

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.65 OF 2016

- | | | |
|--------------------------------|---|-------------------|
| 1. Mohini Ganesh Lonkar |] | |
| Aged about 34 years, Occ. Nil, |] | |
| C/o. Ajay Madhukar Jangam, |] | |
| Shivaji Chowk, Jangam Galli, |] | |
| A/P Rahuri, Taluka – Rahuri, |] | |
| Dist. Ahmednagar – 413 705. |] | |
| |] | |
| 2. Sai, d/o. Ganesh Lonkar |] | |
| Aged about 10 years, Student, |] | |
| C/o. Mohini Ganesh Lonkar |] | |
| C/o. Ajay Madhukar Jangam, |] | |
| Shivaji Chowk, Jangam Galli, |] | |
| A/P Rahuri, Taluka – Rahuri, |] | Appellants / |
| Dist. Ahmednagar – 413 705. |] | Org. Claimants |

Versus

- | | | |
|--------------------------------------|---|------------------|
| 1. Dnyaneshwar Maruti Waghmare |] | |
| R/o. Near Police Station, Alandi, |] | |
| Taluka – Khed, Dist. Pune. |] | |
| |] | |
| 2. Narayan s/o. Samar Sav, |] | |
| R/o. Nandu Korade Chawl, |] | |
| Alandi, Dist. Pune. |] | Deleted |
| |] | |
| 3. Shashikala w/o. Laxman Lonkar |] | |
| Aged about 50 years, Occ.: Household |] | |
| |] | |
| 4. Laxman s/o. Tatyasaheb Lonkar |] | |
| Aged about 56 years, Occ. : Nil, |] | |
| |] | |
| All residents of Shivam, Plot No.5, |] | |
| Survey No.19/4, Sainath Colony, |] | |
| Hinjwadi Road, Dange Chowk, |] | |
| Thergaon, Pune. |] | Respondents |

Ms. Susan Abraham for the Appellants-Original Claimants.

Mr. S.V. Sadavarte for Respondent No.1.

Mr. Sachin Dhakephalkar for Respondent Nos.3 and 4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 20TH OCTOBER 2016.

ORAL JUDGMENT :

1. Heard learned counsels for the parties.
2. This First Appeal is preferred by the original claimants challenging the Judgment and Award dated 9th April 2013 passed by the Motor Accident Claims Tribunal, Pune in M.A.C.P. No.687 of 2009. The Award was passed on the basis of the '*Settlement*' dated 16th March 2013, arrived at before the Mediator. It is submitted that the compensation awarded by the Tribunal to the appellants, considering that appellant No.1 is the widow and appellant No.2 is the minor daughter of ten years age, is unfair, inequitable and against the principles of natural justice. It is also urged that the Tribunal has erred in passing the impugned Award merely for half of the claim amount. It is submitted that the appellants had claimed the total amount of Rs.35,00,000/- towards the compensation. However, the impugned Award is only for the amount of Rs.18,00,000/-.

3. The main contention raised is that of the apportionment made by the Tribunal in dividing the compensation amount in four parts; three equal shares of Rs.4,00,000/-, each, for appellant No.1-widow, the mother and father of the deceased, i.e. respondent Nos.3 and 4 herein, and appellant No.2-minor child was awarded only Rs.5,50,000/-, thereby depriving the appellants from their lawful share. It is urged that appellant No.1, along with the minor child, was driven out of the matrimonial house by respondent Nos.3 and 4. Respondent No.3 has already received the personal insurance claim of deceased Ganesh from M/s. Bajaj Alliance Limited, Pune. Respondent No.4 has inherited the landed property of 0.66 acres of agricultural land at Village Bhagwatipur, Kolhar, Taluka Rahata, Dist. Ahmednagar, from his father and he is drawing income from the same. The elder brother of the deceased Ganesh, namely, Pramod Lonkar, is a Central Government employee, who has appropriated Insurance Policy in the name of the deceased from M/s. Yashwant Co-operative Credit Society Ltd., Kolhar, Taluka Rahata, Dist. Ahmednagar. He is also a salaried Central Government employee having Government residential quarters and, thus, it is urged that respondent Nos.3 and 4 had already received the benefits on account of untimely death of deceased Ganesh. Despite that, the Tribunal has awarded them equal amount of compensation, like, that of appellant No.1 and, hence, as appellant No.2,

being the minor child of the deceased, was entitled to get substantial sum from the compensation amount. She being deprived of the same, this Court should interfere and award the appellants the compensation amount which can be just and reasonable.

