

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

FIRST APPEAL NO.2001 OF 2007

Shrikant Sajanrao Marathe & Ors. ..Appellants

V/s.

Tukaram Haribhau Vidhate & Ors. ..Respondents

Mr.A.M. Gokhale for the Appellants.

Mr.Prashant Patil for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 14 FEBRUARY 2017.

P.C.

1. Heard Mr.A.M. Gokhale for the appellant (Original Claimants). Mr.Prashant D. Patil for Respondent No.1 (Owner of the truck).

2. Mr.S.S. Vidyarthi, who was earlier appearing for the respondent Insurance Company at the outset has stated that he has returned the case paper to the Insurance Company and given them sufficient notice that he would no longer continue in the matter. However, at the request of this Court, he offered his assistance in the matter and made submissions on behalf of the Insurance Company.

3. Mr.Gokhale, the learned counsel for the appellant submits that the salary component of the deceased ought to have been doubled taking into consideration the law laid down by the Hon'ble Supreme Court in the case of *New India Assurance Company Ltd. V/s. Gopali & Ors. [(2012) 12-SCC-198]*. In any case he submits that no amounts have been awarded towards future prospects as held by the Hon'ble Apex Court in the case of *Rajesh & Ors. V/s. Rajbir Singh & Ors. [(2013) 9-SCC-54]*. He submits that there ought to have been addition of 50% towards the income of the deceased, on account of the future prospects, Further, Mr.Gokhale submits that no proper compensation has been paid towards the loss of consortium and loss of love and affection. He submits that according to the law laid down by the Hon'ble Apex Court in several decisions including in *Rajesh & Ors. V/s Rajbir Singh & Ors. (Supra)*, the compensation of Rs.3 lakhs ought to have been awarded under these heads. Further, he submits that the compensation of Rs.25,000/- ought to have been awarded towards funeral expenses. For all these reasons, Mr.Gokhale submits that the impugned award is liable to be modified and the amount of compensation needs to be suitably enhanced.

4. Mr.S.S. Vidyarthi, who has graciously consented to assist this Court, pointed out that necessary deductions are required to be made towards the personal expenses of the deceased. He submits that in this case the deduction have to be to the extent of atleast 1/3rd, taking into consideration the law laid down by the Hon'ble Supreme Court in the case of *Sarla Verma (Smt) V/s. Delhi Transportation Corporation & Anr. (2009) 6-SCG-121*. He also submitted that the impugned award warrants no interference because the same is quite consistent with the law as was prevailing the time when the same was made.

5. Mr.Prashant Patil the learned counsel for the respondent No.1 adopted the submissions made by Mr.Vidyarthi. In any case, he submits that since the motor vehicle of respondent No.1 was insured, the liability to pay the compensation is that of Insurance Company only as has been held in the impugned award. Mr.Patil points out that the amount referred to in the impugned award has already been deposited by the Insurance Company.

6. The rival contentions now fall for my determination.

7. In this case, the claim petition was instituted by the

appellants i.e. husband Shrikant and the two daughters Sonali and Shweta on account of the demise of his wife and their mother. This appeal relates only to the issue of quantum of compensation and there is no necessity advert to the aspect of the negligence or liability in the matter.

8. The deceased Shailaja Smruti was 38 years of age at the time when she met with the fatal accident. She was a teacher and the MACT has determined her take home salary as Rs.6,414/- Applying the law laid down by the Hon'ble Supreme Court in the case of **Rajesh & Ors. V/s. Rajbir Singh & Ors.** (Supra), an addition to the extent of 50% is to be made to such income. Further, as urged by Mr.Vidyarthi, that there has to be a deduction to the extent of 1/3rd which is consistent with the law expressed by the Hon'ble Supreme Court in paragraph 30 of the **Sarla Verma** case (**Supra**). The tribunal has erred in applying the multiplier of 12. In this case, taking into consideration the law laid down by the Hon'ble Supreme Court in paragraph 42 of the **Sarla Verma** case (**Supra**) the proper multiplier to be applied would be 15 and not 12. If the compensation is determined on such basis then same would come to Rs.11,54,520/-.

9. Mr.Gokhale is also right that in the facts and circumstances of the present case the compensation awarded towards loss of consortium and loss of love and affection is too meagre and the same should have been Rs.1,00,000/- towards each of the dependents. Further, compensation of Rs.25,000/- was due and payable towards funeral expenses. On such basis, the total compensation would come to Rs.14,79,520/-. In terms of the impugned award, compensation of Rs.5,75,244/- has already been paid. Therefore, taking the same into consideration, the total amount would come to Rs.9,04,276/-.

10. In the present case, it is not possible to accept the submission of Mr.Gokhale that the salary amount should have been doubled taking into consideration that the deceased in the present case could have been in service for more 10 years at the time when she met with the fatal accident. However, it would be appropriate, if there is an award of 50% towards future prospects in terms of the case law laid down in the case of Rajesh & Ors. V/s. Rajbir Singh & Ors. (Supra) Mr.Gokhale, further submits that the multiplier in the present should have been 15 and not 12 as held in the impugned award. Mr.Gokhale is also right in his submission on the aspect of the funeral expenses and compensation towards loss of consortium

and love and affection. Modification to the aforesaid extent is therefore, due, even after taking into consideration the submissions made by Mr.Vidyarthi on the aspect of the deduction towards personal expenses. The compensation amount is therefore, liable to be enhanced and this means that the respondents will jointly and severally be liable to pay a sum of Rs.9,04,276/- with interest at the rate of 7.5%, which is the rate of interest indicated in the impugned award. Such interest will have to be computed from the date of the application, as held in the impugned award.

11. Mr.Shrikant Sajanrao Marathe, appellant No.1. is present in the Court, states that he will have no objection whatsoever, if the additional amount of compensation now awarded together with interest thereon, is paid in equal shares to his two daughters Sonali and Shweta, who are incidentally, appellant Nos.2 and 3 in this appeal. He states that both the daughters are now married and Sonali's present name is "Mrs.Sonali Swapnil Bhamre" and Shweta's present name is "Mrs.Shweta Kush Chauhan". He therefore, states that the amounts may be directed to be paid to the said daughters in equal measures. This gesture of Mr.Shrikant is truly appreciated.

12. Accordingly, the impugned award is modified in the aforesaid terms. The respondents are directed to jointly and severally pay to Sonali and Shweta, the additional compensation of Rs.9,04,276/- along with interest thereon from the date of the application till the date of realization within a period of three months from today. The Insurance Company i.e. respondent No.2 to draw out necessary Demand Draft or cheques in the name of Sonali Swapnil Bhamre and Shweta Kush Chauhan in equal measures.

13. In the facts and circumstances of the present case, there shall be no order as to costs.

14. All concerned to act on the basis of the authenticated copy of this order.

15. The Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)