IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 168 OF 2024
WITH
INTERIM APPLICATION NO. 19753 OF 2022

The New India Assurance Co. Ltd.
Vanshree Vandan, Shreebaug, Tal. Alibag, Dist. Raigad.
Through Mumbai Legal Hub,
Ground floor, New India Assurance Bldg.,
87, M.G. Road, Mumbai - 400001 ...Appellant

Versus

1) Vivek Niwas Patil
Age 33 years present, Occ: Service
R/at Alkali Colony, Room No. A/12,
Opp. Bank of India, New Posari,
PO Mohopada, Tal. Khalapur,
Dist. Raigad

2) Gursahib Singh Kullar,
Age adult, Occ: Not known
R/at Room No.26, Plot No. 16/A,
Maruti Crescent Co. Op. Housing Soc. Ltd. ...Respondents
Kalamboli, Kharghar.

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Mr. Devendra Joshi for the Appellant.
Mr. Abhishek Jha a/w Nishant Mokal i/b Jha Legal Associates for Respondent No.1.

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CORAM : M.M. SATHAYE, J.
DATE : 1 OCTOBER 2024

:JUDGMENT:

1. Heard learned counsel for the Appellant/Insurance Company and learned counsel for Respondent No.1/Claimant. Learned counsel for the Appellant/Insurance Company submits that the presence of

Respondent No.2/ owner of the offending vehicle is not required for disposal of the Appeal considering the nature of arguments proposed to be advanced about quantum only. Hence, taken up for final disposal with consent of learned counsel appearing for the parties.

2. The Appellant/Insurance Company has filed present Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the said Act' for short) challenging the Judgment and Award dated 23.12.2021 passed by the Motor Accident Claims Tribunal (MACT), Alibaug in Motor Accident Claims Petition (MACP) No. 138 of 2017. By the said impugned Judgment and Award, the claim of Respondent No.1 under Section 166 of the said Act is allowed, thereby holding the Appellant/Insurance Company jointly and severally liable with Respondent No.2 to pay Rs.1,06,94,116/- (Rupees one crore six lakh ninety four thousand one hundred and sixteen only) along with interest @ 9% from the date of claim application till realization.

3. Few facts necessary for disposal of the Appeal are as follows. The claim is filed for compensation towards accidental death of wife (Deepali) of Respondent No.1- Claimant. The case of the Claimant in short is that on 04.03.2017 at around 5.45 am, when deceased Deepali was travelling as pillion rider on Activa scooter (MH-10/BD-5890) from Dandphata to Apta, a tractor (MH-46/F-5278 - offending vehicle) gave dash to the said Activa from backside. In this accident, deceased Deepali got seriously injured, who was taken to hospital, where she succumbed to injuries and died on 06.03.2017. The accident took place due to rash and negligent driving of the offending vehicle. Deceased was 27 years old at the time of death and was working as a professor in Sinhgad Institution of Technology,

where she was earning an amount of Rs.55,979/- per month. On these contentions, claim of Rs. 5 Lakh was made.

4. The Appellant/Insurance Company filed written statement contending *inter alia* breach of policy conditions. It is further contended that Activa was being driven in rash and negligent manner, whereas the driver of the offending tractor was not driving rashly and negligently and therefore, accident has occurred due to fault of the Claimant. The claim that Respondent No. 1 was dependent on deceased's income was disputed and claim was opposed as being excessive.

5. The Tribunal after hearing both sides held that the accident took place due to rash and negligent driving of offending tractor and giving dash to Activa from backside and the offending vehicle was insured with Appellant at the time of accident. It is found on admission that Respondent No. 1 - Claimant himself was driving the Activa Scooter at the time of accident. Compensation has been calculated accepting monthly income of Deepali after deducting the amount of taxes and annual income is fixed at Rs.6,24,948/-, future prospects of 50% is added and 1/3rd deduction is applied towards personal expenses and finally multiplier of 17 is applied. On this basis, the amount as indicated above, is granted.

