

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

FIRST APPEAL NO. 50 OF 2016

ARUN BHILA PATIL AND OTHERS
VERSUS
GAUTAM MOHAN SINHA AND ANOTHER

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Advocate for Appellants : Mr Talhar Ajay G.
Advocate for Respondent 2 : Mr S R Bodade
R/1 Served – absent.

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CORAM : V.K. JADHAV, J.
Dated: January 10, 2017

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PER COURT :-

1. By consent heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 19.10.2015 passed by the Chairman, Motor Accident Claims Tribunal, Jalgaon, in MACP No.441/2007 the original petitioners preferred this appeal to the extent of quantum.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] Deceased Nilesh was working as Software Tester in the Unit owned by respondent No.1. On 21.5.2007 deceased Nilesh alongwith others was proceeding by a

car owned by respondent no.1 bearing registration No.MH-01/P-718 by Mumbai Pune Express way. On that day, near village Pimpaloli because of the rash and negligent driving of the driver of the said car, car turned turtled. It has contended that because of the excessive speed of the vehicle tyre of the car was burst and car turned turtled in consequence of which, the deceased Nilesh and others sustained multiple injuries. Deceased Nilesh had succumbed to the injuries. Deceased Nilesh was unmarried at the time of his death. The parents-legal representatives preferred MACP No.441/2007 before the M.A.C.T Jalgaon for grant of compensation under various heads.

b] Respondent no.1 has denied the contents of the claim petition for want of knowledge. It has contended that there was no rash and negligence on the part of the driver engaged by him on his car. It has contended that the accident occurred because one of the rear tyres of the car burst. Thus, it was a pure accident which could not have been foreseen. In the alternate, it has contended that, the car is insured with respondent no.2

and therefore, if any award is passed against respondent no.1, respondent no.2 is liable to satisfy the award.

c] Respondent no.2 insurer has strongly resisted the claim petition on the ground that the policy prohibits use of the vehicle for hire or reward and respondent no.1 has committed breach of the policy conditions. It was a sheer accident. There was no element of either rashness/negligence on the part of driver of the car. It has also contended that the claim of the petitioner is excessive and their pleadings on the point of age, occupation and income of the deceased are required to be proved strictly.

4. The appellants/original claimants led their oral and documentary evidence in support of their pleadings. Respondents have not adduced any evidence. The learned Chairman of the Tribunal, Jalgaon by its impugned judgment and award dated 19.10.2015 partly allowed the claim petition with proportionate costs and thereby directed the respondents to pay compensation of Rs.6,37,000/- jointly and severally to the appellants-

petitioners with interest. Being aggrieved to the extent of quantum the appellants-original petitioners approached to this court by filing present appeal.

5. Learned counsel for the appellants-original claimants submits that, the learned Chairman of the Tribunal has not considered the salaried income of the deceased Nilesh though the appellants claimants have examined the employee of respondent no.1 to prove the contents of salary certificate exh.60. Learned counsel submits that, though respondent no.1 had denied in his written statement that deceased Nilesh was working in his company, respondent no.1 has not adduced any evidence to substantiate his pleadings and on the other hand authorized his own employee to prove the contents of the salary certificate issued by the company, however, the learned Chairman of the Tribunal has given reference to the aforesaid denial in the pleadings only. Further, the tribunal has also given weightage to a stray admission given by the petitioner no.1 and same also appears to be misinterpreted by the tribunal. Petitioner no.1 never admitted that his son was not working with

respondent no.1. The learned Chairman of the Tribunal has erroneously come to the conclusion that evidence of PW 2 Kapil is not at all reliable. The Tribunal has thus committed error while considering the notional income of the deceased Nilesh by ignoring his salary certificate which has been duly proved by the appellants-claimants.

6. Learned counsel for respondent-insurer submits that, there is no satisfactory evidence adduced by the appellants claimants to prove the contents of salary certificate exh.60. Learned counsel submits that, in fact, said certificate is not a salary certificate, but, it is a pay slip signed by none. Learned counsel submits that, there are no other details such as appointment of deceased Nilesh by company owned by respondent no.1 and whether he was employed by respondent no.1 permanently or temporarily. Learned counsel submits that, the authority letter is issued on a paper and no letter pad of the company has been used. Learned Chairman of the M.A.C.T. has, therefore, rightly discarded said evidence and considered the notional

income of deceased Nilesh. Learned counsel submits that, though respondent-insurer has not preferred any appeal, however, it appears from the impugned judgment and award passed by the Tribunal that the Tribunal has applied multiplier as per the age of the deceased at the time of his death without considering the age of the parents. Learned counsel submits that it is now well settled that, age of the parents is required to be considered for applying the relevant multiplier for assessment of the compensation. Learned counsel has placed his reliance on a judgment in case of United India Insurance Company Ltd., Vs. Sobha Amarsingh Rajput and others in First Appeal No.738/2016 alongwith other connected first appeals.

