IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.361 OF 2014
WITH
CIVIL APPLICATION NO.1790 OF 2010
IN
FIRST APPEAL NO.361 OF 2014

United India Insurance Co. Ltd. ...Appellant/Applicant
Versus
Jayawant Narayan Jadhav & Anr. ...Respondents

Mr.Mehta i/b KMC Legal Venture for the Appellant/Applicant.

None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 24 MARCH 2017

P.C.

1. Heard Mr.Mehta, learned counsel for the appellant. None for the respondent.

2. On the previous occasion, it was made clear that the matter would be disposed of finally on the next date. The matter was adjourned because it was submitted on behalf of the learned counsel appearing for the claimants that cross objections would be filed. Today however, the learned counsel for the claimants is not present. Mr.Mehta points out that no cross objections have also been filed in the matter. Nevertheless, from the perusal of the order

dated 09 February 2017, it is clear that the appellants were put to notice that this Court would consider the issue of compensation towards love and affection on account of the demise of the son of the respondents, who was 22 years of age on the date of the accident.

3. Mr.Mehta, learned counsel for the appellant submits that in this case, the driver of the insured vehicle was under the influence of alcohol and this constitutes a fundamental breach of the insurance policy. On this basis, Mr.Mehta submits that no liability was required to be foisted upon the Insurance Company. In the alternate, Mr.Mehta submits that on the basis of the material on record, contributory negligence was required to be apportioned equally between the two vehicles involved in the accident. Instead, the MACT has erred in apportioning the negligence to the extent of 2/3rd upon the driver of the insured vehicle and only 1/3rd upon the deceased who was riding the motor cycle at the time of the accident.

4. Further, without prejudice, Mr.Mehta submits that in this case, the deceased Devidas was a bachelor and therefore, according to the law laid down by the Hon'ble Supreme Court in the

case of ***Sarla Verma (Smt) & Ors. V/s. Delhi Transport Corporation & Anr. (2009) 6 SCC 121,*** deduction towards personal expenses should have been taken at 50% and not merely 1/3rd. Mr.Mehta also submits that in this case, the MACT, has adopted the incorrect multiplier by adverting to the age of the deceased rather than to the age of the claimants-parents. He relies upon the decision of this Court in the case of ***United India Insurance Company Ltd. V/s. Mrs.Shobha Amarsingh Rajput (2016(4) ACC 407)*** to submit that in a case where the deceased is a bachelor son, then, the age of the bachelor son, is not to be made the basis for determining the multiplier. Mr.Mehta submits that in this case, the MACT has incorrectly taken into consideration the gross salary when infact, the salary certificate indicated that the net salary was Rs.4,760/- per month. For all these reasons, Mr.Mehta submits that the impugned order is liable to be set aside or in any case, suitably modified.

5. In this case, the claimants' son Devidas, died in an accident involving the motor cycle which he was riding and the Santro car, which was an insured vehicle. It is to be noted that neither the owner of the insured vehicle nor the Insurance Company, led any evidence in the matter. The driver of the insured

vehicle, was not summoned to depose in the matter. In such circumstances, Mr.Mehta's contention that the driver was under the influence of alcohol and therefore, there was some fundamental breach of the terms of the Insurance Policy, cannot be accepted.

6. Mr.Mehta's submission with regard to the contributory negligence is also quite similar. In such circumstances, the MACT, has reasonably assessed the material on record and apportioned the negligence in the ratio of 1/3rd upon the deceased and 2/3rd upon the driver of the insured vehicle. Infact, if Mr.Mehta's contention that the driver of the insured vehicle was under the influence of the alcohol is to be considered, then, the entire negligence, was required to be foisted upon such driver. However, it is made clear that there is no case made out to interfere with the apportionment of the negligence at the behest of the Insurance Company, particularly, because no evidence has been led on their behalf and even the driver was not summoned to depose in this matter at their behest.

