

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

FIRST APPEAL NO. 1135 OF 2011

Maharashtra State Road Transport
Corporation, through its Divisional
Controller, Division Nanded.
District Nanded.

Appellant.

Versus

1. Prabhakar Sopanrao Dorle
Age : 51 yrs, occu.: teacher
R/o Gandhipeth Bhum,
District Osmanabad.
2. Gangabai w/o Prabhakar Dorle
Age : 46 yrs, oucc.: household
R/o as above.
3. Shrikant Namdevrao Nittewad
Age : major, occu.: driver.
R/o 54, Parwati Niwas, Naiknagar,
Nanded.
4. New India Assurance Co. Ltd.
Through its Branch Manager,
Nanded.

Respondents.

Mr. B.S. Deshmukh, Advocate for the appellant.
Mr. H.I. Pathan, Advocate for respondent Nos.1 and 2.
Mr. S.J. Salunke, Advocate for respondent No.3 (absent).

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 7th December 2018.

Judgment pronounced on : 14th December 2018.

JUDGMENT.

1. This appeal is directed by Maharashtra State Road Transport Corporation (hereinafter referred to as "M.S.R.T.C."), who was the original respondent No.1 in Motor Accident Claim Petition No.575/2004, against the judgment and award passed by the Motor Accident Claims Tribunal, Nanded (hereinafter referred to as "Tribunal"), awarding compensation of Rs. 21,00,000/- in favour of the claimants. Under that award, 50% liability is saddled on original respondent No.1 and 50% liability was saddled on original respondent Nos.2 and 3 i.e. owner and Insurance Company of the jeep involved in the accident.

2. Hereinafter the parties are referred to by their status in the original claim petition.

3. The facts leading to institution of this appeal are that on 23.05.2004, the deceased Pradeep was travelling by Sumo Jeep bearing registration No. MH-26-C-5646 from Hadgaon towards Nanded by Hadgaon to Waranga road. That time offending S.T. Bus bearing registration No. MH-20-D-4097 came from opposite direction and gave dash to the said jeep, as the driver of Bus lost his control. In that accident, the deceased

Pradeep sustained severe injuries and ultimately succumbed to those injuries on way to the hospital. Therefore, the claimants, who are the parents of deceased Pradeep filed this claim petition for compensation.

4. By filing written statement (Exh.21) respondent No.1 resisted the claim, contending that the accident occurred due to negligence on the part of jeep driver, who was under the influence of liquor and who drove the jeep in rash and negligent manner. S.T. Bus was on the extreme left side of the road.

5. After considering the evidence on record, the Tribunal held that the driver of both vehicles involved in the accident equally contributed negligence and therefore, liability was equally saddled on respondent No.1 and respondent Nos.2 and 3.

6. No cross appeal or cross-objection is filed by respondent Nos.2 and 3 or by the original claimants.

7. Heard Mr. B.S. Deshmukh, learned Counsel for the appellant and Mr. H.I. Pathan, learned Counsel for respondent Nos.1 to 3 (claimants). Learned Counsel for respondent No.3 remained absent at the time of final hearing.

8. Learned Counsel for the appellant assailed the judgment passed by the Tribunal only on the ground of exorbitant quantum of compensation awarded by Tribunal. He submits that though there was no evidence regarding practice of deceased as Doctor and though deceased was continuing his study in Post Graduation, the Tribunal erroneously considered his notional income as Rs. 20,000/- per month. He submits that in absence of evidence, at the most the notional income of deceased can be considered at the rate of Rs.3,000/- per month. He placed reliance on the case of **“New India Assurance Co. Ltd., Vs. Kalpana and others”** [2007 (4) Mh.L.J. 411].

9. His next submission is that the Tribunal erroneously considered the age of deceased as 25 years and applied multiplier of “17”. He prays for reduction of quantum of compensation awarded by the Tribunal.

10. In reply, learned Counsel for the original claimants has pointed out that the deceased was a Registered Medical Practitioner. He has drawn my attention towards certificate of registration (Exh.51) issued by Medical Council and submits that the Tribunal rightly considered notional income of deceased at

the rate of Rs. 20,000/- per month. His next submission is that the Tribunal did not consider loss of future prospects while assessing the monthly income of deceased. He submits that even interest is awarded at the rate of Rs. 7% per annum which is to be enhanced to the extent of Rs.9% per annum.

11. At the outset, I must make it clear that the deceased being a bachelor at the time of his death, only claimant No.2 Gangabai-mother of deceased, can be considered as dependent on the deceased, in view of the law settled by Apex Court in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”**, (AIR 2009 SC 3104).

12. No doubt, no evidence has been placed on record by claimants to prove the exact date of birth of deceased. However, the Tribunal considered age of deceased as 25 years. The postmortem report (Exh.43) of the dead body of deceased indicates that at the time of death the deceased was 26 years old. Therefore, on the basis of this documentary evidence, I hold that at the time of death deceased was of 26 years young person. Therefore, in view of law settled by Apex Court in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”**,

multiplier of “17” is applicable in the case at hand.

