



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 26<sup>th</sup> April, 2022

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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MAC App. No.03 of 2021

**Appellant** : The Branch Manager, New India Assurance Co. Ltd.

**versus**

**Respondents** : Smt. Namita Rani Panigrahi and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

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**Appearance**

Mr. Pramit Chettri with Ms. Sarala Gurung, Advocates for the Appellant.

Ms. Manita Pradhan, Advocate for Respondents No.1, 2 and 3.

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

Ms. Pritima Sunam, Advocate for Respondent No.5.

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## J U D G M E N T (ORAL)

Meenakshi Madan Rai, J.

**1.(i)** This Appeal is confined to two points, the first one assails the monthly income of the deceased, which was computed by the Learned Motor Accidents Claims Tribunal, East Sikkim, at Gangtok, (for short, the "Learned Tribunal") at Rs.1,28,747/- (Rupees one lakh, twenty eight thousand, seven hundred and forty seven) only, instead of Rs.1,09,962/- (Rupees one lakh, nine thousand, nine hundred and sixty two) only, which the deceased would have received after his monthly Income Tax deductions.

**(ii)** The second point pertains to deduction of one-third towards personal and living expenses of the deceased which would have been incurred by him had he been alive, instead of one-fourth as deducted by the Learned Tribunal. To fortify his submission on the second point, Learned Counsel for the Appellant drew strength



from the ratio in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another**<sup>1</sup>. It is contended that although in the Memo of Appeal, other grounds have been raised including a prayer for disregarding the Additional House Rent Allowance indicated in Exhibit 16, the Monthly Pay Slip of the deceased, while computing the compensation, Learned Counsel for the Appellant does not seek to press either this point, or the other points raised therein, besides the above-mentioned two issues.

**2.** Learned Counsel for Respondents No.1, 2 and 3 (*Claimants No.1, 2 and 3 before the Learned Tribunal*), on the other hand, while conceding that the income of the deceased would be the amount in hand after deduction of Income Tax, contended that there is however no error in the Learned Tribunal having deducted one-fourth towards the personal and living expenses of the deceased. The attention of this Court was drawn to the ratio of **National Insurance Company Limited vs. Pranay Sethi & Ors.**<sup>2</sup>, **Reshma Kumari vs. Madan Mohan**<sup>3</sup> and **Sarla Verma supra**. It was urged that even though in **Sarla Verma supra**, it has been held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third ( $1/3^{rd}$ ) where the number of dependent family members is two to three, one-fourth ( $1/4^{th}$ ) where the number of dependent family members is four to six, and one-fifth ( $1/5^{th}$ ) where the number of dependent family members exceeds six, however, in **Reshma Kumari supra**, it has been held that if departure from the norm can be proved, then deduction can be made at the discretion of the Tribunal. According

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<sup>1</sup>(2009) 6 SCC 121

<sup>2</sup> AIR 2017 SC 5157

<sup>3</sup> (2013) 9 SCC 65



to Learned Counsel for Respondents No.1 to 3, the evidence led by the said Respondents clearly indicate that there was a departure from the norm and there is no error in the deduction of one-fourth towards the personal and living expenses of the deceased. Reliance on this aspect was also placed on ***Hem Raj vs. Oriental Insurance Company Limited and Others***<sup>4</sup>. Hence, it is prayed that the Appeal be dismissed.

**3.** Learned Counsel appearing for Respondent No.4 and Respondent No.5 had no submissions to put forth.

**4.** Learned Counsel for the parties were heard *in extenso*, all documents on record including the evidence examined meticulously, as also the impugned Judgment and the citations made at the Bar. It is now to be examined whether the Learned Tribunal was correct in computing the compensation as obtains in the impugned Judgment.