4. By way of amendment in the Appeal Memo, the Consent Terms filed before the Mediator are also challenged by submitting that appellant No.1 was only a 12th Standard passed lady, bringing up a small daughter, who was not staying at her matrimonial home, or, that respondent Nos.3 and 4, at the time of signing Consent Terms before the Mediator, pressurized appellant No.1 to sign the Consent Terms. She was misguided by her lawyer to the effect that she would get for herself and minor child the amount of Rs.18,00,000/- and the Consent Terms were only in respect of her and her child's entitlement and not in respect of the entitlement of respondent Nos.3 and 4. It is submitted that, in view thereof also, it has become necessary to set aside the entire Award as such.

5. This Appeal came to be resisted by learned counsel for respondent No.1 by submitting, *inter alia*, that, when the Consent Terms are filed before the Mediator, then, they must have some sanctity and at the time of filing of the Consent Terms, it was clearly agreed that the compensation amount of Rs.18,00,000/- will be given in lump-sum towards the claim of the present appellants and respondent Nos.3 and 4. There was no

question of any misrepresentation or the appellant No.1 being misled by her lawyer. The reliance is placed on the copy of the '*Settlement*' arrived at before the Mediator; especially, the third clause in the Settlement Terms, which clearly shows that this amount of Rs.18,00,000/- was to be given as compensation towards the claim of all the claimants and thus it is urged that there is no question as to challenging or setting aside the Settlement Terms. As regards the apportionment of the compensation amount, learned counsel for respondent No.1 has fairly conceded that he has nothing to say, because it is the dispute amongst appellant No.1 and respondent Nos.3 and 4 interse.

6. As regards respondent Nos.3 and 4, they have resisted the request made by appellant No.1 by submitting that, there is no question of changing the apportionment of the amount of compensation at this stage, as the Tribunal has rightly awarded the same. At one stage, respondent Nos.3 and 4 had also tried to contend that they were also under impression that amount of Rs.18,00,000/- was awarded as compensation in the Settlement Terms to appellant Nos.1 and 2 only and not towards the claim of all the claimants. However, as no cross-objection was filed on behalf of respondent Nos.3 and 4 taking objection to the Award, on 1st September 2016, an adjournment was also granted for two weeks, as learned counsel for respondent Nos.3 and 4 had undertaken to file such

cross-objection within two weeks. However, today, it is fairly submitted by learned counsel for respondent Nos.3 and 4 that they are not filing any cross-objection challenging the Award.

7. In view thereof, the only question, which can arise and may arise, before this Court now is, *'whether the apportionment of the compensation amount, as made by the Tribunal, is just, legal and correct?* Because, though appellant No.1 has challenged the '*Settlement*' arrived at before the Mediator, on which the Tribunal has passed the Award, on the count that appellant No.1 was misled and though learned counsel for respondent Nos.3 and 4 has also submitted that the Settlement Terms do not bear the signature of respondent Nos.3 and 4 and, therefore, such settlement cannot be binding on them, the fact remains that such contention should have been raised immediately before the Award was passed on the basis of the said settlement. Some sanctity needs to be attached to the settlement, which is arrived at before the Mediator. Otherwise, the entire mediation process, as such, will become fruitless and will lose its significance. If it was so, that respondent Nos.3 and 4 had not consented for the settlement, then, as rightly submitted by learned counsel for respondent No.1, they should not have withdrawn the amount of compensation, but challenged the Award and Settlement itself. However, it is clear that they have not done so.

