IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

FIRST APPEAL NO. 4141 OF 2016

Divisional Controller,
Maharashtra State Road Transport Corporation,
Division Office, At Aurangabad. … Appellant
(Original Respondent No.1)

<u>VERSUS</u>

1. Jagnnath s/o. Himmatrao Thombare,
Age : 59 yrs, Occu : Nil
R/o Salavadgaon, Tq. Paithan,
Dist. Aurangabad

2. Pushpabai w/o. Jagnnath Thombare,
Age : 54 yrs, Occu : Nil
R/o Salavadgaon, Tq. Paithan,
Dist. Aurangabad

3. Archana w/o. Ganesh Thombare,
Age : 23 yrs, Occu : Household
R/o Salavadgaon, Tq. Paithan,
Dist. Aurangabad

4. Yogesh s/o Jagannath Thombare,
Age : 19 yrs, Occu : Education
R/o Salavadgaon, Tq. Paithan,
Dist. Aurangabad

5. Sharavani d/o. Ganesh Thombare,
Age : 23 yrs, Occu : Household
R/o Salavadgaon, Tq. Paithan,
Dist. Aurangabad

6. Jagannath S/o. Sitaram Walukar,
Age : 30 yrs, Occu : Driver
R/o 331, Shivaji Nagar, Ukaligaon,
Tq. Mehakar, Dist. Buldhana … Respondents

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Smt Ranjana D Reddy, Advocate for Appellant
Smt. Savita P. Kakade (Matkar), Advocate for respondent Nos.1 to 5
Mr. Harish S. Bali, Advocate for Respondent No.6
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CORAM : P.R. BORA, J.

RESERVED ON : 13.06.2017
PRONOUNCED ON : 28.07.2017

ORAL JUDGMENT :

. The Maharashtra State Road Transport Corporation (in short 'MSRTC') has filed the present appeal against the Judgment and order dated 11.04.2016 passed by the Motor Accident Claims Tribunal at Aurangabad in Motor Accident Claim Petition No.69/2015.

2. “Where deceased was a self employed person, while determining the amount of compensation payable to his legal representatives, whether an addition of 50% actual income of the said deceased could have been made by the Claims Tribunal towards his future prospects” is the issue to be dealt with in the present appeal.

3. The present respondent nos.1 to 5 had filed the aforesaid

claim petition claiming compensation on account of the death of Ganesh Jagananth Thombre alleging the same to have been caused in a vehicular accident happened on 01.12.2014 having involvement of S.T. Bus bearing registration no.MH-14-BT-2455. It was the contention of the claimants that, deceased Ganesh when was proceeding towards Salvadgaon from Aurangabad was dashed by the aforesaid ST bus and severely injured and succumbed to the said injuries while on the way to the hospital. The claimants had alleged that, the accident in question happened because of the rash and negligent driving of the S.T Bus by the respondent no.6. The claimants had therefore claimed the compensation of Rs.Ten Lakhs jointly and severally from the driver and the MSRTC.

4. The petition so filed was resisted by the MSRTC on various grounds. The learned Tribunal after having assessed the oral and documentary evidence brought before it held the claimants entitled for total compensation of Rs.17,49,000/- inclusive of NFL compensation jointly and severally from the driver of the ST bus and MSRTC. Aggrieved by, MSRTC has preferred the present appeal.

5. The appellant Corporation has assailed the impugned Judgment and Award only on the point of quantum. Smt. Reddy,

learned Counsel appearing for the Corporation submitted that, the tribunal has grossly erred in determining the amount of dependency compensation giving incremental enhancement at the rate of 50% in the income of deceased at the time of his death.

6. The learned Counsel submitted that, deceased Ganesh was admittedly a self employed person and hence incremental enhancement was liable to be given in his income only to the extent of 30% and no 50% as has been given by the tribunal. In order to support her contention, the learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Santosh Devi Versus The National Insurance Company Ltd., & others reported in 2012 (6) SCC 421**. THe learned Counsel submitted that excess compensation of Rs.1,63,200/- has been wrongly awarded by the tribunal by giving incremental enhancement to the extent of 50% of the annual income of deceased at the time of his death. The learned Counsel therefore prayed for modification of the impugned Award accordingly.

7. The learned Counsel appearing for the respondent i.e. original claimants supported the impugned Judgment and award. The learned Counsel submitted that, the tribunal has rightly given the

notional incremental enhancement in the annual income of the deceased Ganesh to the extent of 50%. The learned Counsel submitted that, at the time of his death deceased Ganesh was below 30 years of age and as such in view of the law laid down by the Hon'ble Apex Court in the case of **Sarla Verma & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121** and **Santosh Devi** (cited supra), the tribunal has rightly given incremental enhancement in the annual income of deceased at the time of his death to the extent of 50%. The learned Counsel submitted that, the tribunal has not committed any error in giving such incremental enhancement. The learned Counsel submitted that, no interference is therefore required in the amount of compensation awarded to the claimants vide the impugned Judgment and award. The learned Counsel hence prayed for dismissal of the appeal.

8. In view of the submissions advanced by the learned Counsel appearing for the parties, the only issue which false for my consideration in the present appeal is "Whether an addition made of 50% of actual income to the actual income of deceased Ganesh towards future prospects, by the Tribunal while determining the amount of compensation is sustainable?"

