

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**FIRST APPEAL NO. 378 OF 2004**

KANCHAN  
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DHURI

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**Smt. Padmakshamma Nanu Pillai** )  
 Mother of the deceased, aged 50 years )  
 R/at: Kollamkarottu Puthen Veedu, )  
 Paranthal P O. Thatta (Via) Addor, )  
 Dist. Pathanamthitta, Kerala. )...Appellant

Versus

**1. Mr. Bapu Ramchandra Mane** )  
 Santabai Shelke Building, )  
 Shivaji Nagar, Wagle Estate, Thane. )

**2. Oriental Insurance Company** )  
 R. O. No. 2, Oriental House, )  
 J. Tata Road, Churchgate, Mumbai – 20. )...Respondents

.....  
 Ms. Ketki Gokhale instructed by Mr. A.M. Gokhale, Advocate for the Appellant.

Mr. Sachin Raje, Advocate for the Respondent No.2

.....  
**CORAM** : **ABHAY AHUJA, J.**

**DATE** : **29 APRIL 2026**

**ORAL JUDGMENT :**

1. Being aggrieved by the Judgment and Order dated 11<sup>th</sup> July 2003 passed by the Motor Accident Claims Tribunal, Thane (the “Tribunal”) in Claim Application No. 613 of 1995, the First Appeal has been filed by the mother of the deceased for enhancement of compensation.

2. The fact that the son of the Appellant died in the accident, wherein truck No. MWE 1371 was involved is not in dispute. It is also not in dispute that the said truck was owned by the Respondent No.1 and insured with Respondent No.2.

3. The Appellant is aggrieved by the fact that, despite having proved the income of the deceased of Rs.3,125/- per month, the Tribunal has considered the notional income at Rs.1,800/- per month. Ms. Gokhale draws this Court's attention to the evidence of the Appellant at page 20 and of the employer of deceased at page 23. Ms. Gokhale submits that the income of the deceased has been proved by the Appellant as Rs.3,125/- per month, which has erroneously not been considered by the Tribunal. Ms. Gokhale submits that even the employer has stated that the deceased was working with him as an X-ray Welder and was being paid Rs.125/- per day to the deceased, and also issued a certificate to that effect. That the Tribunal has observed in paragraph 9 that if the monthly income of the deceased is calculated at the rate of Rs.125/- per day, considering that he was working through out 30 days, it comes to Rs.3,750/- and if four days' holiday are deducted, the income would come to Rs.3,250/-. Ms. Gokhale submits that the Tribunal has erroneously observed that by any mode of calculation one cannot arrive at a decision that the monthly income of

the deceased was Rs.3,125/- and has, without any basis, rejected the certificate of the employer and considered the notional income of Rs.1,800/- per month.

4. Ms. Gokhale, relies upon the decision of the Hon'ble Supreme Court in the case of *Mohammed Siddique and another vs. National Insurance Company and others*<sup>1</sup> to submit that so long as the oral testimony of the employer remains unshaken, the same should have been believed by the Tribunal and the said testimony ought not to have been rejected. That no contradictory evidence has been presented before the Tribunal and the Tribunal ought not to have chosen a theoretical presumption and considered the notional income of Rs.1,800/-.

5. In addition, Ms. Gokhale submits that the Tribunal has not considered future prospects in accordance with the decision of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others*<sup>2</sup>, which, considering the age of the deceased of 26 years, the Appellant is entitled to additional 40% income towards future prospects.

6. Ms. Gokhale has further submitted that even under the conventional heads, the Appellant is entitled to Rs.48,000/- for loss of

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1 Civil Appeal No.79 of 2020

2 2017 ACJ 2700

consortium as per the decision of the Hon'ble Supreme Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram and others*<sup>3</sup>, which has also not been granted at all. That even the funeral expenses and loss of estate have not been granted in accordance with the decision in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)*, which ought to have been Rs.18,000/- each. Ms. Gokhale accordingly submits that this Court may allow the Appeal and enhance the compensation as above.

7. Mr. Raje, learned Counsel, appearing for the Respondent No.2 – Insurance Company has raised only two objections. One is that the enhancement of compensation and in particular future prospects as sought for are not available to the Appellant under Section 163-A of the Motor Vehicles Act, 1988, but only to a claimant under Section 166 of the Motor Vehicles Act, 1988. Ms. Gokhale has rebutted the said objection by drawing this Court's attention to paragraphs 45 and 46 of the decision in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)* which clearly suggests that the multiplier in *Smt. Sarla Varma and others vs. Delhi Transport Corporation and another*<sup>4</sup> would apply to both claims under Section 163 as well as Section 166 of the Motor Vehicles Act, 1988. I agree with Ms. Gokhale.

