

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 16.03.2019

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI

MAC App. No. 06 of 2017

Appellant : The Branch Manager,
National Insurance Company
Limited,
Gangtok Branch, East Sikkim.

versus

Respondents : 1. Smt. Aruna Dhakal,
Wife of Late Thakur Prasad Dhakal.

2. Master Abhishek Prasad Dhakal,
Son of Late Thakur Prasad Dhakal.

3. Ms. Archana Dhakal,
Daughter of Late Thakur Prasad Dhakal.

(Residents of
Cheuribote, Duga Road,
Central Pendam,
P.O. & P.S. Rangpo, East Sikkim).

4. Shri Bishwajit Chettri,
Son of Late Bhakta Bahadur Chettri,
P.O. Melli Gumpa, Kubinday Busty,
P.S. Melli, South Sikkim.

**Appeal under Section 173 of the
Motor Vehicles Act, 1988**

Appearance:

Ms. Smita Pradhan, Ms. Rubina Pradhan and Mr. Deven Rai,
Advocates for the Appellant.

Mr. Ajay Rathi, Mr. Rahul Rathi, Ms. Phurba Diki Sherpa and Mr.
Aditya Makkhim, Advocates for Respondents No. 1, 2 and 3.

Mr. Ashok Pradhan, Advocate for Respondent No. 4.

J U D G M E N T

Meenakshi Madan Rai, J

1. The apple of discord in this Appeal is the period of validity shown in the Driving Licence of the driver of the ill-fated vehicle produced by the Claimants (*Respondents No. 1, 2 and 3 herein*) which extends from 08.09.2006 to 07.09.2024. This, according to the Appellant, is contrary to the extract of the office records of the issuance of Driving Licence obtained by the Appellant from the Office of the District Magistrate, Darjeeling Motor Vehicles Department, Government of West Bengal which reflects the period of validity as 08.09.2006 to 07.09.2009. The Driving Licence (Exhibit 15) furnished thus cannot be considered as it was ineffective on the day of the accident *viz.* 02.04.2015, thereby in contravention of the terms of insurance. The other points raised in Appeal are; the granting of 50% as future prospects which according to the Appellant is incorrect as the deceased was not a permanent employee. Further, disgruntlement also ensues on account of the granting of Rs.25,000/- (Rupees twenty five thousand) only, to the Claimants as funeral expenses of the deceased.

2. The above discontentment emanates in a prayer for setting aside the judgment of the Motor Accidents Claims Tribunal, East Sikkim at Gangtok (*for short 'learned Tribunal'*)

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being MACT Case No. 10 of 2015 (*Mrs. Aruna Dhakal and two others v. The Branch Manager, National Insurance Co. Ltd. and another*) dated 06.12.2016, by which a total sum of Rs.14,03,900/- (Rupees fourteen lakhs, three thousand and nine hundred) only, was awarded as compensation to the three Claimants before the learned Tribunal.

3. The Respondents No. 1, 2 and 3 herein were the Claimants No. 1, 2 and 3 and Respondent No. 4 was the Opposite Party No. 2 before the learned Tribunal. The Appellant herein was the Opposite Party No. 1 before the learned Tribunal. They shall be referred to in their order of appearance before this Court.

4. Before the learned Tribunal, the Respondents No. 1, 2 and 3 sought compensation of an amount of Rs.15,89,800/- (Rupees fifteen lakhs, eighty nine thousand and eight hundred) only, on account of the death of the husband of the Respondent No. 1 and father of Respondents No. 2 and 3, in a motor vehicle accident at 23:00 Hrs at Khanigaon under Rangpo Police Station, East Sikkim on 02.04.2015, in which the victim was travelling along with Respondent No. 2. The accident allegedly occurred due to the inability of the driver to control the vehicle on a curve in the road, resultant the vehicle swerved off the road to approximately 1000 feet below causing in the instantaneous death of the victim and injuries on the survivor, Respondent No. 2. The learned Tribunal, on

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careful consideration of the evidence and the documents on record concluded that the Respondents No. 1, 2 and 3 were entitled to compensation of Rs.14,03,900/- (Rupees fourteen lakhs, three thousand and nine hundred) only, as against the claim of Rs.15,89,800/- (Rupees fifteen lakhs, eighty nine thousand and eight hundred) only, put forth by them. The Appellant was ordered to pay the compensation.

