IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2647 OF 2017

1] Suresh s/o Sukhadeo More,
age 34 years, occ. Labour,

2] Shobha w/o Suresh More,
age 31 years, occ. Labour,

Both R/o Kolhewadi
(Wakan Vasti), Tq.Sangamner,
District Ahmednagar ...Appellants
[Orig.Claimants]

VERSUS

1] The Branch Manager,
Shriram General Insurance Co.,
E-8, EPIP, Eco Industrial Area,
Shitapura, Jaipur,
Rajasthan – 302022,

2] Deepak s/o Dilip Bhot,
age 32 years, occ. Business,
R/o Jorve, Tq. Sangamner,
Dist. Ahmednagar ...Respondents
[Orig. Opponents]

W I T H

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age 31 years, occ. Labour,
R/o Kolhewadi (Wakan Vasti),
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...

Mr. K.N.Shermale, advocate for Appellants
Mr. S.G.Chapalgaonkar, advocate for Respondent no.1
Respondent no.2 served

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 12.09.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 19.09.2018

J U D G M E N T :

These both appeals are preferred by original claimants, against the judgment and award, dated 27.3.2017, passed by the Motor Accident Claims Tribunal, Sangamner, in M.A.C. Petition Nos. 81 of 2011 and 82 of 2011, respectively.

2. Motor Accident Claim Petition No.81 of 2011 is filed by parents of three year old child,

who died on 12.12.2010 in motor vehicle accident due to Tata 407 Tempo No. MH-15/G-1823. In that accident, even petitioner no.2 Shobha Suresh More, who is the mother of deceased Kiran More also sustained injuries.

3. Learned Member of the Tribunal partly allowed M.A.C.Petition No. 81 of 2011 and granted total compensation of Rs. 2,25,000/- including interim compensation granted under the no faulty liability. The petition against respondent no.1 Insurance Company was dismissed and award was passed only against respondent no.2, who is the registered owner of above said offending vehicle.

4. Even respondent no.2, the registered owner of the offending vehicle, has filed cross-objection in the same appeal challenging the order of the Tribunal exonerating respondent no.1 Insurance Company.

5. Heard Shri K.N.Shermale, learned counsel for the appellants and Shri S.G.Chapalgaonkar,

learned counsel for respondent no.1 Insurance Company. None appeared for respondent no.2.

6. Learned counsel for the appellants submits that the driver of offending vehicle was holding valid driving license to drive light motor vehicle (non-transport). NO doubt, the offending vehicle is light motor transport vehicle. However, in view of the judgment of three Judges Bench of the Supreme Court in the case of **"Mukund Devangan vs Oriental Insurance Company Limited" [(2017) 14 SSC 663]**, there is no requirement to obtain separate endorsement to drive transport vehicle and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. Learned counsel for the appellants submits that in view of this legal position, the order passed by the Tribunal exonerating the Insurance Company from all liabilities is incorrect.

7. Shri S.G.Chapalgaonkar, learned counsel

for respondent no.1 fairly concedes that in view of the verdict of the Bench of three Judges of the Supreme Court, in above referred authority, now the petitioners have proved that at the time of accident the driver of the offending vehicle was holding valid driving license. Therefore, the Insurance Company cannot be absolved from its liability to indemnify respondent no.2 registered owner of the offending vehicle.

8. In view of this undisputed position before this Court, I have no hesitation to hold that respondent nos. 1 and 2 are jointly and severally liable to pay the compensation to the appellants on account of accidental death of their three year old son Kiran.

9. Learned counsel for the appellants submits that while partly allowing the claim petition, the Tribunal awarded meager compensation of Rs. 1,00,000/- under the head “loss of dependency” and awarded Rs. 1,25,000/- under the head “non-pecuniary damages”. He submits that the

compensation awarded under the head “loss of dependency” needs to be modified to award more compensation than awarded by the Tribunal.

10. In reply, learned counsel for respondent no.1 submits that the Tribunal awarded reasonable compensation under the head of loss of dependency. However, under the head of non-pecuniary damages, the Tribunal awarded exorbitant compensation in view of the judgment of Larger Bench of the Supreme Court in the case of **“National Insurance Company Limited vs Pranay Sethi” [(2017) 16 SCC 680].**

11. Learned counsel for the appellants heavily placed reliance on the case of **“R.K.Malik vs Kiran Pal” [AIR 2009 SC 2506]**, where the Apex Court approved grant of compensation of Rs.75,000/- under the head of non-pecuniary damages in the case of child death.