**5.** The brief facts essential for the present purposes is that on 28.11.2017, at around 19:35 Hrs, the deceased, Late Birendra Kumar Panigrahi, was walking on the footpath along the National Highway-10, near "Golden Gaming" Building, Gangtok, East Sikkim. A speeding Tata Sumo vehicle bearing Registration No.SK-01-J-2586, driven by the Respondent No.5 herein (*Opposite Party No.3 before the Learned Tribunal*), came on the wrong side of the road and hit the deceased by breaking the supporting iron railings. The deceased was evacuated to the Hospital but succumbed to his injuries. Respondent No.1 is the wife of the deceased while Respondents No.2 and 3 are his unmarried

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<sup>4</sup> (2018) 15 SCC 654



daughters, who sought compensation of Rs.1,79,57,940/- (Rupees one crore, seventy nine lakhs, fifty seven thousand, nine hundred and forty) only, with interest at the rate of 12% from the date of filing of the Claim Petition till final payment. The Learned Tribunal, on consideration of the evidence before it, computed the total compensation at Rs.1,47,27,852/- (Rupees one crore, forty seven lakhs, twenty seven thousand, eight hundred and fifty two) only, with interest at the rate of 9% from the date of filing of the Claim Petition till full and final payment.

**6.(i)** The Learned Tribunal, in the impugned Judgment, took the monthly salary of the deceased as Rs.1,28,747/- (Rupees one lakh, twenty eight thousand, seven hundred and forty seven) only, which is clearly erroneous in view of the fact that Exhibit 16, the monthly Pay Slip of the deceased, indicates that his Gross Salary was Rs.1,28,747/- (Rupees one lakh, twenty eight thousand, seven hundred and forty seven) only, however, Tax Deduction at Source amounted to Rs.18,785/- (Rupees eighteen thousand, seven hundred and eighty five) only, leaving the deceased with a monthly income of Rs.1,09,962/- (Rupees one lakh, nine thousand, nine hundred and sixty two) only. While discussing this aspect, reference may be made to **P. Ramanatha Aiyar's, Advanced Law Lexicon, The Encyclopaedic Law Dictionary with Words & Phrases Legal Maxims and Latin Terms, 6<sup>th</sup> Edition, Volume 2, D-1, Page No.2713,** which defines "income" *inter alia* as under;

"INCOME' means—

(i).....

(ii).....

(iii) the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such



company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture. [M.P. Vriti Kar Adhiniyam (16 of 1995) , S. 2(e) **as cited in High Court of M.P. Employees' Association v. State of M.P.**, AIR 1997 MP 155, para 9]

The return in money from business, labour, capital investments, gain, profit. That which comes in to a person as payment for labour, or services rendered in some office, or as gain from lands, the investment of capital.

'Income is defined as that gain which proceeds from labour, business, or property of any kind; the profits of commerce or business.'

.....  
The term 'income' by itself is elastic and has a wide connotation. Whatever comes in or is received is income. In popular parlance 'income' comprehends receipts from wide species having a nexus however to one's labour or one's expertise, or one's properties or one's investments and having further some element or regularity from such source. *Black's Law Dictionary* Revised, 4<sup>th</sup> edition P.906.  
....."

**(ii)** In ***National Insurance Company Limited vs. Indira***

***Srivastava and Ors.***<sup>5</sup> the Hon'ble Supreme Court has held *inter alia*

as follows;

"**19.** The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. **We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.**"

(Emphasis supplied)

**(iii)** The Hon'ble Supreme Court in ***T.N. State Transport***

***Corporation Ltd. vs. S. Rajapriya and Ors.***<sup>6</sup> *inter alia* observed as

under;

"**8.** The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated

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<sup>5</sup> (2008) 2 SCC 763

<sup>6</sup> AIR 2005 SC 2985



remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

**9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants,** and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

**10.** Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

**(Emphasis supplied)**

In ***New India Assurance Co. Ltd. vs. Charlie and Anr.***<sup>7</sup>, the view held in ***T.N. State Transport Corporation Ltd. (supra)*** has been reiterated and also followed in the decision of ***New India Assurance Co. Ltd. vs. Kalpana (Smt.) and Ors.***<sup>8</sup> In ***Shyamwati Sharma and Others vs. Karam Singh and Others***<sup>9</sup> it was held that where annual income is in the taxable range appropriate deduction has to be made towards Income Tax, however, deductions towards GPF, Life Insurance Premium, repayment of Loan etc. shown in the Salary Certificate should not be excluded from the deceased's income. In ***Vijay Kumar Rastogi vs. Uttar Pradesh State Roadways Transport Corporation***<sup>10</sup> the Hon'ble Supreme Court yet again has observed that Income Tax payable is to be deducted from the gross income.

