IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.4225 OF 2017

1. Shivkanta wd/o Santosh Gaware
Age : 29 years, Occu.: Housewife

2. Sumit S/o Santosh Gaware
Age : 7 Years, Occ.: Education,
(under guardianship of real mother-
Shivkanta Wd/o Santosh Gaware)

3. Laxmibai W/o Narayan Gaware
Age : 59 Years, Occ. Housewife

All R/o. Sukli, Tq. Kalamnuri,
Dist.Hingoli. .. Appellants
(Ori. Claimants)

VERSUS

. Maharashtra State Road Transport
Corporation,
Through its Divisional Controller,
R/o. Office at Divisional Workshop,
Nanded, Tq. & Dist. Nanded. ..Respondent
(Ori. Respondent)

...

Advocate for Appellants : Mr.Mahesh V.Ghatge
Advocates for Respondent : Mr.M.K.Goyanka and
Mr.Manoj Shinde

...

CORAM : M.S.SONAK, J.
DATE : 9th JANUARY 2018

ORAL JUDGMENT:-

1) Heard learned counsel for the parties. At their request and with their consent, the appeal itself is taken for final disposal.

2) This appeal is preferred by the appellant No.1 i.e. widow, the appellant No.2 minor son and appellant No.3 the mother, who are aged 29 years, 7 years and 59 years respectively claiming enhanced compensation on account of demise of Santosh the sole breadwinner, who died in a motor accident. Accordingly, record and proceedings were also called for in order to facilitate the disposal of this appeal at the stage of admission.

3) There is no dispute that Santosh Narayan Gaware died on 10.5.2012 after S.T. Bus bearing MH-20/D-8967 dashed against the Motorcycle bearing No.MH-26/Q-6608, which he

was riding with Kishan Kumar as pillion rider. The Motor Accident Claims Tribunal has determined the compensation @ Rs.5,43,000/- (inclusive of no fault liability amount). The Motor Accident Claims Tribunal has also awarded the claimants interest @ 7.5% p.a. on the compensation amount from the date of the petition till realization of compensation amount.

4) Mr.M.V.Ghatge, learned counsel for the appellants submits that the Motor Accident Claims Tribunal was not justified in treating the income of Santosh as only Rs.3,000/- p.m. when there was ample evidence on record to establish that Santosh was a skilled electrician. Mr.Ghatge points out that Santosh owned agricultural land ad-measuring 90 Are and therefore, some compensation was due towards supervision charges, which the claimants will be forced to bear consequent upon demise of Santosh. Mr.Ghatge points out that the Motor Accident Claims Tribunal in deciding the Claim Petition on behalf of

claimants of pillion rider Kishan Kumar has infact awarded supervision charges @ Rs.1,500/- p.m. Mr.Ghatge submits that there was absolutely no reason for unequal yardstick in so far as present claimants are concerned.

5) Mr.Ghatge submits that the income of Santosh was required to be taken minimum @ Rs.8,000/- p.m. taking into consideration that he was skilled as a electrician. Mr.Ghatge submits that the Motor Accident Claims Tribunal has failed to make any addition towards future prospects. Such failure is contrary to law laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and others [**2017 (13) SCALE 12**]*. For these reasons, Mr.Ghatge submits that the compensation amount awarded by the Motor Accident Claims Tribunal is required to be enhanced up to Rs.22,00,000/- or more.

6) Mr.Ghatge hands in a calculation chart, taking

Santosh's income as Rs.8,000/- p.m. and supervisory charges of Rs.1,500/- p.m. Mr.Ghatge submits that it is the duty of the Tribunal to determine just compensation and therefore, just compensation can always be granted by this Court, even though the claimants in their claim petition may have claimed only Rs.8,00,000/- by way of compensation.

7) Learned counsel for the respondent submits that there is no evidence on record to establish that Santosh was indeed a electrician or a skilled person. He submits that no documents like some Diploma from I.T.I., salary certificate have been produced. The employer has not been examined. In such circumstances, the learned counsel submits that the Motor Accident Claims Tribunal was quite justified in treating the monthly income of Santosh @ Rs.3,000/- p.m.

8) Learned counsel submits that there is no proper

evidence as regards the nature of land owned by Santosh and the type of agricultural activity, which was allegedly carried out therein. In the absence of any such material, the Motor Accident Claims Tribunal was quite right in making no award towards supervision charges.

9) Learned counsel points out that excessive compensation has been paid towards conventional heads like loss of love and affection, consortium or funeral expenses. He submits that such award is entirely unjustified considering the decision of the Hon'ble Supreme Court in the case of ***Pranay Sethi*** (supra) upon which reliance has been placed by the appellants themselves. For all these reasons, the learned counsel submits that this appeal is liable to be dismissed.

