

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.397 OF 2002

- 1) Kalpana w/o Dilip Ratnaparkhi
Age: 45 Yrs., occu. Household,
and Service, R/o Plot No. 7,
Behind Chobe Hospital,
New Shreyanagar, Aurangabad.
- 2) Miss. Arpana D/o Dilip Ratnaparkhi
Age: 21 yrs., occu. Student,
r/o as above.
- 3) Alok s/o Dilip Ratnaparkhi,
Age: 19 Yrs., occu. Student,
r/o as above. = **APPELLANT**
(Orig.Claimants)

VERSUS

- 1) Chandulal s/o Narshibhai Patel
(since deceased through L.Rs.)
 - 1-A) Kalpesh Chandulal Patel
Age:Major, occu. Business.
R/o 6, Station Plot, Gondal,
Dist.Rajkot (Gujrath).
 - 2) Vallabh s/o Oghat Makawana
Age:Major, occu. Driver,
r/o Gongal Dist. Rajkot.
 - 3) United India Insurance Co.
Ltd. D.O. Rajkot (Gujrath)
having its branch office at
Adalat Road, Aurangabad.
- (Appeal as against Resp.Nos.4 & 5
is dismissed vide Court's order
dated 16.2.2016) = **RESPONDENTS**
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Mr.P.F.Patni, Advocate for Appellants;

Respondent No.1-A duly served.

Respondent No.2 dead.

Mr. M.S. Deshmukh, Adv.for Respondent No.3.

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CORAM : P.R.BORA, J.

RESERVED ON : 25th August, 2016

PRONOUNCED ON: 1st September, 2016

JUDGMENT:

1) The appellants have filed the present appeal seeking enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal, at Aurangabad(for short, the Tribunal) in MACP No.138/1996 decided on 27.12.2000.

. The aforesaid claim petition was filed by the appellants seeking compensation, being the legal heirs and dependents of deceased Dilip Ratnaparkhi, who suffered death in a vehicular accident, happened on 27.10.1995 having involvement of a truck bearing registration No.GRP-6633 insured with United India Insurance Co. Ltd. (Respondent No.3). As was stated in the claim petition, age of deceased Dilip, on the date of accident was 45 years and his monthly

income by way of salary was stated to be Rs.8,530/- per month. The petition was resisted by the insurance company on various grounds.

2) Learned Tribunal, on it's assessment of oral and documentary evidence adduced by the parties, awarded compensation to the tune of Rs.8,97,172/- to the appellants inclusive of NFL compensation jointly and severally from Respondent Nos.1 to 3, i.e. owner, driver and the insurer of the offending truck. Since the appellants had claimed compensation of Rs.15,00,000/-, dissatisfied with the amount of compensation awarded as aforesaid by the Tribunal, the present appeal has been filed by the appellants.

3) Shri Patni, learned Counsel appearing for the appellants, assailed the impugned Judgment and Award and sought enhancement in the amount of compensation on the following grounds,

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- i) That, the Tribunal has determined the amount of compensation by applying the multiplier of 13, whereas having regard to the age of deceased Dilip, multiplier of 15 was liable to be applied.
- ii) That, the Tribunal did not consider the future prospects of deceased Dilip while determining the amount of compensation;
- iii) That the Tribunal has awarded inadequate amount of compensation towards non-pecuniary damages.

4) In support of the contentions so raised, learned Counsel has relied upon the following judgments, -

- a) Sarla Verma Vs. Delhi Transport Corporation and Anr. TC (2009) 6 SCC 121;
- b) Rajesh & Ors. Vs. Rajbir Singh & Ors. - (2013) 9 SCC 54;
- c) Vimal Kanwar and Ors. Vs. Kishore Dan and Ors. - (2013) 7 SCC 476;

d) Nita w/o Kallappa Kadolkar and ors. Vs.
Divisional manager, MSRTC, Kolhapur – 2015(6)
Mah.L.J. 19.

5) Shri M.S.Deshmukh, The learned Counsel for insurance company, has supported the impugned Judgment and Award. Learned Counsel submitted that considering the available evidence on record, the Tribunal has awarded the adequate compensation and no interference is required in the impugned Award.

6) After having considered the submissions advanced by learned Counsel appearing for the respective parties and on perusal of the impugned Judgment and Award, in the light of judgments relied upon by the appellants, it is explicit that the appellants are entitled for enhancement in the amount of compensation as awarded by the Tribunal.

