

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

**FIRST APPEAL NO. 103 OF 2017
WITH
CIVIL APPLICATION NO.2363 OF 1996**

The State of Maharashtra
(Through the Collector of Nashik)
& Ors.

..Appellants/Applicants

V/s.

Smt. Kamaladevi Kailashchandra
Kaushal & Ors.

..Respondents

Mr. Yogesh Y. Dabke, AGP for the appellants /Applicants.
None for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 27 February 2017

Date of Pronouncing the Judgment : 15 March 2017

JUDGMENT :

1] Heard Mr. Dabke, learned Assistant Government Pleader (AGP) for the appellants/applicants-State. None for the respondents, though served.

2] The appellants i.e. State of Maharashtra, the Dairy Manager Government Milk Scheme and Assistant Director of Insurance Maharashtra State, appeal against judgment and award dated 05 August 1995 made by the Motor Accidents Claim Tribunal (MACT), Nashik in Motor Accident Claim Petition No.371 of 1990. By the impugned award, the MACT has directed the appellants to jointly and severally pay an amount of Rs.1,65,000/- inclusive of no fault

liability to the respondents-claimants i.e. the widow, mother of the deceased Kailashchandra and his two children. The appellants have also been directed to pay interest at the rate of 12% per annum from the date of institution of the claim petition until deposit of the awarded amount in the claim tribunal.

3] This First appeal relates to the year 1996. The same was instituted after some delay. Thereafter, no effective steps were taken by the appellants to serve the respondents. As a result, the matter was pending all this while. In such circumstances and further, taking into consideration the grounds raised by the appellants, even the learned AGP agreed that it would be appropriate if the matter is disposed of finally at this stage itself.

4] Mr. Dabke, the learned AGP has basically questioned the impugned award by contending that it is the deceased Kailashchandra who was negligent in the matter and in any case, there was no evidence on record to establish that the driver of the appellants milk tanker bearing no.MRR-6296 was negligent or the cause for the accident. Mr.Dabke submits that the MACT has completely erred in relying upon the evidence of Kailashchandra's minor son and instead, the MACT should have accepted the testimony of the driver of the milk tanker. Mr. Dabke submits that the son of deceased Kailashchandra, apart from being a minor, was certainly an interested witness and therefore, the MACT was not at all justified in relying upon his testimony. Mr. Dabke submits that in this case, FIR was lodged against the deceased. The criminal prosecution could not proceed further and an abated summary had to be filed, since, the deceased Kailashchandra was not living to face the prosecution. However, Mr. Dabke submits that these

circumstances were sufficient to establish that the deceased Kailashchandra was negligent and consequently, the cause for the accident which led to his eventual demise. For these reasons Mr.Dabke submits that the impugned award which fastens liability upon the appellants is contrary to the material on record and warrants interference.

5] After this matter was argued substantially, this court felt that at least *prima facie* the compensation awarded by the MACT was rather inadequate and could not be regarded as '*just compensation*' in the facts and circumstances of the present case. The matter was therefore adjourned and re-listed after sometime, in order to enable Mr. Dabke to address this court on the issue of compensation, since, in this case, the claimants had neither instituted any cross appeal nor lodged any cross objections.

6] Accordingly, on 27 February 2017, Mr. Dabke made the following submissions:-

(A) That there is an absolute bar upon the appeal court enhancing the compensation amount awarded by the MACT in an appeal by the owner / insurance company, in the absence of any cross appeal or cross objections by the claimants. To support this proposition, reliance was place upon the decision of the Hon'ble Supreme Court in the case of ***Ranjana Prakash & Ors. vs. Divisional Manager & Anr.***¹;

(B) That even otherwise, the compensation determined by the MACT is quite just because, the same is consistent with

1 (2011) 14 SCC 639

the legal position which prevailed on 5 August 1995 when the impugned award was made. Mr. Dabke submits that the claimants in the present case are not entitled to the benefit of the later rulings of the Hon'ble Supreme Court in the case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.***² and other matters.

7] In this appeal therefore, the following points for determination arise :

(A) Whether, from the material on record, it can be said that the accident, from which the claim arises, took place entirely on account of negligence of deceased Kailashchandra or at least on account of contributory negligence on the part of deceased Kailashchandra?

(B) Whether the compensation awarded by the MACT constitutes '*just compensation*' in the facts and circumstances of the present case?