12. In the case at hand, undisputedly at the time of death, the son of the petitioners, was only

3 years old child. In the case of **National Insurance Company Limited vs Pranay Sethi** (supra) the Larger Bench of the Supreme Court, after considering various previous judgments of the Apex Court held that as regards the cases where the age of the victim happens to be up to 15 years, in such cases irrespective of Section 163-A or 166 of the Motor Vehicles Act, 1988, an assessment as indicated in second schedule subject to correction as pointed out in column 6 of the table in the case of **"Sarla Verma vs Delhi Transport Corporation" [2009 (5) Mh.L.J. (SC) 775]** should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of 1988 Act. Regarding non-pecuniary damages, the Larger Bench has approved compensation of Rs. 40,000/- for loss of consortium, Rs.15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate.

13. As this is the case of child death, question of awarding non-pecuniary damages

compensation under the head of loss of consortium does not arise. Therefore, under the head of non-pecuniary damages, the appellants are entitled to only 15,000/- under the head of loss of estate and Rs.15,000/- under the head of funeral expenses i.e. total Rs.30,000/- as compensation.

14. Reasonable and just compensation under the head of loss of dependency is to be calculated taking into consideration Schedule 2 of Section 163-A of the Motor Vehicles Act, 1988 subject to certain modification. Under Schedule 2 of Section 163-A of the Act, notional income of non-earning person is Rs.15,000/- per annum and $1/3^{rd}$ amount is to be deducted towards self-expenditure of the deceased. However, this aspect is also considered by the Supreme Court in the case of **"Kishan Gopal and another vs Lala and others" [2014 (3) Mh.L.J. 530].** After considering the verdict of the Supreme Court in **"Lata Wadhwa vs State of Bihar" [(2001) 8 SCC 197]**, the Supreme Court observed that, "the rupee value has come down drastically from the year

1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/-”. The ratio of this case cannot be distinguished only on the ground that in the case at hand the deceased was only 3 years old. Deceased Kiran, had he been alive, would have certainly contributed substantially to the family of the appellants by working hard. Thus, I have no hesitation to hold that in view of the verdict of the Division Bench in the case of **Kishan Gopal** (supra), the notional income of deceased Kiran is to be calculated as Rs.30,000/- per annum. After deducting 1/3rd amount towards his personal expenses, the loss of dependency can be calculated as Rs.20,000/- per annum.

15. Considering lack of evidence regarding education and school in which the deceased was

attending his pre-primary education, no compensation can be awarded under the head of future prospects. Thus, by applying the legal principles laid down in **Sarla Verma** (supra), which is also approved by Larger Bench in the case of **National Insurance Company Limited vs Pranay Sethi** (supra) the multiplier of 15 can be applied to the multiplicand. Thus, loss of dependency to the deceased is calculated as 20,000 x 15 = 3,00,000/-.

16. As observed above, the appellants are entitled to compensation of Rs.3,00,000/- under the head of loss of dependency and Rs.30,000/- under the conventional head. Thus, the appellants are entitled to total compensation of Rs.3,30,000/- including compensation awarded under no fault liability. As respondent no.1 contested the claim of the parents of the child for last seven years, the appellants are also entitled to interest at the rate of nine per cent per annum from the date of filing of the petition till realization of the amount. Respondent nos. 1 and 2 are jointly and severally liable to pay this compensation. It

follows that these appeals deserve to be allowed. Even, cross-objection filed by respondent no.2 also deserves to be allowed.

17. First Appeal No. 2647 of 2017, filed against the judgment and award in M.A.C.Petition No. 81 of 2011, is allowed. Respondent nos. 1 and 2 do jointly and severally to pay the compensation of Rs.3,30,000/- to the appellants (inclusive of interim compensation under no fault liability) with interest at the rate of nine per cent per annum from the date of filing of the petition till realization of the amount. The apportionment and investment as directed by the Tribunal is approved.

First Appeal No. 2648 of 2017 filed against M.A.C.Petition NO. 82 of 2011 is also allowed. Respondent nos. 1 and 2 are jointly and severally liable to pay the compensation of Rs.60,000/- inclusive of no fault liability amount of Rs.25,000/- with interest at the rate of nine per cent per annum from the date of filing of the petition till realization of the amount.

The award passed in M.A.C. Petition Nos.

81 of 2011 and 82 of 2011 by the Motor Accident Claims Tribunal, Sangamner be modified accordingly

Parties shall bear their own costs.

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

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