

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1590 OF 2008

M/s.Oriental Insurance Co. Ltd. ..Appellant
V/s.
V. Laxmidevi Reddy & Ors. ..Respondents

Mr.S. M. Vidyarthi for the Appellant.

Mr.T.J. Mendon for Respondent Nos.1 to 5.

Ms.S. S. Dwivedi for Respondent No.10.

CORAM : M. S. SONAK, J.
DATE : 06 APRIL 2017.

P.C.

Heard Mr. S. M. Vidyarthi, learned Counsel for the Appellant, Mr. T. J. Mendon, learned Counsel for Respondent Nos.1 to 5 and Ms. S. S. Dwivedi, learned Counsel for Respondent No.10.

2. The appeal has already been dismissed as against respondent No.8/the owner of the insured vehicle. Mr. Vidyarthi, learned counsel for the appellant, however, submits that since, the appeal is only on the ground of quantum of compensation, the dismissal of the appeal as against the owner of the insured vehicle makes no difference.

3. Mr. Vidyarthi, submits that there is no necessity to

await records and proceedings, since, submission in the appeal will merely be upon adoption of correct multiplier. Mr. Mendon, learned Counsel for the claimants has also submitted that appeal may be disposed of finally at this stage itself.

4. Mr. Vidyarthi, learned Counsel for the appellant submits that the age of the deceased in this case was 40 years and therefore, the correct multiplier to be adopted would be 14 and not 15 as adopted by the MACT. On this basis, he submits that the compensation towards the dependency would come to ₹7,00,000/-(Rupees seven lakhs only) and not ₹7,50,000/-(Rupees seven lakhs fifty thousand only) as determined by the MACT. He submits that the impugned award is liable to be modified to this extent.

5. There is merit in the submission of Mr. Vidyarthi that the correct multiplier in the facts and circumstances of the present case will be 14 and not 15. On this basis the contention of Mr. Vidyarthi, that the compensation towards dependency will have to be determined at ₹7,00,000/- (Rupees seven lakhs only) and not ₹7,50,000/- (Rupees seven lakhs fifty thousand only) as determined by the MACT. To this extent, normally, award made by the MACT would warrant interference. However, as shall be noticed hereinafter, MACT, has failed to

determine, “just compensation” in the present case despite there being a statutory duty to determine just compensation.

6. The MACT, in the present case has awarded meager compensation of ₹9500/- towards following heads:-

- (a) Towards loss of consortium and love and affection;
- (b) Towards loss of estate.
- (c) Towards funeral expenses.

7. In this case, the deceased, was survived by his widow, four children and his parents. Unfortunately, the parents of the deceased expired even before they could receive any compensation in the matter. In terms of law laid down by the Hon'ble Apex Court in several cases, including ***Rajesh and Ors. Vs. Rajbir Singh & ors. (2013)9 SCC 54***, compensation of ₹1,00,000/- (Rupees one lakh only) towards loss of consortium was required to be paid to the widow and even, compensation at the rate of ₹1,00,000/- (Rupees one lakh only) each was required to be paid to each of the children of the deceased towards loss of love and affection. Despite compensation of ₹25,000/- (Rupees twenty five thousand only) was required to be awarded towards funeral expenses. This means that MACT was required to award additional compensation of ₹5,25,000/- (Rupees five lakhs twenty five

thousand only), so that, determined compensation can be regarded as “just compensation”.

8. This means that in the facts and circumstances of the present case, “just compensation” payable to the claimants would be ₹12,34,000/- (Rupees twelve lakhs thirty four thousand only) and not ₹7,50,000/- (Rupees Seven lakhs fifty thousand only) as determined by the MACT. This is the position even after accepting Mr. Vidyarthi, contention with regard to adoption of correct multiplier.

9. In ***State of Maharashtra and ors. Vs. Smt. Kamaladevi Kailashchandra Kaushal and ors. (First Appeal No. 103/2017 decided on 15.3.2017)***, this court has held that it is statutory duty of the Tribunal as well as the Appeal Court to award “just compensation” even in the absence of any cross objections or cross Appeals on the part of the claimants.