5. Learned Counsel for the Appellant while reiterating the averments made in his Appeal, submitted before this Court, that the Driving Licence (in "Category T") of the driver employed by the Respondent No. 4 cannot be for an extended duration *viz.* 08.09.2006 to 07.09.2024 as reflected in the Licence in view of the provisions of Section 14 of the Motor Vehicles Act, 1988. That Exhibit R-2 furnished by the Appellant which is an extract of the official records kept in the Office of the District Magistrate, Darjeeling Motor Vehicles Department, Government of West Bengal indicates that the Licence was in fact issued on 08.09.2006 which tallies with the date of issue given on Exhibit 15 but the validity extends only up to 07.09.2009 in terms of the requirement of law. That, Exhibit R-2 was handed over to them on 19.11.2015 from the concerned Office as detailed *supra* and there is no reason to doubt the extract of the official records. Hence the only conclusion that can be arrived at is that Exhibit 15 having doubtful origins ought not to be given consideration.

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Consequently computation made on the assumption that the Licence was valid amongst other considerations ought to be set aside. It was also contended that the deceased was a worker in a nursery and employed on Muster Roll and not permanently, therefore, the learned Tribunal was in error in granting 50% of monthly income of Rs.6,600/- (Rupees six thousand and six hundred) only, as future prospects while computing the compensation. Also that the learned Tribunal erred in granting Rs.25,000/- (Rupees twenty five thousand) only, for funeral expenses. No reason however was set forth in support of this contention.

6. *Per contra* the arguments advanced by learned Counsel for the Respondents No. 1, 2 and 3 were since the Licence was issued for a Light Motor Vehicle, therefore, the driver was authorized to drive any vehicle in the said category of which the unladen weight did not exceed 7,500 kilograms. Besides merely because Exhibit R-2 is an official record it does not establish that Exbt. 15 the Driving Licence produced by the Respondents No. 1, 2 and 3 could not have been issued for the period 08.09.2006 to 07.09.2024 as indicated therein. That apart, Exhibit R-2 has not been proved by any authority of the concerned Office thereby raising doubts with regard to its authenticity. Placing reliance on the decision of the Hon'ble Supreme Court in ***Compaq International and Anr. vs. Bajaj Allianz***

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General Insurance Company Limited and Anr.¹ learned Counsel further contended that the Licencing Authority themselves have failed to furnish a purported copy of the true Licence of the driver, hence the issuance of Exhibit 15 by them cannot be denied. Reliance was also placed on the ratio of this Court in **The Branch Manager, National Insurance Company Limited v. Indra Maya Biswakarma and Others**² to press the argument that the insurer cannot disown its liability only for the reason that the validity of the Licence does not tally with the alleged official records of issuance. Learned Counsel also took the assistance of the ratio in **Mukund Dewangan vs. Oriental Insurance Company Limited with other Special Leave Petitions**³; **Jagdish Kumar Sood vs. United India Insurance Company Limited and others**⁴; **S. Iyyapan vs. M/S United India Insurance Company Ltd. and another**⁵; **A.P.S.R.T.C. vs. P. Thirupal Reddy**⁶ and **Ashok Gangadhar Maratha vs. Oriental Insurance Co. Ltd.**⁷ to garner strength for the contention that once a Driving Licence is issued to a driver he is authorized to drive any vehicle in the category mentioned in the Licence. Countering the argument of the Appellant that the learned Tribunal erred in granting 50% as future prospects, reliance was placed on the decision of the Hon'ble Supreme Court in **Shashikala and Ors. vs. Gangalakshamma and Anr.**⁸ wherein it was *inter alia* observed that in the case of

¹2018 (5) Scale 46

²2018 ACJ 1387

³2017 AIR (SC) 3668

⁴MANU/SC/0208/2018

⁵2013 (7) SCC 62

⁶2005 (12) SCC 189

⁷(1999) 6 SCC 620

⁸2015 (9) SCC 150

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self-employed or persons with fixed wages where the deceased victim was below 40 years, there must be an addition of 50% to the annual income of the deceased while computing future prospects. That, for funeral expenses, the Hon'ble Supreme Court in *Rajesh and Others vs. Rajbir Singh and Others*⁹ has specifically laid down that an amount of Rs.25,000/- (Rupees twenty five thousand) only, is to be computed for the said purpose.

