

## **Sunita Tokas vs New Inda Insurance Co. Ltd. on 16 August, 2019**

**Equivalent citations: AIR 2019 SUPREME COURT 3921, AIR ONLINE 2019 SC 875, (2019) 11 SCALE 24, (2019) 3 ACC 653, (2019) 3 CURCC 358, (2019) 4 ACJ 2652, (2019) 4 RECCIVR 189, (2019) 4 TAC 357, (2019) 76 OCR 143**

**Author: Indu Malhotra**

**Bench: Sanjiv Khanna, Indu Malhotra**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6339 OF 2019  
(Arising out of SLP (Civil) No. 2859 of 2018)

Smt. Sunita Tokas & Anr.

...Appellants

versus

New India Insurance Co. Ltd. & Anr.

...Respondents

JUDGMENT

INDU MALHOTRA, J.

Leave granted.

1. The present Civil Appeal has been filed to challenge the final Judgment and Order dated 01.08.2017 passed by the High Court of Delhi in MAC. APP. No. 323 of 2017. The Appellants herein have filed the present Civil Appeal for enhancement of the compensation granted by the Motor Accident Claims Tribunal, Patiala House Courts, New Delhi ("MACT") and the High Court.

2. The factual matrix in which the present Civil Appeal arises is briefly stated as under :— 2.1. The son of the Appellants viz. Pradeep Tokas was a student who was a trained swimmer, and had won prizes in State level events.

2.2. On 11.05.2004, Pradeep Tokas was sitting on a two-wheeler as a pillion rider, while travelling on the Upper Ridge Road towards Karol Bagh, New Delhi. At 1:05 a.m., the said two-wheeler met with an accident with a stationary Truck bearing Registration No. HR-51-GA-0525, which was not visible at night. The truck was standing in the middle of the road without any indicator lights on. The two-wheeler dashed against the stationary truck, and both Pradeep Tokas and the driver died on the spot. Pradeep Tokas was 21 years old at the time of his death. 2.3. The Appellants herein are the parents of the deceased, who filed the Claim Petition before the MACT, Patiala House Courts, New Delhi claiming compensation on the death of their son.

2.4. The MACT vide Award dated 25.05.2009 granted compensation of Rs. 14,87,140/- along with interest @7% p.a. to the Appellant Claimants. The compensation was awarded under the following heads :-

- (i) The notional income of the deceased was assessed @Rs. 16,246/-p.m. after adding Future Prospects @50%;
- (ii) Deduction of 50% towards personal expenses was made from the notional income of the deceased, since he was a bachelor;
- (iii) The MACT applied the Multiplier of 15 on the basis of the age of the mother of the deceased;
- (iv) Rs. 25,000/- was awarded towards loss of love and affection;
- (v) Rs. 10,000/- was awarded towards loss of estate and consortium;
- (vi) Rs. 5,000/- was awarded towards funeral expenses.

2.5. Aggrieved by the aforesaid Award, the Appellants filed MAC. APP. 323 of 2017 before the Delhi High Court for enhancement of compensation.

The Respondent – Insurance Company also filed a cross-Appeal for reduction of compensation.

The High Court vide the impugned common Judgment and Order dated 01.08.2017 dismissed the Appeal filed by the Appellant – Claimants, and allowed the Appeal filed by the Respondent – Insurance Company in part.

The High Court reduced the amount of compensation awarded by the MACT to Rs. 9,25,000/- The High Court awarded the following amounts under various heads :

- (i) The notional income of the deceased was assessed @Rs. 7,500/-p.m.;
- (ii) Deduction of 50% was made from the notional income of the deceased towards personal expenses, since the deceased was a bachelor;

(iii) Multiplier of 15 was applied on the basis of the age of the mother of the deceased;

(iv) Rs. 2,00,000/□was awarded towards loss of love and affection;

(v) Rs. 50,000/□was awarded towards loss of estate and funeral expenses.

3. Aggrieved by the aforesaid Judgment, the Appellant – Claimants have filed the present Civil Appeal for enhancement of the compensation awarded. We have heard the learned Counsel for the Appellants and the Respondent – Insurance Company. 3.1. The Counsel for the Appellants inter alia submitted that the MACT and the High Court had erroneously applied the wrong Multiplier of 15, on the basis of the age of the mother of the deceased.

It was submitted that the Multiplier of 18 ought to have been applied on the basis of the age of the deceased, as per the table set out in the judgment of this Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*<sup>1</sup> 3.2. It was further submitted that the High Court erred in fixing the notional income of the deceased @7,500/□p.m., and did not award Future Prospects. 3.3. On the other hand, the Counsel for the Insurance Company inter alia submitted that the Courts below were justified in applying the Multiplier of 15 as per the age of the mother of the deceased, and not the age of the deceased who was a bachelor. Reliance was placed on the decision in *New India Assurance Co. Ltd. v. Shanti Pathak & Ors.*<sup>2</sup>

4. We have perused the judgments of the Courts below, and find that the Multiplier has been fixed on the basis of the age of the mother of the deceased boy.