6. Learned counsel Mr. Joshi for the Appellant/Insurance Company has raised two main contentions. It is pointed out that the Claimant has admitted in cross-examination that he himself is employed in a permanent service and earing Rs.45,000/- per month. He has admitted that at the time of accident also, he was employed

in private company and getting Rs.30,000/- per month. He has also admitted that he was not dependent on the income of his wife. He has also admitted that deceased's job was of temporary nature. Based on these admissions, it is argued by the Insurance Company that when the claimant himself is almost equally earning as compared to the deceased, he cannot be treated as dependent and therefore, is not entitled to the compensation. It is further argued that assuming without admitting that there is some dependency of the Claimant, in identical situation like the present case, where the Claimant and deceased are husband and wife living together with no children, Karnataka High Court has taken a view in the case of *A. Manavalagan v/s. A. Krishnamurthy and Ors.*[1] that if the husband and wife were both earning and living together, sharing the expenses, then their joint living expenses are less than twice the expense of each one living separately, and then each of them, by the fact of sharing, is conferring a benefit on the other, resulting into higher savings. It is therefore held that in such circumstances the Claimant (surviving spouse) will be entitled to compensation on the basis of 1/3rd of the income of deceased. In other words in such peculiar case, a view is taken that deduction should be 2/3rd. He therefore, submitted that amount taken as basis under the impugned Judgment and Award should be reduced by applying 2/3rd deduction. In other words, instead of applying deduction of 1/3rd, he submitted that deduction of 2/3rd be applied.

7. The second submission of learned counsel for the Insurance Company, relying on pay-slip of the deceased produced on record, is that deceased was getting Hill Station Allowance (HSA) of

1 ILR 2004 KA 3268

Rs.2,292/- per month as well as Travelling Allowance (TA) of Rs. 1,200/- per month. He submitted that both these allowances were for the use of the deceased only and therefore, cannot be considered as benefit to the family and therefore should be deducted from the amount of income.

8. *Per contra*, learned counsel for the Respondent No.1/Claimant disputed this position relying on the Judgment of Karnataka High Court in the case *Uma w/o Sadashiv Kalmad v/s. Basavaraj s/o Baganvanth Hugar and Anr*[2] contending that the said judgment has followed the judgment of *Sarla Varma v/s. Delhi Transport Corporation*[3], where it is held that in case of married couple only 1/3rd needs to be deducted from the income towards personal expenses. He further relied upon the Judgment of Karnataka High Court in the case of *National Insurance Co. Ltd. v/s. Girija w/o Shivagouda Goudar and Anr.*[4] which once again relying on Sarla Varma (supra) and the case of *Uma Kalmad* (supra) has held that in case of married couple appropriate deduction is 1/3rd of the income for personal expenses. He has also relied upon Judgment of Supreme Court in the case of *N. Jayasree and Ors. v/s. Cholamandalam MS General Insurance Company Ltd.*[5] especially paragraph 11 thereof and *National Insurance Co. Vs. Pranay Sethi & Ors*[6] contending same proposition that in case of married couple 1/3rd deduction should be applied. In short his contention is that appropriate deduction in present case is 1/3rd only and not more.

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2 MFA No. 100859/2016 (MV)
3 (2009) 6 SCC 121
4 Misc. First Appeal No. 22495 of 2010 dated 08.06.2022
5 (2022) 14 SCC 712
6 (2017) 16 SCC 680

9. In rebuttal, the learned counsel for the Appellant/Insurance Company pointed out that in fact, the observations in paragraph 17 of the Judgment of *N. Jayasree* (supra) relied upon by the Respondent / Claimant are helpful to the Appellant/insurance company, in as much as, settled law about percentage of deduction towards personal expenses is re-iterated there - that deduction depends on the facts and circumstances of each case and it cannot be governed by a rigid rule or formula of universal application.

10. There is absolutely no dispute about the propositions and guidelines laid down by the Hon'ble Supreme Court in the cases of both *Sarla Verma and Pranay Sethi (supra).* However, learned counsel for the Insurance Company is right in pointing out that deduction depends on the facts and circumstances of each case and it can not be governed by a rigid rule or formula of universal application, as reiterated by the Hon'ble Supreme Court in the recent case of *N. Jayasree (Supra)*. That is precisely the reason why peculiar facts of this case has to be considered in deciding just and proper deduction.