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3 2018 ACJ 2782

4 (2009) 6 SCC 121

8. For the sake of convenience, paragraphs 45 and 46 in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)* are usefully quoted as under :

“45. In *Reshma Kumari, 2013 ACJ 1253 (SC)*, the aforesaid has been approved by stating, thus :

“(34) ...It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction towards personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think, we must approve the Table in *Sarla Verma* for the selection of multiplier in claim applications made under section 166 in the cases of death. We do accordingly. If for the selection of multiplier, column (4) of the Table in *Sarla Verma (supra)* is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of section 163-A or section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in column (6) of the Table in *Sarla Verma* should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under section 166 of the 1988 Act. In all other cases of death where the application was made under section 166, the multiplier as indicated in column (4) of the Table in *Sarla Verma* should be followed.”

46. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to

*be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and 'income' means actual income less the tax paid. The multiplier has already been fixed in Sarla Verma, 2009 ACJ 1298 (SC), which has been approved in Reshma Kumari, 2013 ACJ 1253 (SC), with which we concur."*

9. The other objection the learned Counsel for the Respondent No.2 – Insurance Company has raised is that the income of the deceased has not been proved. Ms. Gokhale has opposed the said submission and once again drawn this Court's attention to the evidence of the Appellant as well as the employer of the deceased.

10. I have perused the said evidence. Perusal of the mother's evidence viz. the Appellant suggests that her son, the deceased was working in Mumbai as an X-ray Welder with Sunny George at the time of accident, and his salary was Rs.3,125/- per month and has also filed a certificate from the employer which is not controverted. More importantly, the evidence of the employer viz. Sunny George also clearly suggests that the deceased was working as an X-ray Welder with him and he used to pay him wages at the rate of Rs.125/- per day and he has issued a certificate to that effect and would pay him at the end of the month. There is no evidence contradicting the evidence on record that the deceased was earning Rs.125/- per day. The calculation

of Rs.125/- per day for 30 days of month, would be Rs.3,750/- per month, whereas the claim is only Rs.3,125/-.

11. Ms. Gokhale has submitted that the deceased would take five days break and therefore, the certificate of Rs.3,125/- has been given by the employer, which is not contradicted by any evidence on record. In my view, it is not unbelievable that a person would take five days leave in a month. Accordingly, the income of Rs.3,125/- per month, in my view, is proved and that as there is no contradictory material brought to my notice. The oral testimony of the employer of the deceased has remained unshaken and the same should have been believed by the Tribunal. The Tribunal certainly erred in considering the notional income just on the basis that the calculation of Rs.125/- per day did not add upto the claim of Rs.3,125/- made by the Appellant.

12. The objections on behalf of the Respondent No.2 – Insurance Company therefore cannot be countenanced.

13. Having observed as above, I am also of the view that in view of the principle laid down by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)*, the Appellant is entitled to the claim of future prospects on the income of Rs.3,125/- per month. The deceased was employed and considering

his age of 26 years at the time of the accident and death, the appellant is entitled to additional 40% towards future prospects. Paragraph 61(iv) of the decision in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)* is usefully quoted as under :

“In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

14. The Tribunal has also not awarded any amount towards loss of consortium and as per the decision in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram and others (supra)*, the same ought to have been granted. Accordingly, this Court is inclined to award the Appellant the amount of Rs.48,000/- for loss of consortium.

15. Further, the Tribunal has awarded only Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate. However, in view of the decision in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and others (supra)*, I am inclined to enhance the same to Rs.18,000/- each.

16. In view of the above discussion, I am inclined to allow the Appeal and enhance the quantum of compensation awarded to the Appellant on the basis of the following computation :

Sr. No.	Head	Amount
1.	Annual Income (3,125 x 12)	Rs. 37,500/-
	Add 40% future prospects	Rs. 52,500/-
	After deduction of 1/3 <sup>rd</sup>	Rs. 35,000/-
	After applying multiplier of 17 (Age 26)	Rs. 5,95,000/-
2.	Loss of Consortium (2 claimants)	Rs. 48,000/-
3.	Loss of Estate	Rs. 18,000/-
4.	Funeral Expenses	Rs. 18,000/-
	<b>Total</b>	<b>Rs. 6,79,000/-</b>
	Awarded by the Tribunal	Rs. 2,42,500/-
	<b>Enhanced Compensation</b>	<b>Rs. 4,36,500/-</b>

17. Ergo, the Appellant is entitled to a total compensation of Rs. 4,36,500/- inclusive of amount of compensation under 'no fault' liability along with interest thereon at the rate of 9% per annum to be paid by the Respondents No.1 and 2 jointly and severally from the date of filing of the Claim Application till realization, to be paid to the Appellant as mentioned in the Judgment and Order dated 11<sup>th</sup> July 2003 passed by the Motor Accident Claims Tribunal, Thane in Claim Application No. 613 of 1995, less the amount already withdrawn, if any.

18. The Judgment and Order dated 11<sup>th</sup> July 2003 of the Motor Accident Claims Tribunal, Thane in Claim Application No.613 of 1995 be and is modified to the above extent.
19. The Appeal is allowed as above. No order as to costs.

**(ABHAY AHUJA, J.)**