

Joginder Singh . vs Icici Lombard General Insurance ... on 14 August, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3814, AIR ONLINE 2019 SC 848, (2019) 10 SCALE 746, (2019) 3 ACC 664, (2019) 3 CURCC 365, (2019) 3 PUN LR 632, (2019) 4 ACJ 2783, (2019) 4 RECCIVR 187, (2019) 4 TAC 3, (2019) 5 ALL WC 4513, (2019) 6 ANDHLD 9, (2019) 76 OCR 124, AIR 2019 SC (CIV) 2738

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Bench: Sanjiv Khanna, Indu Malhotra

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6291 OF 2019
(Arising out of SLP (Civil) No. 34239 of 2015)

Joginder Singh & Anr.

...Appellants

versus

ICICI Lombard General Insurance Company

...Respondents

JUDGMENT

INDU MALHOTRA, J.

Leave granted.

1. The present Civil Appeal has been filed to challenge the final Judgment and Order dated 22.05.2015 passed by the High Court of Himachal Pradesh at Shimla in FAO (MVA) No. 386 of 2014.

The Appellants herein have filed the present Civil Appeal for enhancement of the compensation granted by the Motor Accident Claims Tribunal, Shimla (“MACT”) and the High Court.

2. The factual matrix in which the present Civil Appeal arises is briefly stated as under :– 2.1. The daughter of the Appellants viz. Ambika Thakur was a student who was undertaking an Air Hostess

Training Program at the Frankfinn Institute, Chandigarh.

2.2. On 10.9.2009, Ambika Thakur was travelling in a Verna car bearing Registration No. CH 04 H 297 from Chandigarh to Bhatinda.

The car met with an accident with a Tata Ace vehicle bearing Registration No. PB 03T 4804 which was being driven in a rash and negligent manner. The offending vehicle suddenly stopped in front of the Verna car, which led to head long collision between the two vehicles, and resulted in the death of Ambika Thakur on the spot. Ambika Thakur was 20 years old at the time of her death.

The offending vehicle was insured with the Respondent – Insurance Company.

2.3. The Appellants herein being the parents of the deceased, filed a Claim Petition before the MACT, Shimla claiming compensation of Rs. 25,00,000/- on the death of their daughter.

2.4. The MACT vide Award dated 15.07.2014 granted compensation of Rs. 10,40,000/- to the Appellant – Claimants along with interest @7.5% p.a. The compensation was awarded under the following heads :-

- (i) The notional income of the deceased was taken as Rs. 15,000/- p.m.;
- (ii) A deduction of 50% was made from the notional income of the deceased, since she was unmarried;
- (iii) The MACT applied the Multiplier of 11 on the basis of the age of the mother of the deceased;
- (iv) An amount of Rs. 25,000/- was awarded towards loss of love and affection;
- (v) An amount of Rs. 25,000/- was awarded towards funeral expenses.

2.5. Aggrieved by the aforesaid Award, the Appellants filed FAO (MVA) No. 386 of 2014 before the High Court of Himachal Pradesh at Shimla for enhancement of compensation.

The High Court vide impugned Judgment dated 22.05.2015 dismissed the Appeal, and upheld the amount of compensation awarded by the MACT.

3. Aggrieved by the aforesaid Judgment, the Appellant – Claimants have filed the present Civil Appeal. We have heard the learned Counsel for the Appellants and the Respondent – Insurance Company. 3.1. The Counsel for the Appellants submitted that the MACT and the High Court applied the wrong Multiplier of 11 by erroneously taking into consideration the age of the mother of the deceased, instead of the age of the deceased.

It was submitted that as per the decision in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.,¹ the Multiplier of 18 ought to have been applied for the deceased who was 20 years old at the

time of the accident.

3.2. It was further submitted that the Courts below failed to award compensation towards Future Prospects and loss of estate.

3.3. The Counsel for the Insurance Company submitted that the Courts below were justified in applying the Multiplier of 11 which should be as per the age of the mother of the deceased, and not the age of the deceased. Reliance was placed on this Court's decision in *New India Assurance Co. Ltd. v. Shanti Pathak & Ors.*²

4. We have perused the judgments of the Courts below, and find that the wrong Multiplier has been applied to the facts of the present case.

1 (2009) 6 SCC 121.

2 (2007) 10 SCC 1.

The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer *res integra*. This issue has been recently settled by a three Judge bench of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors.*,³ wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that :

“10. A reading of the judgment in *Sube Singh* (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of *Munna Lal Jain* (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in *Reshma Kumari and Ors. v. Madan Mohan and Anr.* (2013) 9 SCC 65. The relevant portion of *Reshma Kumari* in turn has referred to *Sarla Verma* (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and

3 (2019) 5 SCC 554.

Reshma Kumari categorically states that it does not want to revisit the law settled in *Sarla Verma* case in this behalf.

11. Not only this, the subsequent judgment of the Constitution bench in *Pranay Sethi* (supra) has also been referred to in *Sube Singh* for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.” (emphasis supplied) In the present case, since the deceased was 20 years old, a Multiplier of 18 ought to have been applied as per the decision of this Court in Sarla Verma (supra). 4.1. We further find that the Courts below have failed to award Future Prospects @40% of the income of the deceased, as mandated by the judgment of the Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi & Ors.⁴ We direct that the compensation be reworked after awarding 40% towards Future Prospects. 4 (2017) 16 SCC 680.

4.2. Furthermore, the Courts below have failed to award loss of estate @Rs.15,000/- as per the judgment in Pranay Sethi (supra).

4.3. The Courts below have awarded a lump sum amount of Rs. 25,000/- towards loss of love and affection. This Court in Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.⁵ has held that a sum of Rs. 40,000/- is to be paid to each of the parents towards loss of consortium on the death of a child. Therefore, the Appellants are entitled to be awarded Rs. 40,000/- each towards loss of consortium.

4.4. The funeral expenses and interest awarded by the MACT are maintained.

5. In light of the aforesaid discussion, the compensation awarded to the Appellants is being enhanced as follows :

i)	Income :	Rs. 15,000/-
ii)	Future Prospects :	Rs. 6,000/- (i.e. 40% of the income)
iii)	Deduction towards personal expenses :	50%
iv)	Total income :	Rs. 10,500/- (i.e. 50% of 15,000 + 6,000)
vi)	Loss of future income :	Rs. 22,68,000/- (i.e. 5 (2018) 18 SCC 130.

vii)	Enhanced amount :	10,500 x 12 x 18) Rs. 12,78,000/- (i.e. 22,68,000 – 9,90,000)
viii)	Loss of Consortium to each of the Appellants :	Rs. 55,000/- (i.e. after deducting 25,000 awarded by the MACT from 40,000 each = 80,000)
ix)	Loss of Estate :	Rs. 15,000/-
	Total enhancement :	Rs. 13,48,000/-

6. The Respondent – Insurance Company is directed to pay the enhanced amount of compensation of Rs. 13,48,000/□to the Appellants within 1 month from the date of this judgment. The enhanced amount shall carry Simple Interest @7.5% p.a. from the date of filing of the Claim Petition till the date of realization.

The Civil Appeal is allowed in the aforesaid terms. All pending Applications, if any, are accordingly disposed of. Ordered accordingly.

.....J. (INDU MALHOTRA)J. (SANJIV KHANNA) New
Delhi;

August 14, 2019.