11. In the present case, only husband and wife are involved, who were admittedly living together and one of them (wife) is deceased and the Husband (living spouse) has claimed compensation. Also, the Claimant (Husband - living spouse) himself is admittedly earning almost equal to the deceased. These are the peculiar facts, in which Insurance Company is arguing for increasing deduction towards personal expenses. There is nothing to indicate in the judgments of *Uma Kalmad (supra)* and *Girija S. Gaudar (supra)* that such a peculiar case as present one, was either involved or considered.

There is also nothing to indicate in those judgments that such peculiar argument or contention was under consideration. Similarly in the case of *N. Jayasree (supra)* facts were that deceased had left behind a widow, 2 daughters and a mother in law, who were claiming compensation. The family size was completely different as compared to present case. Also, the Hon'ble Supreme Court, in that case was considering totally different issues as can be seen from paragraph 8 of the said judgment which reads thus:

> "8. In view of the above, the questions for consideration before us are:
>
> 8.1 (I) Whether the High Court was justified in precluding the mother-in-law of the deceased (Appellant No. 4) as his legal representative?
>
> 8.2 (II) Whether the High Court was justified in applying split multiplier?
>
> 8.3 (III) Based on the findings on the preceding questions, what is the amount of compensation that should be awarded to the appellants?"

It is therefore clear that both facts and issue under consideration was totally different in above judgments. The argument of the Appellant/Insurance Company has to be noted in the peculiar facts of the present case. Therefore, the deduction will have to be determined based on facts existing in this case. In that view of the matter, none of the Judgments relied upon by the Respondent No.1/Claimant will advance his case.

12. The learned counsel for the Respondent-Claimant has relied upon The Report of 6th Central Pay Commission - clause No. 4.2.22

thereof, to contend that many allowances exist to compensate for the hardship of service in certain areas or in cases where the employee is unable to keep his family. He submitted that HSA which was being paid to the deceased in the present case, is covered under this clause and since it makes reference to employee being unable to keep family, such allowance must be held as allowance for the benefit of family and therefore, should not be deducted. *Per contra,* learned counsel for the Appellant/Insurance Company has argued that even though the allowance is being paid because the employee is unable to keep his family because of special condition (which in this case is a job at hill station), this allowance, in any case, was supposed to be utilised for the deceased alone and therefore should be deducted.

13. I have carefully considered this aspect of Hill Station Allowance (HSA). The nature of allowance as indicated in clause 4.2.22 is an allowance to the employee because he or she is required to meet special living condition, being unable to keep family. It can therefore be safely concluded that if the deceased had not met with the accident and had continued to work and earn in hilly area where the institute is situated, she would have received the said allowance (HSA) because she was required to live in special condition, including not being able to keep family. Therefore, in my view, the said allowance was connected with family and cannot be deducted from the income. However, in case of TA, travel allowance, it was obviously for the travel undertaken by the deceased herself and had nothing to do with family and therefore it needs to be deducted.

14. Admittedly in the present case, the Claimant and deceased were living together as husband and wife. Claimant has admitted

that he is earning Rs. 45,000/- per month. The deceased was earning about Rs. 56,000/- per month. Considering the Claimant's admission about earning himself, both at the time of accident and at the time of deposition, his further admission that he is not dependent on deceased's income and comparing the figures, it can be said safely said that the Claimant is earning almost equally, albeit on lower side, compared to the deceased. There are no children or other family members involved.

15. Therefore, in my opinion the Respondent Claimant cannot be called as dependent in the first place.

16. Assuming that the Respondent Claimant was dependent to some extent (giving him benefit of the fact that he was earning a little less than the deceased wife at the relevant time), in my considered view, his peculiar position can not be left to a straight jacket formula or brackets of 1/3rd or half deduction. Cardinally, the compensation has to be 'just' and 'fair'. It can not be a bonanza.