10. In ***Sanobanu Nazirbhai Mirza and ors. vs. Ahmedabad Municipal Transport Service, (2013)9 SCR 882***, the legal representatives of the deceased Nazirbhai, who died in a road accident on 30 May 1998 were awarded compensation of Rs.3,51,300/- by the MACT. In the appeal instituted by the Insurance Company, the Gujarat High Court,

reduced this compensation from Rs.3,51,300/- to Rs.2,51,800/-. The claimants were directed to refund the excess amount of Rs.99,500/- along with interest at the rate of 9% per annum. The claimants, who had never instituted any appeal against the award of Rs.3,51,300/- made by the MACT, appealed to the Hon'ble Supreme Court against the order of the Gujarat High Court. In the appeal, the Hon'ble Supreme Court, applying the law laid down in ***Santosh Devi vs. National Insurance Company Ltd. And ors - 2012 (6) SCC 421*** and ***Rajesh Vs. Rajbir Singh - 2013 (6) Scale 563*** determined "just compensation" at Rs.16,96,000/- as against the determination of Rs.3,51,300/- by the MACT and Rs.2,51,800/- by the Gujarat High Court. The question naturally arose as to whether it was permissible to award this amount of Rs.16,96,000/-, in the absence of any appeal by the claimants to the award of compensation at the rate of Rs.3,51,300/- by the MACT before the Gujarat High Court. This was answered by the Hon'ble Supreme Court by the following observations :

(8)

The amount of Rs.16,96,000/- as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal

principles of Nagappa Vs. Gurudayal Singh & Ors., 2003 2 SCC 274 at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

"There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is — it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made

- (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be."*
- (9) In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. **Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable***

compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs.16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."

(emphasis supplied)

11. In ***Nagappa Vs. Gurudayal Singh & ors., 2003 3 SCC 274***, the issue was whether the claimant is entitled to amend the claim at the appellate stage. However, in this case, even though, the claimant did not appear before the court, the appellant- State was put to notice that the compensation awarded by the MACT did not represent "*just compensation*". Accordingly, learned AGP was afforded opportunity to make his submission on the aspect of just compensation, which was proposed to be determined on the basis of the material on record, without the necessity of any additional evidence. To that extent, the State was afforded full opportunity to meet with the issue of just compensation on the basis of the material on record. In *Nagappa (supra)*, the three Judges Bench of the

Hon'ble Supreme Court has held that in terms of section 166 of the Motor Vehicles Act, 1988 (M.V. Act) it is the duty of the Tribunal to determine an award "*just compensation*". The appeal before this court is a continuation of the original proceedings before the Tribunal. If there is a statutory duty cast upon a Tribunal to determine and award "*just compensation*" then there is equally a statutory duty upon the appeal court to determine and award just compensation, irrespective of whether the same has been claimed by the claimant or not. It is in these circumstances that the Hon'ble Supreme Court in *Sanobanu Mirza (supra)* has in terms held that it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held in catena of cases.

12. In *Nagappa (supra)*, the Hon'ble Supreme Court after reference to several provisions of the M.V. Act has held as follows:

- "9. It appears that due importance is not given to subsection (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.
10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, the only requirement for

determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation.

11. *Secondly, under Section 169, the Claims Tribunal in holding any inquiry under Section 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it thinks fit. In the present case, it has been pointed out that Rule 253 of the Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a civil court under the provisions of the Code of Civil Procedure, 1908. Rule 254 inter alia makes specific provision that Order 6 Rule 17 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, the court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to the other side or it is not necessary for the purpose of determining the real issue between the parties, the court would grant amendment. It is also to be stated that under the MV Act there is no time-limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.*

12. *This Court in Sheikhpura Transport Co. Ltd. v. Northern India Transport Insurance Co. observed as under: (SCC p. 788, paras 6-7)*

"The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.

** * **

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."

13. *Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that the claimant has not precisely stated the amount of damages of compensation which he is entitled to. If the evidence on record justifies passing of such award, the claim cannot be rejected solely on the*

ground that the claimant has restricted his claim. Form 63 of the Karnataka Motor Vehicles Rules, 1989, which is for filing an application for compensation, does not provide that the claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates.