7. I have heard in extenso and considered the rival submissions of learned Counsel for the parties. I have also perused the documents and evidence on record.

8. The question that requires consideration by this Court pertains to the allegation of the Appellant regarding the improbability of the extended validity of the Driving Licence, Exhibit 15 (08.09.2006 to 07.09.2024) produced by the Respondents No. 1, 2 and 3 while official records contrarily indicate validity from 08.09.2006 to 07.09.2009. Peripheral to these are the points regarding 50% addition as future prospects to the loss of earnings and Rs.25,000/- (Rupees twenty five thousand) only, as funeral expenses. In this context, it is but essential to carefully examine the documents and evidence furnished by both contesting parties.

⁹(2013) 9 SCC 54

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9. What emerges from the evidence on record is that Exhibit 15 is the Licence which was issued according to the Respondent No. 1 to the driver of the vehicle. Neither of the parties have examined the driver of the vehicle. The validity shown on Exhibit 15 is from 08.09.2006 to 07.09.2024 and it is not denied by the Appellant that the Licence was issued from the Office of the District Magistrate, Motor Vehicles Department, Darjeeling. According to Exhibit 15, the driver was authorized to drive a Light Motor Vehicle Transport (LMV-T). The Respondent No. 4 vide Exhibit 16 had authorized the driver to drive the vehicle having employed him after perusing the Driving Licence, Exhibit 15 which appeared to him to be genuine as it bore the seal and signature of the Licencing Authority. Consequently he had taken the driver for a road test drive and on being satisfied thereof had engaged him. It is no one's case that the vehicle in accident was not maintained properly and not mechanically fit to be in service at the time of the accident. It is also no one's case that the documents pertaining to the vehicle were invalid and ineffective at the time of the accident. The Appellant has failed to take steps with regard to Exhibit 15 inasmuch as no FIR was lodged with the concerned Police Station alleging that the document was fake neither was any report made to the Licencing Authority seeking clarification concerning the extended validity. Admittedly no verification was made from the said Office as to whether there was typographical error

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committed on Exhibit 15 so far as the typing of the year "2024" was concerned nor was any verification made with regard to extension of dates or revalidation of the document. The authority who had issued Exhibit R-2 has nowhere stated that the seal or signature appearing on Exhibit 15 was fake and in fact no steps had been initiated even by the Licencing Authority although according to the witness of the Appellant when they sought for Exhibit R-2 they had also submitted a copy of Exhibit 15. The Charge-Sheet, Exhibit 30 submitted by the Police reveals that the driver had committed offences under Sections 279, 336, 337, 304 A of the Indian Penal Code, 1860 read with Sections 177 and 178 of the Motor Vehicles Act, 1988. The extract of the Driving Licence Exhibit R-2 contrarily indicates that the Licence was issued on 08.09.2006 and was valid up to 07.09.2009. This document was allegedly issued by the Office of the District Magistrate, Darjeeling Motor Vehicle Department, Government of West Bengal on 19.11.2015. The witness Kishore Kumar Subba failed to establish by any evidence as to how this document was obtained from the said Office. No letter of requisition made to the concerned Office seeking the document was placed before the learned Tribunal for perusal. The contents of the document remained unproved as also the signature on the document. The argument of the Appellant that Exhibit 15 was invalid on the date of accident thus has no legs to stand. It is indeed settled law that rules of Civil Procedure Code, 1908 and the

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Indian Evidence Act, 1872 do not strictly apply to matters in Motor Accidents Claims nevertheless the elementary requirements have to be fulfilled inasmuch as once a document is furnished there must be some proof of its authenticity.

10. Section 35 of the Indian Evidence Act, 1872 require the following conditions to be fulfilled before a document can be held to be admissible under this Section;

- (i) The document must be in the nature of an entry in any public or other official book, register or record;
- (ii) It must state a fact in issue or a relevant fact; and
- (iii) The entry must be made by a public servant in the discharge of his official duties, or in performance of his duties.

