IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1145 OF 2015

Dilip Bhika Patil @ Magar & Anr. .. Appellants
Versus
Rakesh Dilip Patil & Anr. .. Respondents

Mr.M.H. Patil, Advocate for the appellants.
Mr.U.S. Malte, Advocate for respondent No.2.

CORAM : A.V.NIRGUDE, J
DATED : 23.08.2016

P.C. :-

1. This appeal challenges judgment and award dated 19.01.2015 delivered by the learned Member, Motor Accident Claims Tribunal, Dhule, in Motor Accident Claims Petition No.665 of 2012. The appellants were claimants before the Tribunal. They filed claim for compensation on account of death of their son in motor accident. The facts leading to litigation are as under :-

2. Sonu @ Jitendra was 17 years old son of the appellant. On 2nd July, 2012, Sonu died in a motor accident. At the time of his death Sonu was, working as a Cleaner on a truck.

3. The evidence that came on record indicated that Sonu was doing cleaning work at the factory in whose premises the accident took place. The appellants asserted

that Sonu was earning Rs.200/- per day. The learned Judge disbelieved this part of their evidence but accepted the fact that Sonu was nonetheless a worker and his notional income could be not less than Rs.3000/- per month.

4. The first question that arose before me is 'what could be Sonu's income at the time of his death?' The learned Counsel for the appellants argued that the evidence of the appellants should be accepted. However, I am not inclined to accept this submission. The view taken by the learned Member of the Tribunal appears reasonable and I agree with the same. So, the first question is answered that income of the deceased was about Rs.3000/- per month.

5. The second contention between the parties is about the “multiplicand” to be used for calculating the compensation. The learned Judge on the basis of income of Rs.3000/- per month rightly calculated Rs.27000/- as multiplicand.

6. The next question is - what “multiplier” is suitable in this case? The facts indicated that the deceased at the time of his death was about 17 to 18 years old. His parents/appellants were at that time 46 and 42 years old respectively. In such situation, the

learned Member upheld the contention of the respondent/insurance company that “multiplier” would depend on the age of claimant and not the age of the deceased and therefore the multiplier of 14 was chosen.

7. Learned Counsel for the appellants contended that this was a serious error committed by the learned Member. According to him, it is now settled law that the age of the deceased and not the age of dependents should determine the multiplier. I was shown several judgments of the Supreme Court on this point.

8. The judgment of the Supreme Court in the case of **Shakti Devi Vs. New India Insurance Co. Ltd. & Anr., (2010) 14 SCC 757**, on which learned Member of the Tribunal placed reliance to hold that it was necessary to take into consideration the claimant's age when the age of the deceased is lower than the claimants. Applying this principal, the learned Member utilized the average age of the appellants/dependents and chose multiplier of 14 utilizing the formula provided in the judgment of the Supreme Court in the case of **Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121.** I am also shown another judgment of Supreme Court in case of **Amrit Bhanu Shali & Ors Vs. National Insurance Co. Ltd. & Ors., 2012 AIR SCW 3901**.

9. In the later mentioned judgment, the Supreme Court in clear terms held that the selection of multiplier is based on age of the deceased and not on the basis of age of dependent. There could be number of dependents whose ages might be different and therefore their age has no nexus with the computation of compensation. Same logic is also apparently followed in the provisions of Section 163-A of the Motor Vehicles Act. This provision provides fixed sum of compensation in certain conditions. This section is attached with a schedule in which annual income and age of victim are considered factors for determination of multiplier. The table annexed to section 163-A of the M.V. Act, provides multiplier of 16 for a victim who is more than 15 years old and not exceeding 20 years.

10. In the present case, the victim was about 17-18 years old and therefore multiplier of 16 appears to be a proper multiplier.

11. On the other hand, the Supreme Court in the case of **Sarla Verma (Supra)** also provided a table mainly envisaged in earlier judgment of the Supreme Court in the case of **Kerala SRTC Vs. Susamma Thomas (1994) 2 SCC 176**. The table in the judgment provides multiplier of 18 for a

victim, who dies between the age 15 to 20. In my view, the impugned judgment and award requires correction to the extent of providing multiplier of 18 instead of multiplier of 14.

12. The learned Counsel for the appellants also challenged the findings recorded by the learned Member of the Tribunal that the appellants were not entitled to compensation towards loss of love and affection and loss of property. In my view, having regard to the judgment of the Supreme Court in the case of **Sarla Verma (Supra)**, learned Judge committed error in denying compensation under these heads.

13. The question is – how much compensation should be awarded under these heads? The learned Counsel for the respondent/insurance company placed reliance on the judgment of **Sarla Verma (Supra)** in which compensation of Rs.5000/- towards loss of estate and funeral expenses was awarded. For loss of love and affection the Supreme Court awarded Rs.10,000/-. But the judgment of **Sarla Verma (Supra)** was delivered in the year 2009. The time since has changed. In recent judgment of the Supreme Court in the case of **Rajesh Vs. Rajbir Singh (2013) 9 SCC 54**, the Supreme Court increased the amount of compensation on these heads to Rs.1 lakh each. In view of

this judgment, in addition to enhanced compensation indicated above, the appellants would be entitled to compensation towards loss of love and affection of their son and loss of estate. Under these two heads, in my view, compound sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) would be sufficient in the facts and circumstances of the case.

14. The appeal is, thus, allowed and order of the Tribunal is modified as under :-

(i) The respondents shall jointly and severally pay Rs.5,11,000/- (Rupees Five Lakhs Eleven Thousand) inclusive of No Fault Liability to the appellants within two months from today with interest at the rate of 9% from the date of application till the amount is realized.

(ii) In addition to above amount, the respondents shall jointly and severally pay a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) to the appellants towards loss of love & affection and loss of estate.

(iii) On realization of above amount with interest, 75% of said amount shall be paid to appellant No.2-Mrs. Yamunabai Dilip Patil @ Magar and remaining 25% amount shall be paid to appellant No.1-Dilip Bhika Patil @ Magar.

(iv) Out of the amount payable to appellant No.2-Yamunabai, 50% of said amount amount shall be invested in fixed deposit of any nationalized bank in her name initially for five years and appellant No.2-Yamunabai would be entitled to receive interest accrued on it from time to time.

(v) While disbursing the aforesaid amounts, the earlier amount paid, if any, to the claimants shall be adjusted.

[A.V.NIRGUDE,J.]