Rs. 3,24,000/-; added to it Rs. 5,000/- towards funeral and transportation charges and Rs. 20,000/- towards loss of company, the figure comes to Rs. 3,49,000/-. The Tribunal has already granted Rs. 1,90,000/-. So deducting Rs. 1,90,000/- from Rs. 3,49,000/-, the figure comes to Rs. 1,59,000/-. Thus, the claimants are entitled to receive Rs. 1,59,000/- as additional compensation.

In this view of the matter, I pass following order;

- (i) First Appeal Nos. 1611/2013; 60/2013; 2992/2013 and 1233/2012 are dismissed. Statutory Deposit/amount be appropriated towards the satisfaction of the claimant's by remitting it to the concerned MAC Tribunal; Civil Applications in respective matters are disposed of.
- (ii) First Appeal No. 823/2013 is partly allowed. The award is modified. The respondents in the appeal and MACP No. 1/2010, are directed to pay Rs. 3,22,000/- as additional compensation with interest @ 7.5% p.a., from 10.12.2012, with costs.

Deficit court fees, if any, be deposited.

(iii) First Appeal No. 1678/2013 is partly allowed. The Award is modified. The respondents in appeal and MACP No. 85/2010 are directed to pay additional compensation of Rs. 1,59,000/- with interest @ 7.5% p.a. from 20.03.2013. Deficit court fees, if any, be deposited.