7. On careful perusal of the letter of authority Exh.61, it appears that said authority letter has been signed by respondent no.1 and issued in favour of PW 2 Kapil Dediya to depose on behalf of company in respect of the contents of pay slip produced before the Tribunal. On perusal of pay slip, it appears that, same is a computerized slip. I do not think that a computerized

pay slip requires a signature. It appears from the contents of the pay slip Exh.60 that deceased Nilesh Patil joined the company on 2.12.2006 and in the month of May 2007 net salary of Rs.12,194/- paid to him. His basic salary was Rs.9,000/- and including other allowances he was getting gross salary of Rs.12,194/-. Petitioner no.1 who happened to be father of deceased Nilesh has also deposed on oath that deceased Nilesh has completed a degree course in Software at Pune and at the time of accident he was working as Software Tester in the company owned by respondent no.1 named and styled as MedialBC on monthly salary more than of Rs.18,000/-. PW 2 Kapil Dediya in his affidavit of evidence has stated that deceased Nilesh was serving in the company owned by respondent no.1 as Software Tester since December, 2006. He has further stated in the affidavit that said pay slip Exh.60 bears seal of said company and it also bears initial of respondent no.1 Goutam Sinha. He has further deposed in his affidavit that in the month of April, 2007 deceased Nilesh was paid Rs.10,833/- as monthly salary and in the month of May, 2007 as per pay slip Exh.60 a salary of Rs.12,194/-

was paid to him. He has further stated in his cross examination that, during 2005 to 2008 he was working as a Manager in Media IBC company and respondent no.1 was the sole Proprietor of the said Company. He could not give other details as to who was driving the car at the time of accident and as to who owned and hired the said car at the time of accident. However, same is not expected from this witness as he was examined before the Court to prove the contents of pay slip and not more than that. He was not subjected to cross examination by the respondent no.1 owner. The authority letter Exh.61 and pay slip Exh.60 are duly proved by the claimants, however, it appears that the learned Chairman of M.A.C.T. has discarded this material piece of evidence on the ground that, respondent no.1 denied in written statement that deceased Nilesch was working in his company. In fact, respondent no.1 has denied the contents of the claim petition in general with further averments that the claimants has to prove strictly age, occupation, income and other details as contended in the claim petition. It does not mean that respondent no.1 has specifically

denied that deceased was working in his company. I do not find any reason to disbelieve the evidence of PW 2 Kapil Dediya only for the reason that appointment letter of deceased Nilesh was not produced on record. Admittedly, it is a private Software company and if such record is not produced before the Court, no inference could be drawn as observed by the learned Chairman of the Tribunal.

In the said accident one Pravin Mali was travelling alongwith deceased Nilesh also died and his parents preferred claim application No.3333/2007 before the MACT Mumbai against present respondent no.1 Gautam Sinha and insurer. The learned Tribunal by judgment and award dated 29.10.2014 partly allowed the said claim petition and thereby directed the respondents therein jointly and severally to pay compensation of Rs.30,20,000/- to the claimants therein alongwith interest. In this case, the learned Tribunal, Mumbai has considered that respondent no.1 is owner of the said company and deceased Pravin was working in his company as a System Network Administrator. The learned counsel for the appellants-claimants submits

that respondent-insurer has deposited the entire amount under the award before the Tribunal. Learned counsel for respondent-insurer also admits the same. It thus appears that said judgment and award attained finality and respondent insurer has not preferred any appeal and therefore deposited amount before the Tribunal.

8. Learned counsel has rightly relied upon the case United India Insurance Company Ltd., Vs. Sobha Amarsingh Rajput (supra) wherein by referring all earlier judgments in paragraph no.82 of the Judgment, this Court has made following observations :-

82. Hence, in my considered opinion, in these appeals before me also, as the deceased were bachelors and the claimants are the parents and as the age of the parents is higher than the age of the deceased, choice of multiplier has to be made depending on the average age of the parents and not the age of the deceased.

9. In the instant case, the learned Chairman of the Tribunal has applied the multiplier '17' by considering age of the deceased at the time of his death. In view of the observations made by this Court in the aforesaid

case, average age of the parents is required to be considered for applying the relevant multiplier. In the case in hand, average age of the parents comes to '47' and the relevant multiplier would be '13'.

10. In view of the above discussion, salaried income of deceased Nilesh is required to be considered. He was earning Rs.12,194/- p.m. as per pay slip Exh.60 and there would be a 50% addition towards future prospectus i.e. $(12,194 + 6,097) = \text{Rs.}18,291/-$. Deceased Nilesh was unmarried. Thus, there would be a 50% deductions towards personal expenses from the income of deceased Nilesh. So, after deductions of the aforesaid amount of 50% towards personal expenses, it comes to Rs.9,000/-. The loss of future income/dependency would come to $\text{Rs.}9,000 \times 12 = 1,08,000/-$ multiplied by multiplier '13' (considering average age of the parents multiplier '13' is applied) $(1,08,000 \times 13) = 14,04,000/-$. Thus, total compensation under this head comes to Rs.14,04,000/-. Learned Chairman of the Tribunal has also awarded compensation under non-pecuniary head such as funeral expenses Rs.25,000/-. In view of the

same, the appellants claimants are entitled for an amount of Rs.14,29,000/- as total compensation. The impugned judgment and award thus modified to that extent. Hence, following order.

O R D E R

- I. First Appeal is hereby partly allowed.
- II. The Judgment and Award passed by the Chairman, Motor accident Claims Tribunal, Jalgaon dated 19.10.2015 in MACP No.441/2007 is modified in the following manner :-
 - a] Respondents No.1 and 2 jointly and severally do pay the appellants-claimants compensation of Rs.14,29,000/- (Rs. Fourteen lacs Twenty Nine Thousands only) inclusive of amount of Rs.50,000/- (Rs. Fifty Thousand) paid under the principle of 'No Fault Liability' with interest @ 7.5% from the date of the filing of the petition till realization.
- III. Rest of the judgment and Award stands confirmed.
- IV. Award be drawn up in view of the modifications as aforesaid.
- V. First Appeal accordingly disposed of.

(V.K. JADHAV, J.)

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