(C) Whether in the absence of any cross appeal or cross objections on the part of the claimants, the appeal court is entitled to award '*just compensation*' to the claimants, in the appeal instituted by the owner?

8] As regards the first point for determination, it is to be noted that the accident, in which, Kailashchandra expired, took place on 2 May 1990 on the Bombay-Agra Road. At the time of the accident, Kailashchandra was driving Swaraj Mazda Tempo (tempo) which dashed against the rear portion of the appellants milk tanker (milk

² (2009) 6 SCC 121

tanker), which was stated to be halted on the road. The resultant impact caused the instantaneous death Kailashchandra. His then minor son Dinesh, was sitting by the side of his father at the time of the accident, and survived to depose to the circumstances of the accident.

9] Dinesh, who is also one of the claimants, has deposed in this matter. On behalf of the appellants, the driver of the milk tanker has also deposed in the matter. The appellants did not examine the cleaner, who was also stated to be present in the milk tanker at the time of the accident, even though, it is the case of the driver of the milk tanker that the cleaner had given '*hand signal*' to indicate that the milk tanker was in the process of turning towards the approach road. The accident took place at 5.00 a.m. in the morning, when it was quite dark outside. The non examination of the cleaner, in such circumstances, assumes importance and warrants the drawal of adverse inference against the appellants.

10] Dinesh, who was 17 years of age at the time of the accident has deposed that he was sitting by the side of his father (on cleaner's side) in the tempo, which was driven by his father Kailashchandra. He has deposed that the accident took place at about 5.00 a.m. on Bombay Agra Road, when it was quite dark outside. He has deposed that his father was driving the tempo on the left side of the road at a moderate speed and the milk tanker was at a distance of 10 to 12 feet ahead of the tempo. His father Kailashchandra signalled on two to three occasions with dipper, requesting side, in order to overtake. However, the driver of the milk tanker did not oblige. After both the vehicles had travelled for some distance, the driver of the milk tanker suddenly swerved,

initially towards the right, then towards left and finally halted the milk tanker on the road. All this was without giving any signals / indicators. As a result the tempo dashed on the rear side of the milk tanker and the impact resulted in the instantaneous death of his father Kailashchandra. Dinesh has deposed that the driver of the milk tanker did not even render any help to take his father to the hospital.

11] Dinesh was extensively cross examined, but no dent was made to his deposition. Apart from denying the usual suggestions made to him, Dinesh, consistently maintained that the milk tanker suddenly swerved from right to left without giving any signals / indicator and thereafter suddenly stopped on the road, which resulted in the impact. Dinesh has deposed that more than half portion of the milk tanker was on the tar road and therefore, there was no chance for his father Kailashchandra to avoid the accident, even though, his father did make efforts in this regard. This testimony is sufficient to establish that the accident took place on account of negligence of the driver of the milk tanker. In any case, this testimony is more than sufficient to discharge the initial onus upon the claimants.

12] The driver of the milk tanker has admitted to swerving of the milk tanker from the right to the left side. However, the driver has deposed that light indicator as well as hand signal was given, before such turn. The driver has deposed that the light signal (indicators) was given by him and the '*hand signal*' was given by the cleaner who was sitting by his side. There is nothing brought on record to indicate that the light signals / indicators were in working condition. The contemporaneous documents do not indicate this

position. No mechanic was examined to depose to this aspect. If the light signals / indicators were working, it is not known as to why '*hand signal*' was also given. If the *hand signal* was indeed given, it was necessary to examine the cleaner who is stated to have given such *hand signal*, in order to establish this aspect. The accident took place at 5.00 a.m. in the morning, when it was quite dark outside. The efficacy of the so-called hand signal, in such circumstances would be minimum. The circumstance that the cleaner was never examined, warrants drawal of adverse inference in the facts and circumstances of the present case.

13] The documents like spot panchanama, indicate that the mouth of the approach road, was quite narrow and therefore, the milk tanker was required to initially swerve to the right and then to the left. Since, the mouth of the approach road was narrow, it is possible that the driver of the milk tanker had difficulties in order to access the approach road and therefore, applied brakes and halted the milk tanker on the road when, the accident took place. There is really no material on record to establish that the driver of the milk tanker did give any signal / indicator before attempting to turn on to the approach road. On the basis of preponderance of probabilities, the MACT was quite justified in preferring the evidence of Dinesh to the evidence of the driver of the milk tanker.

