IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.47 OF 2015

Namperial Chacko Jacob & Ors. ... Appellants

Vs.

The B.E.S. & T Undertaking ... Respondent

Mr.S.S. Vidyarthi for the Appellants
Ms.Jasmine Upadhye i/b M.V. Kini & Co. for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **18th FEBRUARY, 2016**

P.C.:

1. This appeal is directed against the judgment and award dated 13.2.2014 passed by the Chairman, Motor Accident Claims Tribunal, Mumbai thereby partly allowing the application by granting compensation for Rs.140,000/- with interest @ 7.5% pa. The husband and parents of deceased Mary have filed claim under section 166 of the Motor Vehicles Act. On 15.2.2008, Mary was standing on divider and wanting to cross the road. At that time, the offending BEST bus bearing No.MH-01-L-9727 came along the road in high, excessive, rash and negligent speed and the driver lost control of the vehicle and went towards divider and gave a dash to Mary and one more person. Due to the impact, she died on the spot. The offence was registered against the BEST driver under sections 279, 338, 304A of the Indian Penal Code. Mary was a working lady drawing

salary of Rs.18,000/- per month and her parents and her husband thereafter filed claim for compensation and her parents and her husband thereafter filed claim for compensation for Rs.40 lacs. However, it was fixed for Rs.1,40,000/-. Hence, this appeal for enhancement of the compensation.

2. The point of determination are as follows:

> Whether the appellants prove that the judgment and awrd of the learned Motor Accident Claims Tribunal is erroneous and they are entitled to get more compensation?

3. Mr.Vidyarthi, the learned Counsel for the Appellants, argued that the compensation fixed by the learned Chairman, Motor Accident Claims Tribunal, is very low and unreasonable. Mary was drawing salary of Rs.18,000/- as she was working in a travel and tours company. The officer of the company i.e., M/s.Fantastic Travels Pvt. Ltd., Marol was examined, who confirmed her salary of Rs.18,000/- per month. On the point of her income, the applicants/husband has entered into the box and also one of her employees was examined. The learned Chairman ought to have taken into account her income while fixing the amount of compensation. The Tribunal has erred in holding that the husband was also earning and that he has not stated that he or the parents of Mary were dependent on her. He submitted that learned Chairman, Motor Accident Claims Tribunal has

completely ignored the contribution of a woman in household expenses and in the household work and has incorrectly assessed the point of dependency.

4. In support of his submissions, he further argued that the amount of compensation is to be increased on this point. He relied on the rulings in **Arun Kumar Agrawal and anr. vs. National Insurance Co. Ltd. & Ors.[1]; Yadava Kumar vs. Divisional manager, National Insurance Company Ltd. & anr.[2]; Anjani Singh & Ors. vs. Salauddin & Ors.[3]; and of the Division Bench of this Court in the case of The New India Assurance Co. Ltd. vs. Sunil Parsharam Garud & Ors.[4].**

5. The learned Counsel for the respondent contested the appeal and supported the judgment and award of the Tribunal. She submitted that her husband was drawing salary and, therefore, was not dependent on her. There is no evidence that her parents were also dependent on her and therefore, the evidence discussed by the Tribunal is correct.

6. The short issue in this case revovles around appreciation of dependency of the husband on a wife. In fact, this issue is not res integra, in view of the judgment of the Supreme Court in the case of **Arunkumar Agrawal & anr. (supra).** In the said case, a woman who was a

1 (2010) 9 SCC 218
2 (2010) 10 SCC 341
3 (2014) 15 SCC 582
4 2015 SCC Online Bom. 6563

homemaker died in a road accident and then, the question was how the services rendered and work done by a homemaker can be measured in tems of money. The Supreme Court has taken a very laudable approach and held that in paragraph 26 and 27 thus:

> “26. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.
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> 27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term `services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”

7. In the present case, the deceased Mary was a working woman. So, she was sharing the financial burden with her husband by actually contributing funds in the household expenditure. The Tribunal has not doubted that she was not drawing the amount of Rs.18,000/-. After going through the evidence of her employer and evidence of the applicant, I do not find any ground to disbelieve that she was drawing amount of Rs.18,000/- per month. Such identical issue has come up before the Division Bench of this Court in the case of **The New India Assurance Co. Ltd. vs. Sunil Parsharam Garud & Ors. (supra)**. In the said case, the deceased wife died in the motor accident. She was a working woman. I place reliance on the case of **Jitendra Khimshankar Trivedi & ors. vs. Kasam Daud Kumbhar & ors**.[5] where a similar view is taken by the hon'ble Supreme Court while assessing the dependency of the husband on the deceased wife/mother.

8. In the present case, the learned Tribunal has erred in holding that the husband has failed to prove dependency and income of the wife cannot itself prove the fact of dependency. The income of the wife is necessarily to be considered as a family income which supports the entire family and stoppage of that income amounts to loss of income and dependency. Moreover, though compensation is given under the head of consortium, her services as housewife cannot be ignored. In the present

5 (2015) 4 SCC 237

case, she was drawing Rs.18,000/- per month. She was working in a private travel and tours company. However, for future prospects, the amount of 50% cannot be considered because there is no such specific evidence to that effect tendered by the applicant husband or the witness. Therefore, towards future prospects the amount can be considered at 30% which comes to Rs.6,000/-. So it is considered Rs.24,000/- p.m. and thus, the yearly income would be Rs.24,000 X 12 equalling to Rs.2,88,000/-. The couple was not having children and therefore, towards personal expenditure, one half is is to be deducted. Thus, the amount would be Rs.1,44,000/-.

9. Considering the multiplier at 16, the total amount of compensation is determined at Rs.23,04,000 (144000 X 16) plus Rs.1 lakh towards loss of consortium, Rs.25,000 towards funeral expenses, Rs.25000 for loss of estate and Rs.1 lakh for loss of love and affection, totalling to Rs.25,54,000/- alongwith interest @ 9% p.a. Inclusive of NFL amount.

10. The First Appeal is allowed. The order of the Tribunal is modified as stated above.

(MRIDULA BHATKAR, J.)