

IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

J U D G M E N T (O R A L)

SB M.A.C. APPEAL No.06 of 2014

The Branch Manager,
Bajaj Allianz General Insurance Co. Ltd.,
City Plaze (4th FloorP,
2nd Mile, Sevoke Road,
Siliguri, West Bengal ... **Appellant/Insurer**

Versus

1. Smt. Sanu Rai,
Aged about 53 years,
W/o Late Chandraman Rai.
2. Master Sudip Rai,
Aged about 24 years,
S/o Late Chandraman Rai.
3. Miss Sabina Rai,
Aged about 22 years,
D/o Late Chandraman Rai.
4. Miss Sevika Rai,
Aged about 20 years,
D/o Late Chandraman Rai.

All residents of Khamdong Busty,
P.O. Kalijhora, P.S.Kurseong,
Dist. Darjeeling,
Upper Sittong-II Gram Panchayat,
West Bengal.

Respondents/Claimants.

5. Shri Dilip Kumar Gupta,
S/o Shri K. P. Gupta,
R/o Rangpo Bazar,
P.O. & P.S. Rangpo, East Sikkim
(Owner of the Vehicle (Truck) bearing No.SK
03/2055)

Respondent/Owner.

FOR THE APPELLANT : MR. YADEV SHARMA, ADVOCATE

FOR THE RESPONDENT : MR. AJAY RATHI WITH
NO. 1 TO 4 MS.SUSHMA PRADHAN AND
MR. RAHUL RATHI, ADVOCATES

FOR THE RESPONDENT : MR. D. R. NEPAL, ADVOCATE
NO. 5

C O R A M

The Hon'ble Mr. Justice S. P. Wangdi, Judge

DATE OF JUDGMENT : 23.05.2014

Wangdi,J.

This Appeal is directed against the judgment dated 13.09.2013 passed by the learned Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, in M.A.C.T. Case No.08 of 2012, by which death compensation of Rs.14,69,800.00 (Rupees fourteen lakh sixty nine thousand and eight hundred) only, was awarded to the claimants, who are the Respondents No. 1 to 4 in this Appeal.

2. Briefly stated, the facts of the case, is that the deceased, aged about 26 years, who was an employee under INTAS Pharmaceutical Mazitar, Rangpo, East Sikkim, was on her way on foot to the place of her work at about 7.00 a.m. on 9.11.2011, when she was run over by a speeding truck bearing No.SK-03/2055, crushing her to death on the spot. It is stated that the deceased was earning a monthly income of Rs.6000/-.

3. The claim petition filed by the mother and siblings of the deceased was ultimately heard and disposed off by the learned Tribunal by the impugned order granting the compensation as referred to earlier.

4. Mr. Yadev Sharma, learned Counsel for the Appellant, submits that the impugned judgment is being assailed only on two counts, i.e., (i) application of the multiplier and (ii) deduction towards the contribution of the deceased to the family expenditure for the purpose of working out the compensation. We may, therefore, confine ourselves only on these two questions.

5. On the first question, relying upon **Shakti Devi vs. New India Insurance Co. Ltd. : 2011 (1) T.A.C. 4 (S.C.)**, it is submitted that the multiplier ought to have

been applied based on the age of the parents, in the present case the widowed mother, and not on that of the deceased as has been done by the learned Tribunal.

6. The other is that the deceased being a spinster, the deduction on the personal and living expenditure ought to have been 50% of her income and not one-third as was taken by the Learned Tribunal. The case of **Sarla Verma (Smt) & Others vs. Delhi Transport Corporation and Another. : (2009) 6 SCC 121** was relied upon in support of this.

7. Mr. Ajay Rathi, learned Counsel for the Respondents No.1 to 4, on the other hand, submits that there is no error in the impugned judgment as the multiplier and the deduction have been applied correctly as settled in Sarla Verma's case. He submits that the confusion on these questions were fully discussed and the existing anomalies addressed by the Hon'ble Supreme Court in that case prescribing a table under paragraph 40 of the judgment to be followed in claims as in the present case under Section 166 of the Motor Vehicles Act, 1988. We may also reproduce below paragraph 42 of the decision wherein the table has been explained: -

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying *Susamma Thomas, Trilok Chandra and Charlie*), 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".

8. He submits that the decision clearly lays down that it is the age of the deceased which is the relevant factor to be taken into consideration for the purpose of identifying the multiplier and that the contribution of the deceased to the family, if he/she is a bachelor/spinster, ought to be two-third of his/her income.

9. Having considered the rival contentions, I am inclined to agree with the learned Counsel for the Respondents No.1 to 4 in view of the unequivocal and unambiguous ratio laid down in *Sarla Verma's* case (*supra*). While deciding on the deductions for personal living expenses, it has been held as under : -

"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 the family of the bachelor is large and dependent 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." [underlining mine]

10. Similarly, on the question of selection of multiplier, I find that the Hon'ble Supreme Court, after considering the earlier decisions in **General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs) and Others : 1994 (2) SCC 176**, **U.P. State Road Transport Corporation & Others vs. Trilok Chandra and Others : 1996 (4) SCC 362** and **New India Assurance Co. vs. Charlie and Another : 2005 (10) SCC 720**, prescribed the multipliers for claims under Section 166 of the Motor Vehicles Act, 1988. It has been held that the principle consideration in deciding the multiplier is the age of the deceased and not that of the parents. The decision in **Shakti Devi's case (supra)** relied upon by Mr. Yadev Sharma, is not inconsistent or in conflict with the decision in Sarla Verma's case. The only distinguishable feature in that is that in the former case the mother of the deceased was the sole claimant as the deceased did not to have any sibling.

11. In the present case, the facts and considerations are *in pari materia* with **Sarla Verma's case (supra)**.

12. Under these circumstances, I do not find any error in the impugned judgment of the Learned Tribunal, and, therefore, do not intend to interfere with it.

13. In the result, the Appeal is dismissed.

14. No order as to costs.

15. The Appellant, Insurance Company is directed to ensure that payment of the compensation calculated in terms of the impugned judgment of the learned Member, Motor Accident Claims Tribunal, is paid within a period of 30 days from hence and not later.

16. The judgment stands modified only to the extent that compensation shall be disbursed in equal shares to all the claimants under account payee cheques drawn in their individual names.

17. Compliance report of this order shall be submitted by the Insurance Company to the learned Tribunal on or before 22.06.2014.

18. A copy of this judgment along with the records of the Court of the learned Motor Accident Claims Tribunal, East and North Sikkim at Gangtok be transmitted forthwith to ensure its compliance.

(S. P. Wangdi)
Judge
23.05.2014