14. *In case, where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why such amendment or enhanced compensation should not be granted. In such cases, there is no question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only question is—application of law as it stands.*
15. *Mr P.K. Chakravarti, learned counsel appearing for the Insurance Company, in support of his contention that the Tribunal has no jurisdiction to award higher amount of compensation than what is claimed even though it is not likely to cause prejudice to the Insurance Company, heavily relied upon the decision rendered by the Full Bench of the High Court of Gujarat in Urmila J. Sangani (Dr) v. Pragjibhai Mohanlal Luvana. In that case, the High Court after considering relevant decisions on the subject observed thus: (AIR p. 220, para 10) “We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issues should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision.”*
16. *From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on*

record is sufficient to pass such award. In cases where there is no evidence on record, the court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

17. *In support of her contention, the learned counsel for the appellant Ms Kiran Suri referred to the decision of the Bombay High Court in Municipal Corpn. of Greater Bombay v. Kisan Gangaram Hire wherein the Court dealt with a similar contention and observed thus:*

"8. What is further necessary to note is that what gives a cause of action for preferring an application for claim for compensation is the accident by motor vehicle or vehicles and not a particular monetary loss occasioned by such accident. While the compensation in all no-fault claim cases is fixed and uniform, in fault claim cases the losses may vary from case to case. The particular losses are merely the consequence of the accident which is the cause of action. This being so, the amounts of compensation claimed are nothing but the particulars of the claim made. By its very nature, further the amount of compensation claimed cannot always be calculated precisely. In many cases it can at best be a fair estimate...."

18. *The High Court observed that in all such cases, it is necessary to keep the doors open for the claimant to make the claims, on grounds not stated earlier or for more amounts under heads already specified in the application.*
19. *The aforesaid decision of the Bombay High Court was relied upon and referred to by the Orissa High Court in Mulla Md. Abdul Wahid v. Abdul Rahim and G.B. Pattanaik, J. (as he then was) observed that the expression "just compensation" would obviously mean what is fair, moderate and reasonable and awarded in the proved circumstances of a particular case and the expression "which appears to it to be just" vests a wide discretion in the Tribunal in the matter of determining of compensation. Thereafter, the Court referred to the decision in Sheikhupura Transport Co. Ltd. and held that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture, and if this is so, then it will be*

unreasonable to expect the party to state precisely the amount of damages or compensation that it would be entitled to. The Court also held that there are no fetters on the power of the Tribunal to award compensation in excess of the amount which is claimed in the application.

20. *Similarly, the High Court of Punjab and Haryana in Devki Nandan Bangur v. State of Haryana observed that the grant of just and fair compensation is the statutory responsibility of the court and if, on the facts, the court finds that the claimant is entitled to higher compensation, the court should allow the claimant to amend his prayer and allow proper compensation.*
21. *For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under subsection (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."*

13. In ***Managing Director, Metropolitan Transport V. Ramarao***, learned Single Judge of the Madras High Court, after detailed consideration of the legal provisions as well as the precedents has held that it is the duty of the appeal court to award just compensation irrespective of whether or not the same may have been claimed by the claimants or not. In ***Ningamma and anr. vs. United India Insurance Company***

Limited - (2009) 13 SCC 710, the Hon'ble Supreme Court at paragraph 34 has held that section 166 of the MV Act deals with "*just compensation*" and even if in the pleadings no specific claim was made, a party should not be deprived from getting "*just compensation*" in case the claimant is able to make out a case under any provision of law. Needless to say, the M.V. Act is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "*just compensation*" irrespective of the fact whether any plea was raised in respect of the claimant or not.

14. For all the aforesaid reasons, this appeal is disposed of with the direction to the appellant/insurance company to pay to the claimants i.e the respondent nos. 1 to 5 compensation of ₹.12,34,000/- (Rupees twelve lakhs thirty four thousand only) together with interest at the rate of 6% per annum from the date of institution of the Claim Petition till the date of realisation of the amount. The appellant/insurance company shall obviously to be entitled credit towards the amount already deposition or paid to the respondent nos.1 to 5.

15. Balance amount shall however be paid/ deposited within a period of two months. The amount of ₹25,000/- (Rupees twenty five thousand only) deposited by the appellant

in this Court be transmitted to the concerned MACT, so that same can be paid to the claimants in terms of impugned judgment and award of the MACT as modified by this order.

16. Appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)

vn*