

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1112 OF 2013
WITH
CIVIL APPLICATION NO. 12708 OF 2016**

Bajaj Allianz General Insurance
Company Limited,
through it's Branch Manager,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad

...Appellant
[Orig. Resp.no.2]

VERSUS

1] Bhimrao s/o Vitthalrao Kotgire,
age 55 years, occ. Service,

2] Anant s/o Bhimrao Kotgire,
age 23 years, occ. Education,

3] Subham s/o Bhimrao Kotgire,
age 13 years, occ. Education,
Minor U/g of No. 1
Bhimrao Vitthalrao Kotgire,

All R/o House No. 01/06/382,
Shrinagar, Nanded,

4] Gajanan s/o Vishwanath Solapure,
age major, occ. Business,
R/o Karegaon, Tq. Loha,
District Nanded

...Respondents
[Nos. 1 to 3 Orig. Claimants
No.4 Orig. Resp.no.1]

...

Shri S.G.Chapalgaonkar, advocate for Appellant
Shri A.S.Barlota, advocate for Resp. nos.1 to 3
Shri U.B.Bilolikar, advocate for Resp. no.4

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT

: 24.10.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT

: 01.11.2018

J U D G M E N T :

This appeal is directed by the insurance company against the judgment and award, passed by the Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No. 551 of 2009, where compensation of Rs.1085950/- was granted under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as, "the MV Act").

2. Respondent nos. 1 to 3 are original claimants and Respondent no.4 is original respondent no.1 in claim petition.

3. The parties hereinafter are referred as per their original status in claim petition.

4. Facts, leading to the institution of this appeal are that deceased Sharda was the wife of claimant no.1 and mother of claimant nos. 2 and 3. On 12.4.2009 at about 7 to 7.30 p.m. the deceased was proceeding towards Nanded from Loha, as pillion rider on the motor cycle driven by Ananda Babarao

Mate. When they reached to Harsad Pati, the tractor No. MH-26/K-6534, attached with trolley, dashed against the motor cycle. In the result, deceased sustained injuries, which resulted into her death. Therefore, the claimants filed Motor Accident Claim Petition before the Tribunal at Nanded claiming compensation of Rs.30,00,000/-.

5. Original Respondent no.1, who is registered owner of the offending tractor and trolley, though appeared, did not resist the claim petition by filling written statement. Only original respondent no.2 insurance company filed written statement (Exh.17) and raised all statutory defences available to it. Important defence raised by the insurance company is that the driver of the offending tractor did not hold valid and effective driving license at the time of accident and thereby respondent no.1 owner committed breach of the condition of policy of the insurance.

6. After considering the evidence placed on record, the Tribunal held that the accident

occurred due to rash and negligent driving of driver of offending tractor and respondent no.2 did not prove that the driver of the offending tractor did not hold effective and valid driving license. In the result, joint and several liability to pay compensation was saddled on respondent nos. 1 and 2.

7. Heard Shri S.G.Chapalgaonkar, learned counsel for the appellant, Shri A.S.Barlota, learned counsel for respondent nos. 1 to 3 original claimants and Shri U.B.Bilolikar, learned counsel for respondent no.4 owner of the offending vehicle.

8. Learned counsel for the appellant submits that though insurance company raised defence before the Tribunal that driver of the offending tractor did not hold driving license for driving transport or goods vehicle, the driving license placed on record indicates that the driver of the tractor held effective and valid driving license to drive light motor vehicle. He fairly concedes that in view of recent judgment of the Apex Court in

"Mukund Dewangan vs Oriental Insurance Company Limited" [AIR 2017 SC 3668], driver of the vehicle requires to hold license with respect to the vehicle and not with respect to type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in same class of vehicles, no separate endorsement is required to drive such vehicle. Light motor vehicle includes transport vehicle also. A person holding license to drive light motor vehicle can drive all class of vehicles including transport vehicle.