14] There is no substance in the contention of Mr. Dabke that the testimony of Dinesh was required to be rejected because, Dinesh was an interested witness or a minor. Dinesh, in the facts and circumstances of the present case, was the most natural witness and his evidence cannot be discarded merely because he was the son of deceased Kailashchandra and also one of the claimants.

Besides, Dinesh was 17 years of age at the time of accident and in these circumstances, there was no reason to disregard his testimony on the ground of his age.

15] In this case, as noted earlier, the cleaner, who is alleged to have given the hand signal at 5.00 a.m. in the morning was never examined by the appellants. No other independent witness was examined by the appellants as regards the state of the milk tanker, including in particular, the state of indicators. The MACT, has quite correctly disregarded the tentative opinion expressed by the investigating officer, who lodged FIR in the matter. The MACT has quite correctly held that the observations in the panchanama or for that matter the tentative opinion of the investigating officer was quite cryptic and could not be relied upon. The MACT has correctly appreciated the material on record and on the basis of the same, recorded the finding that the accident took place on account of negligence of the driver of the milk tanker. Such finding warrants no interference. Upon independent assessment of such material, and applying the test of preponderance of probabilities, it appears that the accident did take place on account of negligence of the driver of the milk tanker alone. Accordingly, the first point for determination is liable to be answered against the appellants.

16] On the aspect of quantum of compensation, it is required to be noted that the deceased Kailashchandra was about 42 to 43 years of age at the time of accident. He was an ex-serviceman, having retired from the army after discharge of several years of service. There is evidence that he had obtained loan to purchase the tempo, which was involved in the accident. There is evidence that he was in the business of transporting vegetables from Indore

to Mumbai. On basis of such evidence, the MACT, could not have held that the income of the deceased was only Rs.2,000/- per month. Even upon conservative basis, the income of the deceased was required to be taken at minimum of Rs.5,000/- per month. The MACT has also erred in taking 1/3rd amount towards the personal expenses of the deceased. In this case, the deceased was survived by four dependents i.e. his widow, two minor children and his mother. The deduction therefore, should have been to the extent of 1/4th and not 1/3rd. These are two clear errors on the part of the MACT in the matter of determination of quantum of compensation.

17] The annual income of the deceased was required to be taken at Rs.60,000/-. Upon deduction of 1/4th towards personal expenses, this would come to Rs.45,000/-. There is no reason stated in the impugned award for not making addition towards future prospects. Applying the law laid down by the Hon'ble Supreme Court in the case of **Munna Lal Jain & Anr. vs. Vipin Kumar Sharma & Ors.**³ addition to the extent of 30% was necessary, taking into consideration that deceased Kailashchandra was between 40 and 45 years, at the time of his demise in the accident. This means that the annual dependency factor, on the basis of material on record, was required to be taken as Rs.60,000/-. The multiplier taken by the MACT is 10. However, as per the law laid down by the Hon'ble Supreme Court in the case of *Sarla Verma* (supra), taking into consideration the age of the deceased, the multiplier should have been 14. However, there does appear to be some slight ambiguity as far as the precise age of the deceased is concerned. Therefore the multiplier can be retained at 10. Even after applying such multiplier of 10, the

3 2015 (6) SCC 347

compensation towards dependency itself comes to Rs.6,00,000/-.

18] Further, in this case an amount of Rs.1 Lakh each is required to be awarded to the wife and the two minor children towards loss of consortium and loss of love and affection. An amount of Rs.50,000/- is also due to be awarded to the mother of deceased towards loss of love and affection. This takes the compensation to Rs.9,50,000/- (Rs. Nine Lakhs Fifty Thousand). Further towards funeral expenses an amount of Rs.25,000/- is due and payable. In all therefore, the claimants were entitled to just compensation of Rs.9,75,000/- (Rs. Nine Lakhs Seventy Five Thousand) as against the awarded amount of Rs.1,65,000/-. In this case, the MACT has clearly erred in awarding compensation of hardly Rs.5,000/- towards loss of consortium to the widow. Besides, no award has been made towards loss of love and affection, in so far as the children and the aged mother is concerned. No award has also been made towards funeral expenses. The MACT, has thus, failed to determine and award *just compensation*, which on the basis of the material on record, comes to Rs.9,75,000/-.

