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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FIRST APPEAL NO.373 OF 2016

Mr. Pramodh Kumar Malhotra & Anr.

...Appellants

**Versus**

Shri Kelviester J. Carvalho & Ors.

...Respondents

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Mr Anuj N. Narula a/w. Ms. Meenal Bhatha i/b Jhangiani Narula And Associates for the Appellant.

Mr. D. R. Mahadik for the Respondents.

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**CORAM : JITENDRA JAIN, J.**

**DATED : 8 June 2026**

**P.C. :**

1. By consent, the appeal is taken up for final hearing.
2. The learned counsel for original claimants has filed this appeal for enhancement primarily, on the ground that the claim was made for Rs.50 lakhs whereas, the compensation awarded is only Rs.6.56 lakhs.
3. The learned counsel for the claimants submitted that the deceased was a doctor by profession and was working in UAE prior to 1999. Therefore, the income earned in UAE should be considered for arriving at the compensation. This issue has been discussed at length by the Tribunal in paragraphs 13 to 16 of the impugned order. The accident happened in November 2002 whereas, the deceased doctor was employed in UAE prior to 1999 and there is no evidence led by the claimants to show the income from 1999 to 2002 which the deceased earned in India.
4. In my view, the Tribunal was justified in not considering the income



earned in UAE much prior to the date of accident and moreso when no evidence has been led of the income earned in India post returning from UAE. The Tribunal has correctly observed that if the deceased was employed as a panel doctor of LIC, then there is no reason why the evidence could not have been produced to prove income earned in India. Therefore, in the absence of any evidence, the Tribunal had no choice but to estimate the income. It was incumbent upon the claimants to prove with evidence the income earned in India by the deceased which the claimants has failed to do so.

5. The Tribunal has estimated income of Rs.10,000/- per month in the absence of any evidence. In my view, the deceased was a doctor by profession and, therefore, the estimate of income at Rs.10,000/- per month appears to be on the lower side.

6. The submission made by the learned counsel for the claimants that based on the experience of the deceased, the estimate should be of Rs.50,000/- per month cannot be accepted. First of all, there is no evidence led by way of bank account or any other evidence to show that the deceased earned Rs.50,000/- per month. The blanket submission based on the experience without any evidence cannot be accepted.

7. If the contention of the claimants is to be accepted, then there is no reason coming from the claimants as to why the deceased did not file any income tax returns. A person who does not file income tax returns and does not pay tax cannot be heard while claiming compensation that the income should be considered at Rs.50,000/- per month. There is no justification coming from the claimants as to why the income tax returns were not filed. Therefore, the submission made for estimating income at Rs.50,000/- per month cannot be accepted. However, in the interest of justice, Rs.15,000/-



per month can be considered as just and fair for arriving at the compensation.

8. The impugned order was passed in the year 2012 and, therefore, the Tribunal did not have the benefit of the decision in the case of **Sarla Varma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.**<sup>1</sup> The future prospects should be considered by treating the age of the deceased between 55 to 60 years since in paragraph 12, the Tribunal has given a finding that even the age of 50 years of the deceased was not proved by the claimants.

9. The revised compensation after considering the decision of the Supreme Court in the case of **Sarla Varma (supra)** is as under :-

Sr. Nos.	Particulars	Amount
1.	Annual Income (15,000 x 12)	Rs.1,80,000/-
2.	Future prospects 15%	Rs.2,07,000/-
3.	Deduction for personal expenses with 4 dependants [husband, 3 children (out of which 2 were minors)]	¼ deductions
4.	Annual dependency (Rs. 2,07,000 x ¾ )	Rs. 1,55,250/-
5.	Multiplier (since age is 55 years)	11
6.	Loss of dependency (Rs.1,55,250 x 11)	Rs.17,07,750/-
7.	Loss of estate	Rs.15,000/-
8.	Funeral expenses	Rs.15,000/-
9.	Loss of consortium	Rs. 40,000/-
	Grand Total	Rs. 17,77,750/-
	(Less) Awarded	Rs. 6,56,000/-
	<b>Enhanced Amount</b>	<b>Rs. 11,21,750/-</b>

1 (2009) 6 SCC 121



10. The enhanced compensation is Rs.11,21,750/- (Rs.17,77,750/- minus Rs. 6,56,000/-). The enhanced compensation should be deposited by the insurance company within eight weeks from today alongwith interest @ 7% p.a. from the date of filing of the original application with the Tribunal till the date of its realisation. The enhanced compensation and the original compensation should be paid to the claimants in equal proportion.
11. Any amount paid to the claimants prior to the present order should be reduced from the final compensation awarded by this order.
12. The appeal is disposed of in above terms.

**(JITENDRA JAIN, J.)**