IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1991 OF 2011

New India Assurance Co. Ltd. ..Appellant
V/s.
Smt.Seema Sudam Auti & Ors. ..Respondents

WITH
CIVIL APPLICATION NO.4708 OF 2016

Ms.Poonam Mital for the Appellant.
Mr.Avinash Mukund Gokhale for Respondent Nos.1 to 4 in FA 1991 of 2011 and for the Applicants in CA 4708 of 2016.

CORAM : M. S. SONAK, J.
Date of Reserving the order : 03 APRIL 2017.
Date of Pronouncing the order : 09 JUNE 2017.

<u>JUDGMENT:</u>

1. Heard Ms.Poonam Mital for the appellant-Insurance Company and Mr.Avinash Gokhale for respondent Nos.1 to 4-original claimants before the Motor Accident Claim Tribunal (MACT).

2] The appellant, appeals against the judgment and award dated 29th April 2011 made by the MACT awarding the respondents-claimants compensation of Rs.71,36,917/- together with interest at the rate of 7% per annum from the date of the institution of the claim petition till realization of the amount.

3] The claim instituted by respondent Nos. 1 to 4 (claimants) arose on account of the demise of Sudam Auti on 25th May 2006 in the accident between Maruti Alto Car (Alto) which he was driving and Tempo bearing registration No.MH-01/H-7008 (Tempo) at Rajuri Village, Ahmednagar- Kalyan Road. The collision between Tempo and Alto resulted in the death of Sudam on the spot and injuries to the two other occupants in the Alto. Sudam was 46 years old at the time of his unfortunate demise in the accident. He was working as Manager in Patalganga Plant of Reliance Industries and drawing monthly salary of Rs.52,000/- apart from several other perquisites. The MACT, by the impugned award, has directed the owner and insurer of the Tempo to pay compensation of Rs.71,36,917/- (excluding amount of Rs.50,000/- towards no fault liability) together with interest at the rate of 7% per annum from the date of the claim petition till realization. Aggrieved by the impugned judgment and award, the appellant Insurance Company has instituted the present appeal.

4] Ms.Mital, learned counsel for the appellant, submits that this was a case of head on collision between two motor vehicles on a broad wide road. She submits that the material on record makes out a case of contributory negligence on the part of deceased Sudam, who was driving Alto. She submits that the material on record establishes that Alto was overloaded and being driven in a rash and negligent manner. She submits that the evidence on record establishes that Sudam was speaking on mobile phone and driving the Alto with only one hand to control the steering. She, therefore, submits that the compensation awarded, which is even otherwise very excessive, is required to be scaled down by at least 50%, since, the deceased Sudam, contributed to the accident to the extent of 50%. On the aspect of contributory negligence. Ms.Mital, has placed reliance upon the following decisions :-

(i) Kunjamma Mathai V/s. Marcelo Fernandes & Ors. - 1996 ACJ 866;

(ii) Smt.Ushakiran Shridhar Shinde & Ors. V/s. Arunkumar Kisanlal Kalal & Ors. - 2001 (4) ALL M.R. 21;

(iii) New India Assurance Co. Ltd. & Anr. V/s. Kamalbai & Ors. - 1994 ACJ 519; and

(iv) Anand Ramkrishna Raikar & Ors V/s. Raghunath V. Keny & Anr. - 1996 ACJ 697.

5] Ms.Mital, without prejudice to the aforesaid, submits that the compensation awarded by the MACT is excessive and contrary to the well settled principles. She submits that the evidence on record, at the highest, suggest that the total income of Sudam was Rs.5,25,910/- per annum and the MACT has erred in treating such annual income at Rs.7,46,592/-. She submits that from out of the annual income of Rs.5,25,910/-, an amount of Rs.1,09,928/- was required to be deducted towards income tax. She submits that the amount of annual income includes certain perquisite, which were exclusive to Sudam and therefore, some suitable deductions are warranted from annual income. She submits that the net income of Sudam on the basis of evidence on record, cannot exceed Rs.4 lakhs per annum. She submits that the MACT, has grossly erred in taking the annual income of Sudam at Rs.8,24,413/- and determining the compensation on the said basis. She submits that even on this score the compensation awarded by the MACT is required to be reduced to Rs.35 lakhs in place of Rs.71,86,917/- as determined by the MACT. She submits that no proper deductions have been made towards personal expenses, income tax or personal perquisites. She relied upon certain decisions in support of determination of quantum of compensation in such matters.