[State of Bihar vs. Radha Krishna Singh and Others¹⁰]

Such entries however must be established by necessary evidence. In addition to which the entries must be made by or under the direction of the person whose duty it is to make them at the relevant time. It is essential to show that the document was prepared by the public servant in the discharge of his official duty.

11. Section 74 of the Indian Evidence Act, 1872 defines what public documents are and reads as follows;

¹⁰(1983) 3 SCC 118

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"74. Public documents.—The following documents are public documents:—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents."

12. In *Madan Mohan Singh and Others vs. Rajni Kant and Another*¹¹

distinguishing between the admissibility of a document and its probative value, the Hon`ble Supreme Court would explain as follows;

"18. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma v. State of Bihar* [(1969) 2 SCC 359 : AIR 1970 SC 326], *Ram Murti v. State of Haryana* [(1970) 3 SCC 21 : 1970 SCC (Cri) 371 : AIR 1970 SC 1029], *Dayaram v. Dawalatshah* [(1971) 1 SCC 358 : AIR 1971 SC 681], *Harpal Singh v. State of H.P.* [(1981) 1 SCC 560 : 1981 SCC (Cri) 208 : AIR 1981 SC 361], *Ravinder Singh Gorkhi v. State of U.P.* [(2006) 5 SCC 584 : (2006) 2 SCC (Cri) 632], *Babloo Pasi v. State of Jharkhand* [(2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266], *Desh Raj v. Bodh Raj* [(2008) 2 SCC 186 : AIR 2008 SC 632] and *Ram Suresh Singh v. Prabhat Singh* [(2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194]. In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.

19. Such entries may be in any public document i.e. school register, voters' list or family register prepared under the Rules and Regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain v. State of U.P.* [AIR 1964 SC 1625 : (1964) 2 Cri LJ 590] and *Santenu Mitra v. State of W.B.* [(1998) 5 SCC 697 : 1998 SCC (Cri) 1381 : AIR 1999 SC 1587].

20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, **they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their**

¹¹(2010) 9 SCC 209

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probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information.”

[emphasis supplied]

It is indeed explicit that the Indian Evidence Act, 1872 does not give licence to any party to submit and rely on any document sans proof by any measure whatsoever. Even if the strict rules of evidence are excluded in the instant matter, one cannot overlook the fact that there is no proof whatsoever on record that the Appellant had sought Exhibit R-2 from the concerned Office or that it had in fact been issued by the said Office. No registers or entries made were furnished to prove the contention of the Appellant nor was any official examined to oust the doubts that arise on its authenticity. In such circumstances, in my considered opinion, Exhibit R-2 has no probative value.

13. That having been said, coming to Exhibit 15, undoubtedly the authenticity of this document has remained unchallenged save the extended validity period which was argued by the Appellant as being an impossibility. The provisions of Section 14 of the Motor Vehicles Act, 1988 which reads as follows are relevant for the present purposes;

“14. Currency of licences to drive motor vehicles.-

- (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.
- (2) A driving licence issued or renewed under this Act shall,-
 - (a) **in the case of a licence to drive a transport vehicle, be effective for a period of three years:**
[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or

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hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

(b) in the case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry."

14. Section 14(2)(a) of the Motor Vehicles Act, 1988 thus clarifies that a Licence to drive a transport vehicle will be effective for a period of three years. In this context, we may revisit Exhibit 15 and the evidence of Kishore Kumar Subba, the witness has categorically stated under cross-examination as follows;

"...It is true that the O.P. No. 1 is only disputing with regard to the period of validity of the driving licence of offending driver Tek Bahadur Chettri though the said driving licence was issued by Licencing Authority, Darjeeling.

It is true that as per Exbt. R-2 the offending driver is having a skill of driving with regard to light motor vehicle (Transport).

It is true that we had not put any queries to Licencing Authority, Darjeeling as to whether there was any typographical mistake with regard to typing of year of validity i.e., 2024.

It is true that the said driving licence as filed by the claimants is tallying with Exbt. R-2 apart from the period of validation.