10) Upon perusal of the evidence on record, it is seen that there is no documentary evidence produced in so far

as income of Santosh is concerned. Appellant No.1 i.e. Shivkanta has deposed that Santosh was an electrician employed with Raj Electricals and was earning Rs.8,000/- p.m. There is evidence that Santosh was having agricultural land ad-measuring 90 Are, which was being used for agricultural purpose. In this regard 7/12 extract has also been produced on record. Taking into consideration this material, although, it will not be possible to accept the appellants' contention that Santosh's income should be taken as Rs.8,000/- p.m. and to that, Rs.1,500/- should be added as supervision charges, it must be said that determination of Tribunal is rather conservative.

11) In the facts and circumstances of the present case, it will be appropriate if the income of Santosh, even after taking into consideration the aspect of supervisory charges, is taken as Rs.4,500/- p.m. In such matters, it is not always possible to produce any documentary

evidence and therefore, some amount of guesswork is inevitable.

12) Even assuming that Santosh may not have been a skilled worker, nevertheless, in the facts of the present case, his income can be taken as Rs.4,500/-, which is nothing but addition of Rs.1,500/- over the income determined by the Tribunal. Besides, the Tribunal in the present case has made an addition of Rs.1,500/- to the income of pillion rider Kishan Kumar, who also died in the same accident, in the claim petition instituted by the dependents of said Kishan Kumar. Therefore, even this circumstance is required to be taken into consideration and the income of deceased Santosh is required to be determined @ Rs.4,500/- p.m.

13) The Tribunal in this case has omitted to take into consideration the aspect of future prospects all together. This is clearly an error apparent on the face

of record, which is required to be corrected in the appeal. In terms of the decision of the Constitution Bench in ***Pranay Sethi*** (supra), taking into consideration the fact that the age of deceased Santosh was 29 years, Santosh's income is required to be increased by 40% towards future prospects. This means that Santosh's monthly income is to be taken as Rs.6,300/- p.m.

14) Again, as per the decision in ***Pranay Sethi*** (supra) deduction of 1/3 is due towards personal expenses of Santosh. This means that deceased Santosh would have contributed towards his dependents a sum of Rs.4,200/- p.m.

15) In this case, there is no dispute that the proper multiplier would be 17. A compensation towards dependency would therefore, come to Rs.4,200 x 12 X 17 = Rs.8,56,800/-.

16) The learned counsel for the respondent is right in his submissions that the compensation awarded by the Tribunal towards conventional heads like loss of consortium, loss of love and affection or funeral expenses, is not consistent with the law laid down in ***Pranay Sethi*** (supra).

17) Since, just compensation is being determined, some modification is necessary on this aspect, even though, the respondent may not have filed any cross-objection. So also, on the same basis, there is no necessity to restrict the compensation to the amount claimed by the appellants in their claim petition. In *Nagappa Vs. Gurudayal Singh and ors. [**(2003) 2 SCC, 274**]*, *Sanobanu Nazirbhai Mirza Vs. Ahmedabad Municipal Transport Service [**(2013) 9 SCR 882**]* and in *Ningamma and anr Vs. United India Insurance Company Limited [**(2009) 13 SCC 710**]*, the Hon'ble Supreme Court has held that it is the duty of the Tribunal to award just compensation

irrespective of whether or not same is claimed by the claimants.

18) Applying the principle for award of compensation towards conventional heads as laid down in ***Pranay Sethi*** (supra), compensation of Rs.40,000/-can be awarded to the appellant No.1 for loss of consortium; Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate. In addition, this is a fit case to award compensation of Rs.25,000/- each to Santosh's minor son and aged mother towards loss of love and affection. This means that to the dependency amount of Rs.8,56,800/-, an amount of Rs.1,20,000/- will have to be added towards compensation under conventional heads, thereby, taking the total compensation to Rs.9,76,800/-.

19) The impugned award is therefore, modified and the respondent is directed to pay to the appellants compensation of Rs.9,76,800/- together with interest

accrued thereon @ 7.5% from the date of filing of the petition till realisation of the amount by way of compensation. This shall be inclusive of the amount already paid towards no fault liability. The respondent shall be entitled to credit for the amount already paid under the impugned award.

20) From out of the enhanced compensation amount, which will now have to be paid by the respondent to the appellants, a sum of Rs.1,00,000/- be paid to appellant No.3 i.e. mother of Santosh. Further, an amount of Rs.2,00,000/- to be kept in Fixed Deposit in the name of appellant No.2 i.e. minor soon jointly with appellant No.1, the mother. This Fixed Deposit is to be encashed only upon the appellant No.2 attain majority. The balance compensation of Rs.1,33,800/- is to be paid to the appellant No.1.

21) The appeal is partly allowed in the aforesaid terms.

There shall be no order as to costs.

22) The Registry to determine the deficit of Court fee proportionate to the present award, within four weeks from today.

23) The appellants to deposit such Court fee, within a period of eight weeks from the date of such determination.

[M.S.SONAK, J.]