9. It is not in dispute that, the age of deceased Ganesh at the time of his death was below 30 years. It is also undisputed that, deceased Ganesh was not in the employment of Central or State Government or any semi governmental organization. Deceased Ganesh was thus not having any fix salary income. As is the case of the original claimants deceased Ganesh was carrying on a business of selling building material like sand, stone and bricks etc. He was, thus, a 'self employed person'. From the evidence on record it is revealed that, the claimants did not produce any documentary evidence to prove the income of deceased Ganesh. However, by doing some guess work the tribunal has held the income of deceased Ganesh to the tune of Rs.6,000/- per month. The tribunal has thereafter added 50% of his annual income on the ground of future prospects and held his income of to the tune of Rs.1,08,000/- (Rs.72,000/- + Rs.36,000/-) per annum. As has been argued by Smt. Reddy, the learned Counsel appearing for the corporation, in view of the Judgment of the Hon'ble Apex Court in the case of **Santosh Devi** (cited supra), if at all any incremental enhancement was to be given in the instant matter, having regard to the fact that, deceased Ganesh was a 'self-employed person' it should not have been more than 30% of his actual income at the time of his death. As was further submitted by the learned Counsel applying the criteria as

laid down in the case of **Santosh Devi** (cited supra), the annual income of deceased Ganesh even after considering the notional incremental enhancement in his income to the extent of 30%, could not have been held more than Rs.93,600/- (72,000/- + Rs.21,600/-), and deducting 1/3rd of the said amount towards the personal expenses of the deceased the dependency compensation must have been determined by the tribunal by taking multiplicand of Rs.62,400/- in stead of Rs.72,000/- as has been taken by the tribunal. According to the learned Counsel the tribunal has thus awarded the excess compensation of Rs.1,63,200/- to the claimants.

10. There appears substance in the objection so raised on behalf of the appellant corporation. In the case of **Sarla Verma** (supra) the Hon'ble Apex Court, after having considered the earlier Judgments on the issue of addition to the income of deceased for future prospects so as to assess the amount of dependency compensation, laid down certain guidelines to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. In the said matter, the Hon'ble Apex Court ruled that, it was in favour of adopting as a rule-of-thumb, an addition of 50% of actual salary to the actual salary income of deceased towards future prospects where the deceased had

a permanent job and was below 40 years. The Hon'ble Apex Court further held that, the addition should be only 30% if the age of the deceased was 40 to 50 years and there should be no addition where the age of deceased is more than 50 years.

11. Thereafter in the case of **Santosh Devi**, a issue fell for consideration of the Hon'ble Apex Court as about the incremental enhancement of annual income where deceased was a self-employed person or on fixed salary without the provision of annual increment. While deciding the said issue, the Hon'ble Apex Court ruled in favour of making applicable the incremental enhancement of annual income also in the cases of self-employed persons or those on fixed salary without the provision of annual increment. I deem it appropriate to reproduce herein below the observations made by the Hon'ble Apex Court in para nos.14 to 18 of the said Judgment.

> *14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.*

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to

> *lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.*

12. From the observations made as above it is evident that, though the Hon'ble Apex Court recommended for incremental enhancement even in respect of self-employed persons or those on fixed salary without the provision of annual increment, restricted the percentage of such increment to the extent of 30% of the annual income of deceased at the time of his death.

13. In the instant matter, deceased Ganesh was admittedly a self-employed person. As such, while determining the amount of dependency compensation the tribunal could not have given incremental enhancement to the extent of 50% of his annual income at the time of his death. In view of the law laid down by the Hon'ble Apex Court in the case of **Santosh Devi** (supra), such an incremental enhancement could have been given only to the extent of 30% of the annual income of deceased Ganesh at the time of his death and not more than that. It is true that, the Hon'ble Apex Court has not prescribed any express bar for awarding incremental enhancement in

the case of self-employed person beyond the extent of 30% of his annual income at the time of his death. This judgment, however, has to be read and understood in the background of the observations made by the Hon'ble Apex Court in the case of **Sarla Verma** (supra). As has been ruled by the Hon'ble Apex Court in the said case, it is necessary that the additions are standardized so that no different yardsticks are applied or different methods of calculation are adopted.

14. In para 24 of its judgment in the case of **Sarala Varma**, the Hon'ble Apex Court has observed thus:

> *24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'.) The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a*

> *fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.*"

15. It is significant to note that the Hon'ble Apex Court felt it necessary to specifically mention that the departure from the method as prescribed by it for addition to income for future prospects should be made only in rare and exceptional cases involving special circumstances. In the present matter the Tribunal has not provided any such reason for making an addition of 50% actual income to the actual income of deceased Ganesh towards future prospects, nor any such special circumstance is revealed from the evidence on record. In absence of any such exceptional circumstance it was not open for the tribunal to make a departure from the norm laid down by the Hon'ble Apex Court. The impugned Judgment and Award to the aforesaid extent thus needs to be modified.

16. As noted herein before, because of 50% incremental enhancement given by the tribunal in the annual income of deceased Ganesh instead of to the extent of 30%, excess compensation of Rs.1,63,200/- (Rs.One Lakh Sixty Three Thousand Two Hundred Only) has been awarded to the claimants. The said amount has to be deducted from the total compensation as has been awarded by the

tribunal. The tribunal has awarded total compensation of Rs.17,49,000/- (Rs.Seventeen Lakhs Forty Nine Thousand Only). Deducting the aforesaid amount, the claimants are now held entitled to the total compensation of Rs.15,85,800/- (Rs.Fifteen Lakhs Eighty Five Thousand Eight Hundred Only). The award be modified accordingly. Save and except the modification as above in the amount of compensation, the remaining part of the impugned Award is maintained as it is. The appeal stands partly allowed in the aforesaid terms.

[P.R. BORA]
JUDGE

ggp.