IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3399 OF 2011

1] Shri Sachin Shrawan Wabale (Patil),
age 24 years, occ. Service,

2] Shri Pramod Shrawan Patil,
age 22 years, occ. Education,

3] Shri Mahesh Shrawan Patil,
age 20 years, occ. Education,

R/o 2/10 Mahesh Niwas,
State Bank Colony,
Bhadgaon Road, Pachora,
District Jalgaon ...Appellants
[Orig. Claimants]

VERSUS

1] Shri Narsingh Poladsingh Rajput,
age 40 years, occ. Business,
R/o Gulan Bk.,, Taluka Pachora,
District Jalgaon,

2] The New India Insurance Company Ltd.,
through Branch Manager,
Ghat Road, Chalisgaon Branch,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon ...Respondents
[Orig. Respondents]

WITH

FIRST APPEAL NO. 3397 OF 2011

1] Shri Sachin Shrawan Wabale (Patil),
age 24 years, occ. Service,

2] Shri Pramod Shrawan Patil,
age 22 years, occ. Education,

3] Shri Mahesh Shrawan Patil,
age 20 years, occ. Education,

R/o 2/10 Mahesh Niwas,
State Bank Colony,
Bhadgaon Road, Pachora,
District Jalgaon ...Appellants
[Orig. Claimants]

VERSUS

1] Shri Narsingh Poladsingh Rajput,
age 40 years, occ. Business,
R/o Gulan Bk.,, Taluka Pachora,
District Jalgaon,

2] The New India Insurance Company Ltd.,
through Branch Manager,
Ghat Road, Chalisgaon Branch,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon ...Respondents
[Orig. Respondents]

...

Mr. M.M.Bhokarikar, advocate for Appellants
Mr. A.G.Kanade, advocate for Respondent no. 2
Mr. B.S.Deshmukh, Advocate for Resp. no. 1 absent

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 10.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 19.10.2018

J U D G M E N T :

These both appeals are filed by original claimants against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No. 401 of 2002 and

Motor Accident Claim Petition No. 402 of 2002. In both Petitions, the claimants are the sons of deceased Shrawan and mother Nirmala, who died on 22.4.2002 due to dash given by the offending truck No. MW-D-8087, when they were returning to home by motor cycle No. MH-19/U-7976.

2. Respondent no.1 is owner of the offending vehicle and respondent no.2 is insurer of the said vehicle.

3. Facts, in nut shell are that on 22.4.2002, the deceased Shrawan Bapu Patil and his wife Nirmal Shrawan Patil were proceeding towards Pachora by their motor cycle No. MH-19/U-7976 at about 5.30 p.m. That time, the offending truck No. MWD-8087 came from opposite direction and due to rash and negligent driving by the driver of the truck, it dashed against the motor cycle of Shrawan Patil resulting into death of Shrawan and his wife Nirmala. Claimants being the only sons of deceased filed claim petitions for compensation before the Tribunal.

4. After considering the evidence placed on record, the Tribunal held that the accident occurred due to rash and negligent driving by the driver of offending truck. However, only because the claimants have become major during pendency of claim petition, the Tribunal awarded meager compensation of Rs.1,00,000/- with interest thereon at the rate of 7.5 per cent per annum from the date of filing of petition. That award is challenged in the present appeals by the claimants claiming enhancement of compensation. Therefore, the entire discussion in the present appeals will be restricted with the just, reasonable and fair compensation to be awarded to the claimants.

5. Heard Mr. M.M.Bhokarikar, learned counsel for the appellants and Shri A.G.Kanade, learned counsel for respondent no.2.

6. Learned counsel for the appellants submits that at the time of accident, deceased Shrawan was 50 years old and he was in permanent service. Therefore, 30 per cent income is to be

added in the monthly income of deceased towards future prospects. He placed reliance on (1)“**Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.” [AIR 2009 SC 3104];** and (2)“**National Insurance Company Limited vs Pranay Sethi” [2018 (3) Mh.L.J. 70].** He submits that in case of death of Shrawan, multiplier of 13 will be applicable as ruled by the Apex Court in **Smt. Sarla Verma and Ors.**(supra).