17. Such peculiar identical situation is already considered by the Division Bench of the Karnataka High Court in the case of *A. Manavalagan (supra)*, where also earning wife working as a lecturer had died and an earning husband was claiming compensation and there were no children. Same as in the present case. Division Bench of that Court considered a view taken by Hon'ble Supreme Court in the matter of *Madhya Pradesh State Road Transport Corp. Vs. Sudhakar*[7] in similar situation. Finally, a rationale is developed and applied in the said case of *A. Manavalagan (supra)* about such cases

7 1977 ACJ 290

where claimants are dependents and where claimants are not dependents, both as under:

> "20(iv) If the deceased is survived by an educated employed wife earning an amount almost equal to that of her husband and if each was maintaining a separate establishment, the question of 'loss of dependency' may not arise. Each will be sending from his/her earning towards his living and personal expenses. Even if both pool their income, the position will be the same. In such a case the amount spent for personal expenses by each spouse from his/her income will be comparatively higher, that is three-fourth of his/her income. Each would be saving only the balance, that is one fourth (which may be pooled or maintained separately). If the saving is taken as one-fourth (that is 25%), the loss to the estate would be Rs. 2250/- per month or Rs. 27,000/- per annum. By adopting the multiplier of 14, the loss to estate will be Rs. 3,78,000/-.
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> Note: The position would be different if the husband and wife, were both earning, and living together under a common roof, sharing expenses. As state in BURGESS VS FLORENCE NIGHTINGALE HOSPITAL (1955 (1) Q.B. 349), 'when a husband and wife, with separate incomes are living together and sharing their expenses, and in consequence of that fact, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring a benefit on the other'. This results in a higher savings, say, one-third of the income; In addition each spouse loses the benefit of services rendered by the other in managing the household, which can be evaluated at say Rs. 1,000/- per month or Rs. 12,000/- per annum). In such a situation, the claimant (surviving spouse) will be entitled to compensation both under the head of loss of dependency (for loss of services rendered in managing the household) and loss to estate (savings to an extent of one-third of the income that is Rs. 3,000/- per month or Rs. 36000/- per annum). Therefore, the loss of dependency would be 12000×14=168,000/- and loss to estate would be 36000×14=5,04,000/-. In all Rs. 6,72,000/- will be the compensation"
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> [Emphasis supplied]

Thus, in such peculiar situation, the Division Bench of Karnataka High Court has taken a view that 2/3rd deduction should be proper. It is not brought to my notice that this Judgment has been set aside or varied or modified. I do not see any reason why the same

view should not be followed in the present case also, especially considering the striking similarity of the facts involved.

18. There is no merit in the argument of the Appellant/Insurance Company that interest of 9% granted by the Tribunal is excessive. I find that 9% interest is reasonable and calls for no interference.

19. No other arguments are advanced.

20. Having held as above, the amount of TA - travelling allowance of Rs. 1200/- per month needs to be deducted from the income of the deceased apart from deduction of taxes (as already applied by the Tribunal). So also, the deduction towards personal expenses must be 2/3rd instead of 1/3rd applied by the Tribunal. 50% Future prospects will remain unchanged. Applying these changes, the calculation would come out as indicated in the below, which in my opinion is just and proper compensation in the present case:

Rs. 55,979 /- monthly income (-) 1,200/- (deduction of TA) =
Rs. 54,779/- (x) 12 months =
Rs. 6,57,348 /- Annual income
(-) 44,300/- Income Tax (-) 2,500/- Professional Tax =
Rs. 6,10,548/- Annual loss (+) 3,05,274/- (50% addition for future prospects) =
Rs. 9,15,822/-
(-) 6,10,548/- (2/3rd deduction towards personal expenses) =
Rs. 3,05,274/-
(x) 17 (multiplier) = Rs. 51,89,658/-
(+) 70,000/- (for loss of consortium & funeral expenses as awarded by the Tribunal) = **Rs. 52,59,658/- Total amount of compensation.**

21. The Appeal is therefore partly allowed in the peculiar facts of this case and the impugned award is modified as under.

(A) The claim of the Respondent No.1 is granted with costs as under.

(B) The Respondent No.1/Claimant is held entitled to receive Rs.52,59,658/- (Rupees fifty two lakh fifty nine thousand six hundred fifty eight only) from Appellant Insurance Company jointly and severally with Respondent No. 2 / Owner along with interest @ 9% per annum from date of claim application till realization.

(C) The amount of no fault liability, if already received, will be adjusted from the above amount.

22. In view of disposal of first appeal, nothing survives in the interim application and the same is also disposed of.

23. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

Sneha Chavan