13. In this appeal mainly notional income of the deceased is the debatable point. According to learned Counsel for the appellant, it cannot be more than Rs. 3,000/- per month. However, it cannot be forgotten that Degree Certificate (Exh.46) placed on record by the claimants shows that in the month of May/June – 2002 the deceased passed M.B.B.S. and he was registered as Medical Practitioner by Maharashtra Medical Council, Mumbai (Exh.51) on 12.09.2003. In view of this record, the contention of claimants is certainly acceptable that the deceased used to earn his livelihood by practicing in medicines.

14. The claimants claim that monthly income of deceased was Rs.25,000/-. It is to be noted that only because the deceased was pursuing his Post Graduation, inference cannot be drawn that he was not practicing in medicines. Undisputedly, the accident occurred on 23.05.2004. Therefore, the admission given by claimant Prabhakar (PW-1) in his cross-examination that on the date of accident deceased was not registered for practicing in medicines, is absolutely erroneous admission and no importance can be given to that admission. In the circumstances,

considering the young age of deceased, his qualification as M.B.B.S. and his registration as practicing Doctor in medicines since 2003, I have no hesitation to hold that notional income of the deceased at the rate of Rs. 20,000/- per month is just and reasonable.

15. In the case of **“New India Assurance Co. Ltd., Vs. Kalpana and others”** (supra) the deceased was an ordinary taxi driver and in that case the Apex Court considered his notional income as Rs. 3,000/- per month even after deducting personal living expenses. Thus, this case relied by learned Counsel for the appellant is distinguishable and not applicable in the case at hand.

16. On the other hand, in view of the law settled by Larger Bench of the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [(2017) 16 SCC 680]**, considering the age of deceased below 40 years and his occupation as Medical Practitioner, 40% amount is to be added in his monthly income. Thus, the monthly income of deceased comes to Rs. 28,000/- (20,000 + 8,000). Consequently, his annual income comes to Rs. 3,36,000/- (28,000 x 12). Out of

this income $\frac{1}{2}$ amount is to be deducted towards personal expenses of the deceased as per the guidelines issued by Apex Court in the case of “**Sarla Varma**” (supra). Thus, the annual contribution by deceased to his family comes to Rs. 1,68,000/-. If this multiplicand is multiplied by multiplier of “17”, the loss of dependency would come to Rs.28,56,000/-.

17. In addition to this, in accordance with law settled by Apex Court in the case of “**Pranay Sethi**” (supra), claimant No.2 is entitled to compensation of Rs.15,000/- under the head of loss of estate and Rs.15,000/- under the head of funeral expenses.

18. As the deceased was unmarried, no compensation can be awarded under the head of consortium, as awarded by Tribunal.

19. Thus, the claimant No.2 is entitled to following compensation under different heads :-

Loss of dependency	:-	Rs. 28,56,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	<u>Rs. 15,000/-</u>
Total :-		<u>Rs. 28,86,000/-.</u>

(Rupees Twenty Eight Lakh Eighty Six Thousand)

20. As the M.S.R.T.C. dragged the claimants in this litigation for about seven years, the claimants could not get fruits of award passed by the Tribunal. Therefore, in view of the law settled by Apex Court in the case of **“Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy” [(2011) 14 SCC 481]**, claimant No.2 is entitled to interest on compensation amount at the rate of Rs. 9% per annum from the date of filing of petition till realization of compensation amount.

21. The compensation amount shall be inclusive of the amount received under the head of “no fault liability”.

22. Learned Counsel for the appellant though raised objection that in absence of cross-objection the compensation cannot be enhanced. However, in view of the law settled by Apex Court in the case of **“Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others” [2015 (4) SCC 237]**, in the appeal while determining fair and reasonable compensation, this Court can enhance it even in absence of cross-objection or cross appeal by the claimants.

24. Accordingly, I hold that the appeal preferred by M.S.R.T.C. deserves to be dismissed. However, award passed by

Tribunal, Nanded in M.A.C.P. No.575/2004 deserves to be modified to enhance the compensation.

25. In the result, First Appeal No. 1135 of 2011 is dismissed. The award passed by Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No.575/2004 is modified to enhance the compensation to the tune of Rs.28,86,000/- (Rupees Twenty Eight Lakh Eighty Six Thousand), inclusive of the compensation received under the head of “no fault liability”, with interest on compensation amount at the rate of Rs.9% per annum from the date of filing of petition till realization of compensation amount. Claimant No.2 Gangabai Prabhakar Rao Dorle is entitled to receive the said compensation. Out of compensation amount 50% amount shall be paid by original respondent No.1 M.S.R.T.C. And remaining 50% shall be paid by original respondent Nos.2 and 3 jointly or severally.

26. The award be modified accordingly.

27. If the compensation amount is deposited in this Court, it be remitted to the concerned Tribunal, for its payment.

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

Appeal is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/