6] Mr.Gokhale, learned counsel for the respondents-claimants, submits that the accident in the present case took place entirely on account of negligence on the part of Tempo driver, who was driving tempo at the very high speed in a rash and negligent manner. He submits that there is absolutely no material on record to suggest any contributory negligence. He submits that the MACT has carefully assessed the material on record and rightly rejected the contentions based upon the alleged overloading of vehicle, over speeding or driving with one hand and using the other for speaking on the mobile phone. He submits that in this case prosecution was launched against the Tempo driver and in the prosecution so launched, even the State, has not hinted any contributory negligence on the part of deceased Sudam. He submits that the spot panchanama and other documentary evidence on record also militates against the theory of any contributory negligence. Mr.Gokhale has relied upon the following decisions in support of his submissions:

i] N.K.V. Bros (P) Ltd. Vs/. M. Karumai Ammal and ors.- (1980 ACJ 435 Supreme Court);

ii] Bimla Devi and ors V/s. Himachal Road Transport Corporation and ors. - (Civil Appeal No. 2538 of 2009 arising out of SLP (C) No.280 of 2006 decided on 15th April 2009);

iii] Dr. Dattatraya Laxman Shinde vs. Nana Raghunath Hire and ors – 2013 ACJ 474 (Bom.);

iv] Oriental Insurance Co. Ltd. vs. Sangita D. Jamdade and ors. - 2006 ACJ 971 Bom.;

v] Rajasthan State Road Trans. Corpn. And anr. vs. Devilal and ors. - 1991 ACJ 230 (Rajasthan); and

vi] Philippose Cherian and anr. vs. T.A. Edward Lobo and anr. - 1991 ACJ 634 (Kerala);

7] Mr.Gokhale has further submitted that the determination of compensation by the MACT is in fact on a conservative basis and that this is a fit case where this court ought to exercise powers under Order 41 Rule 33 of Code of Civil Procedure, 1908 (CPC) and enhance the compensation amount, even in the absence of any cross appeal or cross objections by the claimants. He submits that the MACT has unnecessarily deducted certain amounts from the annual income of Sudam and this has resulted in determination of compensation, which is less than just and reasonable. Besides, he submits that in this case award of Rs.12,000/- towards loss of consortium, Rs.30,000/- towards loss of estate and love and affection and Rs.2000/- towards funeral expenses is totally inadequate and in fact contrary to the decisions in cases of ***Smt. Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr. - (2009) 6 SCC 121 and Munna Lal Jain and***

anr. vs. Vipin Kumar Sharma and ors. -- 2015 (6) SCC 347. He submits that the compensation under the said heads was required to be at least Rs.10 lakhs and not Rs.42,000/- as determined by the MACT. Mr. Gokhale submits that it is a fit case where the compensation amount awarded by the MACT by the impugned judgment and award is liable to be enhanced by this court. Mr. Gokhale therefore, submits that this appeal may be dismissed, but the compensation amount may be enhanced to Rs.1 crore as prayed for by the claimants in the claim petition. Mr. Gokhale has also placed reliance upon the following decisions in the matter of assessment of compensation:-

vii] Vimal Kanwar and ors. Vs. Kishore Dan and ors. - 2013 ACJ 1441 SC);

viii] Rajesh & ors. vs. Rajbir Singh and ors. - 2013 ACJ 1403 SC).

8] In addition to the aforesaid, Mr. Gokhale also relied upon the decisions in case of ***Daljeet Kaur and ors. Vs. Fakru and anr. - 2008 ACJ 949 M.P.*** and ***Oriental Insurance Co. Ltd. vs. Surendra Umrao and anr. - 2008 ACJ 293 Allahabad,*** which deal with admissibility of public documents in evidence. In the facts and circumstances of the present case, however, these decisions are quite irrelevant and therefore, are not required to be considered.

9] The rival contentions now fall for my determination.