7. Mr.Mehta is however right, in his submission that the deduction of 50% was required to be made towards the personal expenses in this case. This is because Devidas was admittedly a bachelor at the time of his unfortunate demise. This however,

makes no difference because, in addition to the extent of 50% was required to be made on account of future prospects, taking into consideration the age of Devidas. Such addition, is consistent with the law laid down by the Hon'ble Apex court in the case of ***Reshma Kumari and Others V/s. Madan Mohan (2013-9-SCC-65) and Munna Lal Jain & Anr. V/s. Vipin Kumar Sharma & Ors. (2015) 6 SCC 347.***

8. Mr.Mehta is also right in his submission that the age of Devidas was not the determinative of the multiplier to be adopted, since, Devidas died a bachelor. In terms of the law laid down by this Court in the case of ***Shobha Amarsingh Rajput (Supra)***, it is the age of claimants-parents which will be determinative. In this case, the father was 50 years of the age and the mother was 44 years of the age therefore, the average age would come to 47 years. On this basis applying the law laid-down by the Hon'ble Supreme Court in the case of ***Sarla Varma (Supra),*** appropriate multiplier would be 13.

9. There is no merit in the submission of Mr.Mehta that in this case, gross income was wrongly taken into consideration. Infact, this is not the case, where the MACT has taken the gross

income into consideration. It is evident from the material on record that Devidas was earning Rs.6,000/- per month by way of salary since, he was working as a security guard in the Top Security Company. This is completely reasonable estimate and MACT was correct in taking the income of Devidas at Rs.6,000/- per month. On the aforesaid basis, compensation towards dependency, would come to Rs.9,36,000/- (Rs.6,000 X 12 X 13). From out of this amount, 1/3rd is required to be deducted towards contributory negligence. This brings the total compensation towards loss of dependency to Rs.6,24,000/-.

10. In this case, the MACT, has completely forgotten to make an award towards loss of love and affection and towards funeral expenses. Taking into consideration the circumstance, that the claimants have lost their son, aged 22 years in a road accident, atleast an amount of Rs.75,000/- each is required to be awarded to the parents towards loss of love and affection, in terms of the law laid down in the case of ***Sarla Varma (Supra).*** Besides, an amount of Rs.25,000/- is required to be awarded towards funeral expenses. This means that to the amount of Rs.6,24,000/-, further addition of Rs.1,75,000/- will have to be made. This takes the total amount compensation to Rs.7,99,000/-.

11. The Hon'ble Apex Court, in the case of ***Nagappa V/s. Gurudayal Singh & Ors. (2003-2-SCC-274)*** has held that it is the duty of the tribunal as well as the Appellate Court to award 'just' compensation irrespective of whether or not any cross objections or cross appeals have been instituted on behalf of the claimants. 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 sub-section (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.*
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> *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.*
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> *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 Sheikhupura 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 sub-section (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."*

12. In ***Sanobanu Nazirbhai Mirza and ors. vs. Ahmedabad Municipal Transport Service***[1]***,*** the Division Bench of the Hon'ble Supreme Court, after relying upon the decision of the Larger Bench of the Hon'ble Supreme Court in *Nagappa (supra)* , has held that it is the duty of the Tribunal and the appeal court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony. In *Sanobanu Mirza (supra),* 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.***

1 (2013) 9 SCR 882

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

13. Even after accepting certain submissions put forth by Mr.Mehta and after giving credence to such submissions, the just compensation in this case works out to Rs.7,99,000/-, which is

required to be rounded off to Rs.8,00,000/- inclusive of the amount awarded towards no fault liability.

14. The appeal is therefore, disposed of by directing, the appellant to pay to the respondents-claimants, total compensation of Rs.8,00,000/- together with interest at the rate of 7.5% per annum from the date of the petition till its realization.

15. The respondents-claimants are entitled to withdraw compensation amount already deposited by the appellant Insurance Company before the learned MACT. Insofar as the shortfall is concerned, the Appellant-Insurance Company, consistent with the provisions contained in Section 168(4) is required to deposit the awarded amount within 30 days from today before the learned MACT. Upon deposit, the MACT, may permit the respondents-claimants to withdraw such additional compensation amount as well.

16. The appeal is disposed of in the aforesaid terms. In view of the disposal of the appeal, the Civil Application does not survive and the same is also disposed of.

17. The Registry is directed to transmit the amount of Rs.25,000/- deposited by the appellant in this Court to the concerned MACT within a period of two weeks from today.

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

(M. S. SONAK, J.)