Regarding deceased Nirmala, learned counsel for appellants submits that her date of birth was 17.12.1960. On the date of accident, she was about 41 years. Therefore, multiplier of 14 is applicable and for loss of future prospects 25 per cent income is to be added in her notional monthly income. He has pointed out that as per salary certificate of deceased, at the relevant time of the death, salary of the deceased was Rs.9077/- per month. He submits that only because the claimants are major sons of the deceased, they cannot be excluded from the category of dependents when they reside jointly in the family of their parents. He placed reliance on (1)“**Smt. Manjuri Bera vs Oriental Insurance Co. Ltd.” [AIR 2007 SC 1474]** and (2) “**Gujarat State Road Transport Corporation, Ahmedabad vs Ramanbhai Prabhatbhai and another” [AIR 1987 SC 1690].**

7. Learned counsel for respondent no.2 submits that claimant no.1 (PW 1) has admitted in his cross-examination that on the date of accident he was in service, and therefore, he cannot be dependent of the deceased.

His next submission is that after death of deceased, claimant no.2 was also appointed on compassionate ground and claimant no.3 joined State Government service as Police Constable, and therefore, none of the claimants can be dependent on the deceased. He submits that considering the income of the claimants, the Tribunal has rightly reduced the quantum of compensation.

His next submission is that while assessing annual income of the deceased Shrawan, the income tax payable by the deceased shall be deducted from his annual income.

8. Initially, I prefer to deal with the objection raised by the learned counsel for the respondent regarding capacity of the claimants to file the claim petition as dependents. In fact, in view of Section 166(1)(c) of the Motor Vehicles Act, 1988, the claim petition can be filed by any legal representative of the deceased. Therefore, all the claimants being the sons of the deceased, after the death of deceased represent estate of the deceased and being legal representatives they can file claim petition under Section 166 of the Motor Vehicles Act. So also, the Apex Court in **Gujarat State Road Transport Corporation, Ahmedabad** (supra) held that :

> " We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by S.110-A to S.110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the

> Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in S.110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by S. 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under S.110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Magjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under S. 110-A of the Act if he is a legal representative of the deceased. “

However, the ratio of **Smt. Manjuri Bera** (supra) that the married daughter cannot be denied compensation on the ground that she is not dependent on deceased is not applicable due to distinguishing fact that it was application under

Section 140 of the Motor Vehicles Act. In view of this legal position, when all the claimants were residing together with their deceased parents and when at the time of the death of parents, claimant nos. 2 and 3 were only taking education, they cannot be excluded from the category of dependents. Even claimant no.1 being member of the joint family, though in service, will be considered as dependent of his parents.

Regarding second objection of learned counsel for respondent no.2 about the appointment of claimant no.2 on compassionate ground in the same Bank where the deceased Shrawan was serving as a peon, the legal position is absolutely clear. In "**Vimal Kanwar and Ors. Vs Kishore Dan and Ors.**" **[(2013) 7 SCC 476]**, the Apex Court held that :

> " Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no

> correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

In view of this legal position, only because claimant no.2 obtained service on compassionate ground after death of his father, he cannot be excluded from claiming compensation on account of death of his father. So also, claimant no.3 was not in service on the date of accident. Therefore, merely because he joined service after the death of his parents, he cannot be excluded from the category of dependents. I hold that all the claimants can claim compensation from the owner and insurance company as dependents of the deceased.

9. While determining the quantum of compensation, at first, I deal with Motor Accident Claim Petition No.401 of 2002, in which income of deceased Shrawan is the relevant factor. Claimants have filed Form 16 under Income Tax Act of the period April 2002 to March 2003. It shows that the gross income of the deceased Shrawan Patil was Rs.176241/- and income tax of Rs.4342/- was deducted at source by the Bank. Therefore, annual income of deceased is assessed as Rs.176241-4342=171899/-. From this income, professional tax @ Rs.175/- per month, i.e. annual professional tax Rs.175x12=2100/- is to be deducted from gross salary. Thus, annual salary minus tax is assessed as Rs.171899-2100=169799/-.

Considering the age of deceased Shrawan as 50 years at the time of his death, in view of guidelines issued by the Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra) 15 per cent income is to be added, which is assessed as 24470/-. Thus, total contribution of deceased to his family is assessed as Rs.169799+24470=194269/-.

The dependents in the family of the deceased being 3 in number, 1/3rd income is to be deducted towards personal expenses of the deceased. 1/3rd income is assessed as Rs.64756/-. Thus, total contribution by deceased to his family is assessed as Rs.194269-64756=129513/-. Thus Rs.129513/- is the multiplicand.

Applying multiplier as 13 to the multiplicand of Rs.129513/-, loss of dependency is assessed as Rs.129513x13=1683669/-.

In addition to this, under conventional head, the claimants are entitled to Rs.15000/- towards loss of estate and Rs.15000/- towards funeral expenses, which is assessed as Rs.30000/-.