20] There is no merit in the contention of Mr. Dabke that the impugned award is consistent with the law as it stood on 5th August 1995 when the impugned award was made. The decision in case of *Sarla Verma (supra)*, was delivered in the year 2009. However, the Hon'ble Supreme Court has basically declared the law and the MACT was duty bound to make an award towards loss of consortium, loss of love and affection as also towards funeral expenses. The MACT was also duty bound to take into consideration the correct income of the deceased. For all these reasons, it cannot be said that the compensation awarded by the

MACT in the impugned award constituted “*just compensation*”. The award of interest at the rate of 12%, however, appears to be on the higher side and the same is required to be scaled down to 8% per annum.

21] The third submission made by Mr. Dabke, no doubt, finds support in certain observations made in *Ranjana Prakash (supra)*. In the said case, however, the question as to whether the appeal court can enhance the compensation awarded by the MACT, in an appeal instituted by the owner/Insurance Company, did not directly arise. Since, the material on record in the said case did not warrant award of higher compensation. On the contrary, in ***Sanobanu Nazirbhai Mirza and ors. vs. Ahmedabad Municipal Transport Service⁴***, another 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 vs. Gurudayal Singh and ors.⁵***, 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.

22] 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

4 (2013) 9 SCR 882

5 (2003)2 SCC 274

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)

23] In *Nagappa (supra)*, 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.

24] 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.

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 *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 Sheikhpura 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.”

25] In ***Managing Director, Metropolitan Transport V. Ramarao***⁶, 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

6 (2013)5MLJ 715

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. Accordingly, even the third point of determination is liable to be decided against the appellants and in favour of the claimants.

26] In this case, the deceased Kailashchandra was an ex serviceman who had served the Indian Army for almost two decades prior to his unfortunate demise in the road accident. As noted earlier, the compensation amount awarded by the MACT was shockingly inadequate and therefore, cannot be styled as ‘*just compensation*’. Kailashchandra’s widow, lost her husband, at a relatively young age and yet, the MACT awarded only Rs.5,000/- towards loss of consortium. The two children Dinesh and Sangita, lost their father, at a age when they required him the most and yet the MACT has awarded no compensation whatsoever towards loss of love and affection. Kailashchandra’s mother was also awarded no compensation whatsoever for loss of love and affection. There was no award made towards loss of estate or towards funeral expenses. Upon due consideration of the material on record compensation of Rs.9,75,000/-, together with interest thereon at the rate of 8% per annum has been determined.

27] There is yet another disturbing feature about the present matter. This appeal was instituted in the year 1996 and notice was ordered sometime in May of 1996. Even after lapse of 20 years, there is no clarity as to whether service has really been effected upon the respondents. In the meantime, on the basis of ad interim relief obtained by the appellants on 11 April 1996, the claimants, have been deprived of the meagre compensation awarded by the

MACT. The appellants have taken no steps to ensure that the notice which was ordered upon the respondents on 2 May 1996 was really served upon the respondents. There is no service report on record. There is no affidavit of service filed by the appellants. There is really no justification on the part of the appellants to take no steps for a period of almost 20 years to ensure that service is effected upon the respondents. Since, the appellants were armed with an ad interim order, they perhaps, did not deem it necessary to take such steps. This is not a manner, in which the State must treat the widow, the aged mother and the then minor children of an ex serviceman, who has died in a road accident on account of the negligence of the driver of the tanker owned by the State. In fact, this is a fit case for imposition of exemplary costs. However, since the compensation amount is ordered to be enhanced, no costs are imposed.

28] This appeal is therefore, disposed of with the direction to the appellants to pay the claimants total compensation of Rs.9,75,000/- together with interest thereon at the rate of 8% per annum from the date of institution of the claim petition till the date of payment or deposit before the concerned MACT. Out of the compensation so determined, an amount of Rs.1 Lakh should immediately be paid to respondent No.4 - Smt. Chotibai H. Kaushal, the mother of deceased Kailashchandra, 50% of the balance amount shall have to be paid to Kamaladevi, widow of the deceased Kailashchandra. The balance amount shall have to be paid equally to Dinesh and Sangeeta the children of Kailashchandra, who by now, must have attained the age of majority. The appellants to deposit this amount before the MACT within a period of six weeks from today. The Registry is requested to forward a copy of this order to the

concerned MACT, so that the MACT shall issue notice to the claimants, in order to facilitate the execution/payment of the amount of compensation now awarded.

29] In view of disposal of the appeal, civil application does not survive and the same is also disposed of.

(M. S. SONAK, J.)

CHANDKA