10] The accident in which, Sudam died took place on Ahmednagar - Kalyan Road. Sudam was driving Alto from Rajuri towards Ozar. The Tempo, which was insured by the appellant came from the opposite direction and dashed the Alto, resulting in demise of Sudam. The parties have lead both oral as well as documentary evidence as to the circumstances of the accident. There is also no dispute that the criminal prosecution was launched by the State against the driver of the Tempo alleging rashness and negligence. However, the final out come of prosecution is not reflected from the record.

11] As held by the MACT, there is no evidence to sustain any finding of contributory negligence. In particular, there is no evidence that the Alto was carrying passengers in excess of prescribed limit or that Alto was being driven at some speed exceeding some permissible limit. There is also no evidence that Sudam was speaking on the mobile phone and the car was being driven with only one hand on the steering. Ms Mital is not justified in her criticism, when she urged that the MACT has in fact approved driving of the car with only one hand on the steering. The MACT, has in fact held that there is no evidence to sustain any inference that Sudam was speaking on the mobile phone and driving the Alto with one hand only. The MACT has rightly referred to spot panchanama and noted the absence of any such mobile phone from the scene of accident. The MACT has also made reference to the deposition of DW-1 Mansur, who had also not made any reference to any mobile phone in the hand of Sudam. After recording a categorical finding of fact that Sudam was not speaking on the mobile phone, at the time of accident, the MACT, by way of demurer made an observation that there is no rule, which bars a driver from retaining the right hand on the steering wheel and changing gears with his left hand. This is merely an observation by way of demurer. Ms Mital, on the basis of material on record, was unable to make out a case that Sudam was indeed negligent or that Sudam contributed to the negligence, which ultimately resulted in the accident and demise of Sudam. The material on record does establish that the accident took place on account of negligence of the Tempo driver. The oral and documentary evidence on record does not support the theory of any contributory negligence. The spot panchanama, damage to the vehicles, the circumstance that the Tempo was a heavier vehicle weighing 5500 Kgs as compared to Alto which weighed about 750 Kgs, are all relevant pieces of evidence, which have been appropriately considered by the MACT in concluding that the accident took place on account of negligence of the Tempo driver and Sudam, in no manner, contributed to the negligence.

12] The decisions relied upon by Ms Mittal basically turn on their own facts. In *Kunjamma Mathai (supra),* the collision was between a mini bus and motor cycle. The evidence on record established that the motorcyclist on the main road took a turn towards his right to go to a secondary road without giving signal. The Tempo dashed the motorcycle and it is in these circumstances that negligence was apportioned at 60% upon the motorcyclist and 40% upon the Tempo driver. No such circumstances are brought on record in the present case and therefore, the decision in case of *Kunjamma Mathai (supra),* is inapplicable.

13] Similarly, in *Ushakiran Shinde (supra),* learned Single Judge of this Court has held that the plea of contributory negligence cannot be regarded as proved merely on basis of certain observations in the panchanama, more particularly when the contents of the panchanama were never proved. This decision hardly assists the appellant in establishing the plea of contributory negligence. In *New India Assurance Co. Ltd. vs. Kamalabai (supra),* there was head on collision between a Matador and Truck on a road whose width was enough for the two vehicles to pass. In the facts and circumstance as established, this Court held that the drivers of both the vehicles were proceeding at high speed and contributed to negligence. No such facts have been established in the present case.

14] In *Anand R. Raikar (supra),* there was eye witness's evidence that the scooterist came from village road to the highway and was dashed by a taxi. On basis of established facts, this court held that the deceased scooterist ought to have looked on both sides before entering upon highway from the village road and therefore, contributed to negligence to the extent of 75%. Again, such facts do not obtain in the present case and therefore, the decision in *Anand Raikar (supra),* is of no assistance to the appellant.

15] Accordingly, there is no merit in the contention of Ms Mittal that deceased Sudam contributed to negligence, which resulted in accident and demise of Sudam.

16] There is no dispute that deceased Sudam was working as a Manager Lab/Process in Patalganga Plant at Reliance Industries.