Thus the claimants are entitled to total compensation under different heads as under :

Loss of dependency	:	Rs.1683669/-
Loss of estate	:	Rs. 15000/-
Funeral expenses	:	Rs. 15000/-
Total	:	Rs. 1713669/-

This compensation of Rs.1713669/- (Rs.Seventeen Lac Thirteen Thousand Six Hundred

Sixty Nine Only) shall be inclusive of compensation received under no fault liability. Claimants are also entitled to receive interest at the rate of nine per cent per annum on this amount of Rs.1713669/- from the date of filing of petition till realization of the compensation amount.

Thus, in Motor Accident Claim Petition No. 401 of 2002, the award passed by the Tribunal deserves to be modified to enhance the compensation amount to the extent of Rs.1713669/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the compensation amount.

10. Now turning to the Motor Accident Claim Petition No. 402 of 2002, wherein quantum of compensation is to be determined for the death of mother Nirmala Shrawan Patil. While determining the quantum of compensation, the age of deceased Nirmala plays important role. The School Leaving Certificate (Exh.56) of Nirmala shows that her date of birth is 7.12.1960. Therefore, on the date of her death she was 41 years of age. No doubt,

deceased Nirmala was only house wife. However, in view of recent verdict of the Supreme Court in "**Laxmidhar Nayak and Ors. Vs Jugal Kishore Behera and Ors." [2018 AIR (SC) 204]**, in the case of death of house wife, who was also agriculture labour, her notional income was assessed at the rate of Rs.4,500/- per month, where the victim died on 29.9.1991. Therefore, considering passage of time from 29.9.1991, some escalation of notional income of the house wife shall be presumed at the rate of Rs.5,000/- per month.

Considering the age of deceased as 41 years, in view of guidelines issued by the Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra), 25 per cent income is to be added in the monthly income of the deceased, which is assessed as Rs.1250/-. Thus, monthly income of deceased Nirmala is assessed as Rs.5000+1250=6250/-. Accordingly annual income of deceased Nirmala is assessed as Rs.6250x12=75000/-.

Claimants being three in number, 1/3rd income is to be deducted towards personal expenses of the deceased, which is assessed as Rs.25000/-. Thus, the contribution of deceased to her family is assessed as Rs.75000-25000=50000/-.

In view of guidelines issued by the Supreme Court in **Smt. Sarla Verma and Ors.**(supra) multiplier of 14 is applicable. Thus loss of dependency is assessed as Rs.50000x14=700000/-.

In addition to this, under conventional head, claimants are entitled to Rs.15000/- towards loss of estate and Rs.15000/- toward funeral expenses, total Rs.30000/-.

Thus, the claimants are entitled for total compensation under different heads as under.

Loss of dependency	:	Rs.700000/-
Loss of estate	:	Rs. 15000/-
Funeral expenses	:	Rs. 15000/-
Total	:	Rs. 730000/-

Thus the appellants are entitled to total compensation of Rs.730000/- (Rs. Seven Lac Thirty Thousand Only) along with interest of nine per cent per annum from the date of filing of petition till realization of compensation amount including no fault liability amount.

Thus, in Motor Accident Claim Petition No. 402 of 2002, the award passed by the Tribunal deserves to be modified to enhance compensation to the extent of Rs.730000/- (Rs. Seven Lac Thirty Thousand Only) along with interest at the rate of nine per cent per annum, from the date of filing of petition till realization of compensation amount. It shall be inclusive of no fault liability amount.

11. In view of above discussion, both the appeals deserve to be allowed. Accordingly, First Appeal No. 3399 of 2011 and First Appeal No. 3397 of 2011 are allowed.

The award passed in Motor Accident Claim Petition No. 401 of 2002 be modified in the above terms to enhance compensation to the extent of Rs. 1713669/- (Rs.Seventeen Lac Thirteen Thousand Six Hundred Sixty Nine Only) along with interest at the rate of nine per cent per annum from the date of filing of petition till realization of compensation amount, including no fault liability amount.

Award passed in Motor Accident Claim

Petition No. 402 of 2002 be modified in the above terms to enhance compensation to the extent of Rs.730000/- (Rs. Seven Lac Thirty Thousand Only) along with interest at the rate of nine per cent per annum from the date of filing of petition till realization of compensation amount including no fault liability amount.

Parties shall bear their respective costs of appeals. First Appeal Nos. 3399 of 2011 and First Appeal No. 3397 of 2011 are disposed of in above terms. The appellants are permitted to withdraw the compensation amount deposited in this court. Deficit court fee, if any, be recovered from the appellants.

[**SUNIL K.KOTWAL, J.**]

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