9. In view of this settled legal position, when the driving license of the driver of the offending tractor (Exh.41) shows that the driver was holding driving license to drive light motor vehicle like tractor throughout India and when this license is valid from 31.8.2004 to 30.8.2024, in view of verdict of Apex Court in above cited authority, the defence taken by the insurance company holds no substance.

10. Even learned counsel for appellant assailed

the judgment of the Tribunal only on the count of quantum of compensation. He submits that by amending the claim petition, the claimants pleaded that the deceased was non-earning member of the family and relying on Second Schedule of Section 163A of the MV Act, the claimants claimed 1/3rd income of claimant no.1 as notional income of deceased Sharda. He submits that while determining the quantum of compensation in the proceeding under Section 166 of the MV Act, the Second Schedule of Section 163A of the MV Act cannot be considered. He submits that there cannot be enhancement in the compensation awarded by the Tribunal in absence of Cross-objection filed by the claimants. He submits that quantum of compensation needs to be reduced to the extent of Rs.5,90,000/-.

11. Learned counsel for original claimants submits that deceased Sharda is considered as house wife. Her notional income cannot be less than Rs.6,000/- per month. He submits that in view of the verdict of **"National Insurance Company Ltd. Vs Pranay Sethi and others[2018 (3) Mh.L.J. 70],**

considering the age of deceased at the time of death, 25 per cent income is to be added in the monthly notional income of the deceased towards loss of future prospects. Therefore, there shall be substantial enhancement in the compensation amount payable to the claimants. He submits that the income of claimant no.1 can be considered while determining the notional income of deceased in accordance with the Second Schedule of Section 163A of the MV Act.

12. In view of above rival submissions, as the insurance company has waived the defence taken by it regarding lack of valid driving license of the driver of the offending vehicle, I have to restrict my discussion only regarding reasonable and fair compensation payable to the claimants.

13. In view of judgments of the Apex Court in the case of **"National Insurance Company Ltd. Vs Pranay Sethi and others"** (supra) and **"Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and**

Anr." [2009 (5) Mh.L.J. 775], the remedies under Section 166 and under Section 163A of the MV Act are distinct. The claimants have option to choose any one of these two remedies. Thus, once the claimants have chosen the remedy of filing claim petition under Section 166 of the MV Act, the Second Schedule of the MV Act, which can be considered to determine the quantum of compensation payable to the claimants under Section 163A of the MV Act, on the basis of structural formula prescribed under Second Schedule, cannot be considered in the claim petition filed under Section 166 of the MV Act. Thus, the quantum of compensation determined by the Tribunal, on the basis of Second Schedule of Section 163A of the MV Act, is absolutely erroneous. 1/3rd monthly income of claimant no.1 cannot be treated as notional monthly income of the deceased. Therefore, when according to claimants, the deceased was non-earning member of the family, the notional income of the deceased is to be determined only as notional income of house wife.

14. In **"Lata Wadhawa and others vs State of Bihar and others"** [(2001) 8 SCC 197], after considering the multifarious services rendered by house wife to her family, the Apex Court assessed the notional income of the house wife at the rate of Rs.3,000/- per month in case of house wife of the age between 34 to 59 years. This quantum of notional income for house wife was assessed by Apex Court in the case where the said house wives died on 3.3.1989 in fire mishap. From 1989 till the date of accident, in the case at hand i.e. till 12.4.2009 about 20 years have passed. In other words, prior to 20 years, notional income of the house wife was assessed as Rs.3,000/- per month.

15. In **"Laxmidhar Nayak v. Jugal Kishore Behera"** (2018 AIR (SC) 204), notional income of house wife cum agricultural labour, who died in the year 1991 was considered as Rs.4500/- per month. Certainly due to passage of so many years, there would be substantial hike in the minimum wages of ordinary labours. Therefore, the notional income

of house wives needs to be considered at higher rate than considered in the year 1989 and 1991. On account of multifarious services rendered by house wife for her family, the expenses for cook service, maid servant service, housekeeping expenses, are saved. Even the emotional support of house wife to her husband, children and in-laws, cannot be assessed in terms of money. I hold that notional income of the deceased as house wife cannot be less than Rs.5,000/- per month.