There is both documentary as well as oral evidence with regard to salary and emoluments drawn by Sudam at the time of his demise in the accident which has given rise to the claim in this proceedings. The gross salary as per the income tax returns for the financial year 2005-2006 comes to Rs.6,16,969/-. The MACT has added an amount of Rs.1,29,623/- towards perquisites. However, such addition in its entirety appears to be excessive. The material on record indicates that at least 50% of such amount relates to travelling expenses, which, in the facts and circumstances of the present case, will have to be regarded as personal to Sudam. The addition of Rs.65000/-, i.e., approximately 50% of Rs.1,29,623/-, appears to be proper in the facts and circumstances of the present case. This means that the gross annual income of Sudam can be taken as Rs.6,81,969/-. Out of this, amount of Rs.1,09,928/- will have to be deducted towards income tax, so as to assess the net income at Rs.5,72,041/-. In terms of the law laid down by the Hon'ble Supreme Court in *Sarla Verma (supra),* the addition of 30% is due to the net annual income, since, Sudam was about 46 years at the time of his demise. This means that the annual income of Sudam, for the purposes of assessment of compensation, will have to be taken as Rs.7,62,724/- and not Rs.8,24,413/- as held by the MACT.

17] The MACT has deducted 1/3rd amount towards personal expenses. In this case, Sudam was survived by his widow, two children and two parents, i.e., Sudam was survived by five dependents. Shri. Shripatrao Auti, Sudam's father has expired during pendency of proceedings before the MACT. The deduction towards personal expenses, in such circumstances, could be taken as 1/4th and not 1/3rd as held by the MACT. This means that the annual dependency comes to Rs.5,72,041/-. Further, considering that Sudam was 46 years old at the time of accident and demise, the multiplier in terms of *Sarla Verma (supra),* will have to be correctly taken as 13. The MACT has correctly taken the multiplier as 13. The total compensation towards dependency would therefore, be Rs.5,72,041 X 13 = Rs.74,36,533/-.

18] Besides aforesaid, the compensation of Rs.1 lakh is payable to Seema, i.e., Sudam's widow for loss of consortium. The two children of Sudam also entitled to compensation of Rs.1 lakh each towards loss of love and affection on account of demise of their father Sudam. Similarly, Sudam's mother Tarabai is also entitled to compensation of Rs.50,000/- towards loss of love and affection on account of demise of Sudam. The compensation of Rs.25,000/- is due and payable towards funeral expenses. This means that additional compensation of Rs.3,75,000/- is due and payable to the claimants.

19] Thus, just and reasonable compensation, in the facts and circumstances of the present case is required to be assessed at Rs.78,11,533/- in place of Rs.71,36,917/- as determined by the MACT.

20] In ***Nagappa vs. Gurudayal Singh and ors.- (2003) 2 SCC 274,*** the Hon'ble Supreme Court has held that it is the duty of the claims tribunal as well as the appeal court to determine and award just and reasonable compensation and that such duty is statutory irrespective of whether claim has been made in respect thereof or not.

21] 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.*
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> * * *
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> *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."

22] In ***Managing Director, Metropolitan Transport V. Ramarao-(2013) 5 MLJ 715,*** 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 to award "*just compensation*" irrespective of the fact whether any plea was raised in respect of the claimant or not.

23] Applying the aforesaid principles to the facts and circumstances of the present case, the appeal will have to be dismissed. However, the compensation is determined at Rs.78,11,533/- in place of Rs.71,36,917/- as determined by the MACT. The appellant is therefore directed to pay compensation as now determined to the claimants. Now that children of Sudam have attained majority, there is no necessity to abide by the directions as regards investment of compensation amount so awarded. Rather, interest of justice will be met if the compensation amount now determined is apportioned amongst the claimants in the following manner:

a]	Seema (widow)	45% ;
b]	Smita (daughter)	20%;
c]	Swapnil (son)	20%; and
d]	Tarabai (mother)	15%.

24] The claimants shall be entitled to proportionate interest upon the compensation amount so determined. The MACT has awarded interest of 7% per annum and there is no reason to disturb such award. The appellant shall however be entitled for credit in respect of the amounts already deposited or paid.

25] The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

26] The civil application for withdrawal is disposed of in terms of the final order made in the appeal itself.

(M. S. SONAK, J.)