7) It is not in dispute that age of

deceased Dilip, at the time of his death was 45 years. In the circumstances, as held by the Hon'ble Apex Court in the case of Sarla Verma (cited supra) the appropriate multiplier would have been of 15. It is thus evident that the compensation needs to be determined by applying the said multiplier.

. It is further not in dispute that deceased Dilip was drawing monthly salary of Rs.8529/- by virtue of his employment as a Clerk with United Western Bank. The Tribunal has assessed the amount of compensation on the basis of the aforesaid amount. The Tribunal has admittedly not considered the aspect of future prospects and consequent increase in the income of deceased Dilip. From the discussion made by the Tribunal it appears that the Tribunal has not considered the aforesaid aspect observing that wife of deceased Dilip, i.e. appellant No.1 – Kalpana, has been provided with compassionate appointment and was getting the salary to the tune of Rs.5,100/- per month.

8) The Hon'ble Apex Court in the case of Vimal Kanwar Vs. Kishore Dan (cited supra) has ruled that, - "Salary receivable by the dependants in the motor accident claim petitions on compassionate appointment does not come within the periphery of Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. In Para 21 of the judgment, the Hon'ble Apex Court has observed thus, -

"21. "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute

occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

9) In view of the law laid down by the Hon'ble Apex Court in the aforesaid judgment, it is thus clear that the Tribunal should not have refused to consider the aspect of future prospects of deceased Dilip on the ground that his wife was provided with compassionate

appointment. Thus, the amount of compensation as awarded by the Tribunal needs adequate enhancement under the aforesaid head also.

10) The learned Tribunal has awarded a sum of Rs.10,000/- to the appellant towards loss of consortium, but has not awarded any compensation towards the loss of love and affection to the children of deceased Dilip or towards the funeral expenses.

. In view of the principles laid down by the Hon'ble Apex Court in the case of Jiju Kuruvila and ors. Vs. Kunjujamma Moha and Ors. - (2013) 9 SCC 166; and as further held by the Hon'ble Apex Court in the case of Rajbir Singh and Ors., which are referred in the subsequent judgments by the Hon'ble Apex Court in the case of Neeta w/o Kallappa Kadolkar and Ors. Vs. Divisional Manager, MSRTC, Kolhapur (cited supra), the adequate non-pecuniary damages need to be awarded to the appellants and on that count also, the amount of compensation needs to be

adequately enhanced.

11) In view of the discussion made as above, the compensation will have to be assessed as below, -

. Salary of deceased at the time of his death was Rs.8529/- and his age was 45 years. Considering the aforesaid aspect, as laid down by the Hon'ble Apex Court in the case of Rajesh Vs. Rajbir Singh (cited supra), income of the deceased will have to be enhanced for the purpose of computation of compensation by 30%, which would come to Rs.11,877/- per month. The amount of dependency compensation will have to be assessed on 2/3rd of the aforesaid income. 1/3rd of the said amount, which comes to Rs.3,950/- will have to be presumed as the personal expenses of the deceased. Deducting the aforesaid amount, the amount of dependency compensation comes to Rs.7980/-. By applying multiplier of 15, the amount of dependency compensation would be of

Rs.11,08,770/-. In addition to the amount of compensation as above, The appellant No.1 is entitled for a sum of Rs.1,00,000/- towards the loss of consortium; whereas appellant Nos. 2 and 3 are entitled for Rs.1,00,000/- each towards loss of love and affection. The appellants are also entitled for a sum of Rs.25,000/- towards the funeral expenses. Thus, the appellants are held entitled to the total compensation amounting to Rs.14,33,770/-. The amount of compensation as awarded in the impugned Award, therefore, needs to be enhanced to the aforesaid extent.

12) In the result, the following order, -

ORDER

i) The appellants are held entitled for the total compensation of Rs.14,33,770/- jointly and severally from Respondent Nos.1 to 3;

ii) Respondent Nos.1 to 3 are directed to pay to the appellants the enhanced amount of compensation along with interest thereon @ 9% p.a. from the

date of the petition till its realization and also to pay the appellants the proportionate costs of the present appeal;

iii) 60% of the aforesaid amount of enhanced compensation along with interest thereon shall be paid to appellant No.1 viz. Kalpana and 20% each along with interest thereon shall be paid to appellant Nos.2 & 3;

iv) Out of the amount payable to appellant No.1 – Kalpana, 50% of the same shall be invested in Fixed Deposit Receipt (FDR) in any Nationalized Bank of the choice of appellant No.1 for a period of three years;

v) The Award be modified accordingly;

vi) The appeal is allowed in the aforesaid terms.

(P.R.BORA)
JUDGE