It is true that in Exbt. R-2 the authority had not said that the licence, the seal appearing on licence or the signature on the same are fake. ..."

[emphasis supplied]

The provisions of Section 14 of the Motor Vehicles Act, 1988 extracted hereinabove clarify that when the Driving

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Licence is issued or renewed under the Act licencing a person to drive a "Transport Vehicle," the licence is to be issued for a period of three years. It is only in the case of any other Licence that the validity can be for a period of twenty years from the date of either issuance or renewal provided the person has not attained the age of 50 years. The details as to what transpires for issuance and renewal of Licence after a person attains the age of 50 years is not being elucidated herein being irrelevant for the present purposes as the driver to whom Exhibit 15 was issued was approximately 34 years at the time of the accident as emerges from the same document.

15. The evidence of Kishore Kumar Subba is a clear admission of the fact that the only dispute is with regard to the validity of the Driving Licence i.e. the period between the date of issuance and date of expiry. This is indeed a vexed situation since the contest is not to the genuineness of the Licence as it is not disputed that the Driving Licence was issued by the Licencing Authority in Darjeeling. It is also not disputed that the offending driver had skills to drive Light Motor Vehicle (Transport). No questions were put forth to the Licencing Authority as to whether there was any typographical error with regard to the year of validity. In such a circumstance, considering that the Appellant has failed to decimate the validity of Exhibit 15 it stands as a genuine document irrespective of the fact that it does not comply with

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the provisions of Section 14 of the Motor Vehicles Act, 1988. This is so since no concerned authority was examined to establish that the period of validity was wrongly entered and neither the driver nor the Claimants or the owner can be held to ransom for any alleged erroneous entry in the Driving Licence made by the concerned authority. There is no allegation that the Driving Licence was prepared by any of the Respondents or for that matter by the driver himself.

16. This Court in *Branch Manager, National Insurance Co. Ltd. vs. Karma Bhutia and others*¹² has while placing reliance on the decision in *United India Insurance Company Ltd. vs. Lehru and others*¹³ has *United India Insurance Company Ltd. v. Lehru and Others, (2003) 1 ACC 611 (SC)* held that the owner cannot be expected to launch investigation into the genuineness of the Licence when employing the driver. On this count, it would be worthwhile to extract the observation of the Hon'ble Supreme Court in *United India Insurance Company Ltd. v. Lehru and others (supra)* wherein it was held as follows;

"17. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a Competent Authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company

¹² 2016 (161) AIC 830

¹³ (2003) 1 ACC 611 (SC)

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would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured.
..."

17. Further, the Hon'ble Supreme Court also observed in

National Insurance Co. Ltd. v. Swaran Singh and Others¹⁴ as follows;

"109.

(iii) The breach of policy condition e.g., disqualification of the driver on invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time..."

Hence, in view of the aforestated observations the question of the Licence being invalid on any account does not arise. Section 2 (21) of the Motor Vehicles Act, 1988 defines Light Motor Vehicle as follows;

"(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;"

The vehicle in accident was described as a "C Carriage" vehicle with unladen weight of 1720 kilograms in Exhibit 14, the Certificate of Registration. Hence, the driver had the requisite Licence to drive the vehicle in accident.

¹⁴(2004) 1 ACC 1 (SC)

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18. Coming to the question of the learned Tribunal having added 50% of the Monthly Income of Rs.6,600/- (Rupees six thousand and six hundred) only, as future prospects, it needs no reiteration that in *Shashikala's* case (*supra*), the Hon'ble Supreme Court has specifically laid down that in the case of self-employed or persons with fixed wages in case the deceased victim was below forty years there must be an addition of 50% to the actual income of the deceased while computing future prospects. This observation was arrived at after considering the ratio of a two Judge Bench of the same Court in *Santosh Devi vs. National Insurance Co. Ltd. & Ors.*¹⁵ The relevant paragraphs as discussed by the Court is extracted as under;

"14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries

¹⁵AIR 2012 SC 2185

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of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

Hence, people who are self-employed or engaged on fixed wages are also entitled to 50% of the actual income of the deceased to be computed as future prospects. Later in **Rajesh and Others (supra)** a three Judge Bench of the Hon'ble Supreme Court took into consideration the decision of the case in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another**¹⁶ and **Santosh Devi (supra)** and held as follows;

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on

¹⁶(2009) 6 SCC 121

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fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. **In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.** Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

[emphasis supplied]

This issue is no more *res integra* and in fact ought to have brooked no discussions in view of the settled position of law.