The postmortem report of the deceased shows that at the time of death she was 41 years old. Thus, in view of guidelines issued by the Apex Court in the case of **"National Insurance Company Ltd. Vs Pranay Sethi and others"** (supra), as the deceased fall in between age of 40 to 50 years, there shall be addition of 25 per cent income while assessing monthly income of the deceased. Therefore, monthly notional income of the deceased is assessed as $\text{Rs.}5000+1250=6250/-$. It follows that the annual income of the deceased is $\text{Rs.}6250 \times 12 = 75000/-$.

As claimants are three in number, $1/3^{\text{rd}}$

income is to be deducted towards personal expenses of the deceased. Thus, annual contribution of the deceased to her family is Rs.75000-25000=50000/-.

Considering the age of the deceased as 48 years, in view of guidelines issued by the Apex Court in "**Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.**" (supra) multiplier of 13 is applicable in the case at hand. Thus, loss of dependency is assessed as Rs.50000x13=650000/-.

In addition to this, as per the guidelines issued by the Apex Court in "**National Insurance Company Ltd. Vs Pranay Sethi and others**" (supra), under conventional head, compensation of Rs.40,000/- is to be awarded for loss of consortium, compensation of Rs.15,000/- is to be awarded for loss of estate and Rs.15,000/- is to be awarded for funeral expenses.

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

Loss of Dependency	: Rs. 650000/-
Loss of Consortium	: Rs. 40000/-

Loss of Estate	: Rs.	15000/-
Funeral Expenses	: Rs.	15000/-

Total	: Rs.	720000/-

16. Therefore, appeal preferred by the insurance company deserves to be partly allowed to reduce the compensation awarded to the claimants. Accordingly, First Appeal No. 1112 of 2013 is partly allowed. The compensation awarded by the the Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No. 55 of 2009 is reduced to the extent of Rs.720000/- (Rs.Seven Lakh Twenty Thousand only) with interest thereon, at the rate of nine per cent per annum, from the date of filing of claim petition till realization of the compensation amount. This compensation shall be inclusive of compensation received by the claimants under no fault liability. The award passed by the Tribunal be modified accordingly as under :

" (i) Claim Petition is partly allowed with proportionate costs.

(ii) Opponent nos. 1 and 2 do jointly and severally pay compensation of Rs.720000/- to the claimant nos. 1 to 3

with interest thereon, at the rate of nine per cent per annum, from the date of filing of claim petition till realization of the compensation amount. This compensation shall be inclusive of compensation received by the claimants under no fault liability.

(iii) On deposit of this compensation, same be equally apportioned in between claimant nos. 1 to 3.

(iv) Out of the compensation payable to the claimants, 50 per cent amount shall be invested in fixed deposit for the period of three years.

(v) Premature withdrawal is not permissible. The concerned Bank be informed accordingly.

(vi) Remaining 50 per cent amount shall be equally paid to claimant nos. 1 to 3 by separate account payee cheques through the Tribunal.

(vii) Award be drawn accordingly."

17. Claimants are permitted to withdraw the compensation amount deposited by appellant in accordance modified award. The amount payable to claimants be remitted to Motor Accident Claims Tribunal, Nanded in M.A.C. Petition No. 551 of 2009 for payment and investment.

18. The surplus amount, if any, be refunded to the appellant insurance company.

19. Parties to bear their respective costs of the appeal.

20. Deficit court fee, if any, be recovered from the appellants as per rules.

21. Appeal is disposed of in above terms. Civil Application is disposed of accordingly.

[SUNIL K.KOTWAL, J.]

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