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 mother, is no longer res integra. There are a catena of judgments rendered by this Court, wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased, and not on the basis of the age of the dependants. 4.1. In *Sarla Verma (supra)*, this Court held that :

“19. ... 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.” (emphasis supplied) 4.2. In *Reshma Kumari & Ors. v. Madan Mohan & Ors.*,<sup>3</sup> a three judge bench of this Court held that :

“36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependancy and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* 2009 (6) SCC 121 that claimants in case of death claim for the purposes of 3 (2013) 9 SCC 65.

compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (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. 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* 2009 (6) SCC 121.” (emphasis supplied) 4.3. In *Amrit Bhanu Shali & Ors. v. National Insurance Co.*

Ltd. & Ors.,<sup>4</sup> this Court held that the selection of multiplier is based on the age of the deceased, and not on the basis of the age of the dependants. There may be a number of dependants of the deceased, whose ages would vary. Therefore, the age of the dependants would have no nexus with the computation of compensation.

4.4. Another three judge bench of this Court in *Munna Lal Jain & Ors. v. Vipin Kumar Sharma & Ors.*,<sup>5</sup> discussed the issue as to whether the multiplier should depend on the age of the dependants, or that of the deceased. This Court held that the issue had been decided in 4 (2012) 11 SCC 738.

5 (2015) 6 SCC 347.

*Reshma Kumari* (supra), wherein it was held that the multiplier to be used, must be with reference to the age of the deceased. The Court cited para 36 of the judgment in *Reshma Kumari* (supra), and held that :

“11. The remaining question is only on multiplier. The High Court following *Santosh Devi* (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants 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 dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken.” (emphasis supplied) 4.5. The decision in *Munna Lal Jain* (supra) was followed by another three judge bench of this Court in *Sube Singh & Ors. v. Shyam Singh (dead) & Ors.*<sup>6</sup> 4.6. The Constitution Bench in *National Insurance Company Limited v. Pranay Sethi & Ors.*,<sup>7</sup> affirmed the view taken in *Sarla Verma* (supra) and *Reshma Kumari* (supra), and recorded in the conclusions as under :

6 (2018) 3 SCC 18.

7 (2017) 16 SCC 680.

“59.7. The age of the deceased should be the basis for applying the multiplier.” 4.7. Recently the legal issue whether in case of a motor accident of a bachelor, the age of the deceased, or the age of the dependants, would be taken into account, for calculating the multiplier, came up for consideration before a three judge bench of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors.<sup>8</sup> The Court referred to the earlier three judge bench decision rendered in Munna Lal Jain (supra), which in turn relied upon the judgment in Sarla Verma (supra), which has been affirmed by the Constitution Bench in Pranay Sethi (supra). The Court also referred to the three judge bench decision in Sube Singh (supra).

The Court after perusing all earlier judgments, observed that the judicial pronouncements had devised a standard formula for calculation of the compensation qua various components. The amount of compensation is to be paid to the claimants who are dependants in 8 (2019) 5 SCC 554.

the event of the death of a person, based on what the deceased would have contributed to their support. The amount received by the dependants becomes a part of the estate, as they may live longer, or may be younger than the age limits taken into account for calculation of the multiplier to be applied in such a situation. In the case of the death of a married person, it is an accepted norm that the age of the deceased would be taken into account. The Court held that even in the case of a bachelor, the same principle must be applied. The Court held that once the law is settled, it should not repeatedly be changed, since certainty of law is of crucial importance, to avoid any confusion. 4.8. In the present case, since the deceased was 21 years old, the Multiplier of 18 was applicable as per the table set out in the Sarla Verma case.

4.9. The High Court erred in reducing the notional income of the deceased from Rs. 16,246/□ as awarded by the MACT, and reduced it to Rs. 7,500/.

The deceased was a trained swimmer who had won several State□level competitions. His mother runs a Swimming/Gym Centre at Air Force Station (Central School), Gurgaon. Therefore, the deceased certainly had the potential to earn a living by utilizing his skills. In such circumstances, we deem it appropriate to fix the notional income of the deceased @Rs. 12,000/□p.m. 4.10. The Courts below failed to grant Future Prospects @40% of the notional income of the deceased, as per the judgment of the Constitution Bench in Pranay Sethi (supra).

4.11. The amounts awarded by the High Court under the heads of loss of love and affection, loss of estate, funeral expenses, and the Interest awarded by the MACT, are however, maintained.

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

i)	Income :	Rs. 12,000/-
ii)	Future Prospects :	Rs. 4,800/- (i.e. 40% of the income)
iii)	Deduction towards	50%

personal expenses :		
iv)	Total income :	Rs. 8,400/- (i.e. 50% of 12,000 + 4,800)
vi)	Loss of future income :	Rs. 18,14,400/- (i.e. 8,400 x 12 x 18)
vii)	Loss of love and affection :	Rs. 2,00,000/-
viii)	Loss of estate and funeral expenses :	Rs. 50,000/-
	Total :	Rs. 20,64,400/-
	Enhanced amount :	Rs. 11,39,400/- (i.e. 20,64,400 - 9,25,000)

6. The Respondent – Insurance Company is directed to pay the enhanced amount of Rs. 11,39,400/- to the Appellants within 1 month from the date of this judgment. The enhanced amount shall carry Simple Interest @7% p.a. from the date of filing 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 16, 2019.