8. Even as regards the appellants, as can be seen from the contents of the '*Settlement*', the amount of Rs.18,00,000/- was accepted towards the full and final settlement of the entire claim of Rs.35,00,000/-. It is pertinent to note that, the settlement was arrived at before the Mediator on 16th March 2013 and the Award in terms thereof has been passed by the Tribunal on 9th April 2013. Therefore, there was sufficient period of one month, in between, for either appellant No.1 or even for respondent Nos.3 and 4 to challenge the said '*Settlement*'. They have not done so. Otherwise also, it becomes difficult to accept that respondent No.1 would agree for the settlement with appellant Nos.1 and 2 only, and, that too, for the half of the claim amount. It follows that respondent No.1 would not have agreed for the same, if it was not the settlement of the total claim. Hence, looked at It from any angle, this Court is not convinced to accept the contention that the settlement was only between the appellant Nos.1 and 2 on the one part and respondent No.1 on the other part.

9. Now remains only the question of the apportionment of the compensation amount. As stated above, the Tribunal has awarded the equal share of Rs.4,00,000/-, each, to appellant No.1 and respondent No.3-mother and respondent No.4-father of the deceased. While, the appellant No.2, the minor child of appellant No.1 and the deceased, was

awarded only Rs.5,50,000/- from the total compensation of Rs.18,00,000/-. It is clear that appellant No.1, being the widow, and appellant No.2, being the minor child of the deceased, they need to be awarded more share and not the equal share like that of the parents; especially, when one considers the fact that the deceased had one more brother, who was Central Government employee, and also considering the fact that respondent No.3-mother of the deceased had already received the personal insurance claim of the deceased from M/s. Bajaj Alliance Ltd. It is also brought on record that respondent No.4 had the landed property, from which he is deriving income. Therefore, it is clear that the apportionment of the compensation amount, as made by the Tribunal, is not at all correct and definitely calls for the interference.

10. In this respect, learned counsel for the appellants has relied upon various decisions of this Court and the Hon'ble Apex Court; especially, the decision of Division Bench of this Court in ***First Appeal No.872 of 2012, in the case of Smt. Archana Sandip Purandare & Ors. Vs.Dawoodsab Ladlesab Walikar & Ors., dated 12th December 2013 [Coram : S.C. Dharmadhikari and R. Y. Ganoo, J.J.]***, in which the claimants were the widow and the daughter of the deceased, along with parents of the deceased, and while apportioning the said claim, this Court has awarded 20% of the total amount of compensation to the parents, 60% of the total

amount of compensation to the minor child and 20% of the total amount of compensation to the widow.

11. Considering the facts of the present case, in this Appeal also, it has become necessary to quash and set aside the apportionment of the compensation amount, as done by the Tribunal, and to that extent, the Appeal needs to be allowed.

12. This First Appeal is, therefore, allowed partly.

13. The impugned Award of the Tribunal granting compensation of Rs.18,00,000/- is maintained. However, the apportionment is changed and modified as follows :-

14. Out of the total amount of compensation, 60% of the compensation amount be paid to appellant No.2 – the minor child of appellant No.1 and the deceased. The said amount, with proportionate interest accrued thereon, be deposited in any Nationalized Bank till the appellant No.2 attains the age of majority. However, appellant No.1 – the mother of appellant No.2, will be entitled to withdraw the interest accruing thereon for bearing education and maintenance expenses of appellant No.2.

15. The Tribunal is directed to award 20% of the total amount of compensation to appellant No.1 and to pay remaining 20% of the total

amount of compensation to respondent Nos.3 and 4 with proportionate interest thereon.

16. This First Appeal is, accordingly, disposed of.

17. Tribunal is directed to do the needful within a period of two months from the date of receipt of a copy of this order. Registrar (Judicial-II) is directed to communicate this order to the concerned Tribunal forthwith.

18. As Ms. Susan Abraham, learned counsel for the appellants, is appointed from the Panel of Legal Services Authority, the Legal Services Authority is directed to pay her fees, which are quantified @ Rs.5,000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.]