**(iv)** In light of the above ratiocinations, it is essential to reproduce the relevant portion of Exhibit 16 herein;

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<sup>7</sup> AIR 2005 SC 2157

<sup>8</sup> AIR 2007 SC 1243

<sup>9</sup> (2010) 12 SCC 378

<sup>10</sup> 2018 SCC OnLine SC 193



"Bharat Sanchar Nigam Limited  
(A Govt. of India Enterprise)  
Payslip for the Month of November-2017

.....

Earnings	Amount	Deductions	Amount	Perks/Other Income/Rebates	Amount
Additional HRA	4353.00	Prof Tax-split period	200.00	Exemption U/S 10	20000.00
Basic Pay	48760.00	TDS from Employee	18785.00	Agg of Chapter VI	150000.00
IDS-DA	60609.00	GPF Subscription	40000.00		
HRA	4876.00	GSLIS	525.00		
Prof. Upgradation Allow.	975.00	Union Subscription	50.00		
SCA-RL-Rs.1300	2600.00				
Special duty allowance	5774.00				
Transport Allow	800.00				
Total	128747.00	Total	59560.00		

....."

Consequently, in consideration of the deduction of Income Tax of Rs.18,785/- (Rupees eighteen thousand, seven hundred and eighty five) only, as reflected in Exhibit 16 *supra*, the Monthly Income of the deceased admittedly would be Rs.1,09,962/- (Rupees one lakh, nine thousand, nine hundred and sixty two) only, instead of Rs.1,28,747/- (Rupees one lakh, twenty eight thousand, seven hundred and forty seven) only, as calculated by the Learned Tribunal.

(v) While addressing the second aspect pertaining to the deduction of one-fourth of the annual income towards personal and living expenses of the deceased which would have been incurred by him had he been alive, the Learned Tribunal took an erroneous view in making such a deduction instead of a deduction of one-



third. On this count, the Hon'ble Supreme Court in **Sarla Verma** (*supra*), has observed *inter alia* as follows;

"**30.** Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra* [(1996) 4 SCC 362], the general practice is to apply standardised deductions. **Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.**

.....  
**49.** As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. ...."

(Emphasis supplied)

In **Reshma Kumari** *supra*, it was propounded as follows;

"**43.6.** Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121:(2009) 2 SCC (Civ) 770:(2009) 2 SCC (Cri) 1002] subject to the observations made by us in **para 41** above."

Para 41 referred to *supra*, reads as under;

"**41.** The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

**42. In our view, the standards fixed by this Court in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out."**

(Emphasis supplied)





A Constitution Bench of the Hon'ble Supreme Court in ***Pranay Sethi supra***, while supporting the above stance on deductions towards personal expenses of the deceased, held as follows;

"**41.** On a perusal of the analysis made in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121:(2009) 2 SCC (Civ) 770:(2009) 2 SCC (Cri) 1002] which has been reconsidered in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65:(2013) 4 SCC (Civ) 191:(2013) 3 SCC (Cri) 826], we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by Conclusion 43.6 of *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65:(2013) 4 SCC (Civ) 191:(2013) 3 SCC (Cri) 826]. We concur with the same as we have no hesitation in approving the method provided therein."

It is an admitted fact that the dependent family members of the deceased were three, i.e. Respondents No.1 to 3 herein. No departure from the norm has been established by Learned Counsel for Respondents No.1 to 3 nor does the evidence of the Respondents reveal such departure, hence, the Learned Tribunal ought to have deducted one-third of the annual income of the deceased towards his personal and living expenses instead of one-fourth.

**7.(i)** Next, it is essential to notice that Rs.40,000/- (Rupees forty thousand) only, has been granted as Loss of Consortium towards Respondent No.1. The Learned Tribunal has certainly overlooked the ratiocination of the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and Others***<sup>11</sup> wherein it is *inter alia* held as follows;

"**21.** A Constitution Bench of this Court in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680:(2018) 3 SCC (Civ) 248:(2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance,

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<sup>11</sup> 2018 (8) SCC 130



"consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:[*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54:(2013) 4 SCC (Civ) 179:(2013) 3 SCC (Cri) 817:(2014) 1 SCC (L&S) 149]

**21.1.** Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [*Black's Law Dictionary* (5th Edn., 1979).]

**21.2.** Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

**21.3.** Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

.....  
**24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *Pranay Sethi* [National Insurance Co. Ltd. v. *Pranay Sethi*, (2017) 16 SCC 680:(2018) 3 SCC (Civ) 248: (2018) 2 SCC (Cri) 205].** In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium."