19. With regard to the addition of Rs.25,000/- (Rupees twenty five thousand) only, as funeral expenses, the Hon'ble Supreme Court in *Rajesh and others (supra)* held as follows;

"18. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000."

This is therefore also settled by the aforestated ratio.

20. Now to address the quantum of compensation. The judgment of the learned Tribunal reveals that the Multiplier of 17 has been adopted for computing loss of earnings. It would be relevant to point out that Section 163 A of the Motor Vehicles Act, 1988 contains a special provision for payment of compensation on a structured formula basis as spelt out in the

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table in the Second Schedule to the Motor Vehicles Act, 1988. This table however does not apply for computing compensation for applications under Section 166 of the Motor Vehicles Act, 1988. The instant Appeal arises out of a petition filed under Section 166 of the Motor Vehicles Act, 1988. In *Sarla Verma's* case (*supra*) the Hon'ble Supreme Court while discussing the ratio in *General Manager, Kerala S.R.T.C. vs. Susamma Thomas*¹⁷, *UP State Road Transport Corporation vs. Trilok Chandra*¹⁸ and *New India Assurance Co. Ltd. vs. Charlie*¹⁹ for claims under Section 166 of the Motor Vehicles Act, 1988 *inter alia* held;

"**20.** Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to *Susamma Thomas* (set out in column 2 of the table above); some follow the multiplier with reference to *Trilok Chandra*, (set out in column 3 of the table above); some follow the multiplier with reference to *Charlie* (set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per *Susamma Thomas*, 14 as per *Trilok Chandra*, 15 as per *Charlie*, or 16 as per the multiplier given in column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163A of MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable.

21. 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

¹⁷ (1994) 2 SCC 176

¹⁸ (1996) 4 SCC 362

¹⁹ AIR 2005 SC 2157

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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."

In view of the speaking decision, as the deceased was approximately 34 years at the time of accident, the correct Multiplier that the learned Tribunal ought to have adopted would have been 16.

21. In conclusion, the judgment of the learned Tribunal warrants no interference save to the extent of the choice of Multiplier.

22. In light of the above discussions and findings, the compensation stands re-calculated and modified as follows;

Monthly Income of the deceased	Rs.6,600.00
Annual Income of the deceased (Rs.6600x12)	Rs.79,200.00
Add 50% of Rs.79,200.00 as future prospects	<u>Rs.39,600.00</u>
Yearly income of the deceased	Rs.1,18,800.00
Less 1/3 rd of Rs. 1,18,800.00 [deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.]	<u>Rs.39,600.00</u>
Net yearly income	Rs.79,200.00
Multiplier of '16' adopted in terms of Sarla Verma's case (supra) (Rs.79,200 x 16)	Rs.12,67,200.00
Add Funeral expenses	Rs.25,000.00
Add Loss of estate	Rs.2,500.00
Add Loss of consortium	Rs.5,000.00
Add Non-pecuniary damages	<u>Rs.25,000.00</u>
Total	<u>Rs.13,24,700.00</u>

(Rupees thirteen lakhs, twenty four thousand and seven hundred) only.

23. The Respondents No. 1, 2 and 3 shall be entitled to simple interest @ 9% per annum on the above amount with

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effect from the date of filing of the Claim Petition before the learned Tribunal, until its full realisation.

24. The Appellant is directed to pay the awarded amount to the Respondents No. 1, 2 and 3 within one month from today, failing which, the Appellant shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant to the Respondents No. 1, 2 and 3.

25. The impugned Judgment and Award of the learned Tribunal stands modified accordingly.

26. The Appeal is dismissed.

27. No order as to costs.

28. Copy of this Judgment be sent to the learned Tribunal for information and compliance, and its records be remitted forthwith.

(Meenakshi Madan Rai)
Judge
16.03.2019

Approved for reporting: **Yes**
Internet: **Yes**

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