(Emphasis supplied)

**(ii)** In *Pranay Sethi* (*supra*), the Court *inter alia* held as follows;

"**52.** .....Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. ...."

In view of the above, it is essential to grant Spousal Consortium to Respondent No.1 amounting to Rs.40,000/- (Rupees forty thousand) only, which has been granted by the Learned Tribunal and requires no interference. Parental Consortium of Rs.40,000/-



(Rupees forty thousand) only, each, is granted to Respondents No.2 and 3, upon the loss of their father.

**(iii)** While adding the amount by way of Parental Consortium, to the compensation, it is pertinent to mention that this Court is clothed with powers to consider “just compensation” in terms of the provisions of Section 168 of the M.V. Act. In **Pranay Sethi** (*supra*), the Hon’ble Supreme Court observed *inter alia* as under;

“**55.** Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121:(2009) 2 SCC (Civ) 770:(2009) 2 SCC (Cri) 1002] and it has been approved in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65:(2013) 4 SCC (Civ) 191:(2013) 3 SCC (Cri) 826]. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well-accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the



principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

(iv) Hence, the compensation computed by the Learned

Tribunal is modified and stands recomputed as follows;

**Annual Income** of the deceased

(Rs.1,09,962/- x 12) Rs.13,19,544.00

**Multiplier** of "11" adopted in terms of the ratio in

**Sarla Verma** supra (Rs. 13,19,544/- x 11) Rs.1,45,14,984.00

**Add** 15% of Rs.1,45,14,984/- as Future Prospects (+) Rs.21,77,248.00

[As per the ratio in **Pranay Sethi** supra]

**Net Yearly Income** of the deceased Rs.1,66,92,232.00

**Less** 1/3 of Rs. 1,66,92,232/- (i.e. Rs.55,64,077/-) (-) Rs. 55,64,077.00

[As per the ratio in **Sarla Verma** supra]

**Rs.1,11,28,155.00**

**Add** Funeral Expenses (+) Rs.15,000.00

[As per the ratio in **Pranay Sethi** supra]

**Add** Loss of Consortium (+) Rs.1,20,000.00

[Rs.40,000/- each, payable to Respondent No. 1 as Spousal Consortium and to Respondents No.2 and 3 as Parental Consortium, respectively]

[As per the ratio in **Magma General Insurance Co. Ltd. (supra)**]

**Add** Loss of Estate (+) Rs.15,000.00

[As per the ratio in **Pranay Sethi** supra]

**Total**

**Rs.1,12,78,155.00**

**(Rupees one crore, twelve lakhs, seventy eight thousand, one hundred and fifty five) only.**

**8.** The Respondents No. 1, 2 and 3 shall be entitled to Simple Interest @ 9% per annum on the above amount of Rs.1,12,78,155/- (Rupees one crore, twelve lakhs, seventy eight thousand, one hundred and fifty five) only, with effect from the date of filing of the Claim Petition before the Learned Tribunal i.e. 15.03.2018 till full realization.

**9.** The awarded amount shall be paid by the Appellant to the Respondents No. 1, 2 and 3 within one month from today with interest @ 9%, failing which, the Appellant shall pay Simple Interest @ 12% per annum from the date of filing of the Claim



Petition till realization, duly deducting the amounts, if any, already paid by it to the Respondents No. 1, 2 and 3.

**10.** The modified awarded amount of compensation along with interest as specified above, shall be divided amongst the Respondent-Claimant No.1 being the wife of the deceased and Respondents-Claimant Nos.2 and 3 being the children of the deceased, as follows;

(i) From the amount awarded, Respondent-Claimant No.1, wife of the deceased, is entitled to 60%.

(ii) Respondents-Claimants No.2 and 3, daughters of the deceased, shall be granted 40% @ 20% each.

**11.** In the end result, Appeal allowed to the extent above.

**12.** MAC App. No.03 of 2021 stands disposed of accordingly.

**13.** No order as to costs.

**14.** Copy of this Judgment be forwarded to the Learned Tribunal, for information and compliance.

**15.** Records of the Learned Tribunal be remitted forthwith.

**( Meenakshi Madan Rai )**

**Judge**

26.04.2022

Approved for reporting : **Yes**