

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

FIRST APPEAL NO. 4391 OF 2016

1] Papita w/o. Parmeshwar Maske,
Age 43 years, Occ. Household,d.

2] Parmeshwar s/o. Manikrao Maske,
Age 45 years, Occ. Nil.

Both R/o. Gawalwadi, Tq. and Dist. Beed.

...APPELLANTS

versus

1] Maharashtra State Road Transport Corporation
Summons to be served through Divisional Controller,
Maharashtra State Road Transport Corporation, Beed.
Tq. and Dist. Beed.

2] Sandipan s/o. Wamanrao Shelke,
Age Major, Occ. Driver,
The Maharashtra State Road Transport Corporation, Dharur,
Tq. Dharur, Dist. Beed.

...RESPONDENTS

.....
Mr. Mohit R. Deshmukh, Advocate for Appellants
Mr. D.S. Bagul, Advocate for Respondent Nos.1 and 2.
.....

CORAM : K.K. SONAWANE, J.

RESERVED ON : 21/11/2017

PRONOUNCED ON : 8/1/2018

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Heard. Admit. Matter is taken up for final hearing on merit with consent of both the parties.

2] Being dissatisfied with the quantum of compensation amount determined by the MACT, Beed vide judgment and award dated 19.3.2015, in MACP No. 91 of 2010, the appellants-original claimants, taking recourse of remedy under Section 173 of the Motor Vehicles Act (for short “the Act 1988), preferred the present appeal for redressal. It has been alleged that the compensation amount awarded by the Tribunal is meager, unjust and unreasonable one. Therefore, claimants claimed enhancement of compensation awarded by the Tribunal in this appeal.

3] The genesis of the appeal culled out in brief is that, the deceased Vinod s/o. Parmeshwar Maske, 20 years old, was the milk-man and agriculturist resident of Gawaliwadi, Tal. and Dist. Beed. The claimants are his legal representatives, being parents. On the ill-fated day of incident, i.e. on 28.2.2010, deceased Vinod started proceeding towards Palwan village dairy on his bicycle for delivery of milk. But, it had something different in store for him. Suddenly, the vehicle - ST bus bearing Registration No. MH-12/AV 9420, arrived speedily from the backside and gave dash to the bicycle of deceased Vinod. The driver of the ST bus was very negligent and rash while driving the vehicle. He did not pay any heed to the traffic conditions on the road, resulting into occurrence of alleged vehicular accident. The deceased Vinod received fatal injuries and died instantaneously on the spot

itself. The information about the incident was passed on to Police Station Beed (Rural). The police personnel rushed to the spot and drawn panchanama of scene of occurrence. The dead body of deceased Vinod was escorted to the Government Hospital, Beed. After inquest panchanama, the Medical Experts conducted post mortem on the mortal remains of deceased Vinod. The concerned Medical Officer opined that deceased Vinod succumbed to fracture injuries to his skull. The police registered crime No. 24 of 2010 under Section 304-A and 279 of IPC against the driver of the vehicle ST Bus involved in the accident. The parents of deceased Vinod blamed the driver of the ST Bus for untimely death of their son Vinod. Thereafter, the appellants/claimants by invoking remedy under Section 166 of the Act 1988, filed the application for compensation of Rs. 10 Lakhs, for the accidental death of their son Vinod.

4] In response to the notices, both the respondents appeared and submitted their written statement (Exh.12) on record. The respondent denied the allegations of rash and negligent driving of ST Bus involved in the accident. It has been contended that deceased Vinod himself lost control of the bicycle and banged on the ST Bus. The respondents are not liable for any amount of damages/compensation in this case.

5] After considering rival submissions, the learned Member of the Tribunal framed requisite issues and proceeded to adjudicate the matter in controversy on merit. In order to establish claim, the claimant Parmeshwar

Maske, stepped into the witness box and adduced his evidence on oath (Exh.19). He has also examined PW-2 Raosaheb Pandit (Exh.22) and PW-3 - Jayram Kale (Exh.23) in support of his claim. The claimants also relied upon the documents of police record comprising Accident Report (Exh.25). FIR (Exh. 26), Spot Panchanama (Exh.27), Post Mortem Report (Exh.28) Charge sheet (Exh 29) and Inquest Panchanama (Exh.30) etc. In refutation, respondents examined driver of the ST Bus involved in the accident at (Exh.32). The learned member of the Tribunal, after appreciating oral and circumstantial evidence on record, was pleased to allow the claim petition partly and issued directions to both the respondents for payment of sum of Rs. 6,70,000/- towards compensation, jointly and severally, to the claimants i.e. parents of deceased Vinod within stipulated period. But the claimants did not satisfy with the quantum of compensation amount determined by the Tribunal. It has been alleged that the Tribunal should have granted more amount, including amount of future prospects. Hence, claimants rushed to this court and filed the present appeal under Section 173 of the Act, 1988 for enhancement of compensation amount.

6] The learned counsel Shri Deshmukh for appellants assailed that the impugned judgment and award passed by the Tribunal is erroneous, imperfect and not as per the provisions of law. The Tribunal did not appreciate evidence on record in its proper perspective. According to learned counsel Shri Deshmukh, deceased Vinod was 20 years old, stout and healthy youngster. He was eking livelihood by doing agricultural work as well

as he used to sell milk for earning. The income of the deceased was Rs.2,40,000/- per annum i.e. Rs. 20,000/- p.m. But, the Tribunal did not consider properly the amount of income of deceased Vinod. The Tribunal overlooked the sources of income as well as his future prospects. The learned counsel Shri Deshmukh gave much more emphasis on the exposition of law laid down in the case of ***“National Insurance Co. Ltd. Vs. Pranay Sethi and others (2017) SCC Online SC 1270.*** He submits that the Honourable Apex Court specifically ruled that, in case deceased was self-employed person, an addition of 40% of the established income should be calculated where the deceased was below the age of 40 years. He pointed out that the Tribunal considered the established income of deceased Vinod to the tune of Rs. 6,000/- p.m. and after addition of 40% of the total income, i.e. Rs. 2,400/- p.m. towards future prospects, the multiplicand would be Rs. 6,000/- + 2400/- = 8,400/-. After deducting $\frac{1}{2}$ amount for his personal expenses, the annual dependency would come to Rs.4,200/- x 12 = 50,400/- by application of multiplier of 18, the pecuniary loss would accrue to Rs. 50,400/- x 18 = 9,07,200/-. Therefore, learned counsel Shri Deshmukh claimed enhanced compensation of Rs. 2,37,200/- being just and reasonable compensation in this case. He also harped on the circumstances of non-pecuniary loss quantified by the Tribunal. He claimed Rs. 15,000/- each for funeral expenses and loss of estate. The learned counsel Shri Deshmukh explained that the Tribunal did not appreciate source of income of deceased Vinod from his agricultural land as well as milk business. He was also indulged in the business of sale and purchase of cattles. According to

learned counsel the Tribunal should have considered at least the notional income of deceased @ Rs. 8,000/-p.m. in this case.

7] Per contra, learned counsel Shri Bagul for respondent Corporation contends that there was no concrete evidence to establish exact amount of monthly income of deceased Vinod on record. Therefore, in view of uncertainty in the earning from agricultural land as well as milk business, the Tribunal has correctly dealt with the circumstances and determined notional income of deceased Vinod @ Rs. 6,000/- p.m. He relied upon the principles laid down by the Hon'ble Apex Court in the case of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation reported in AIR 2009 SC 2104 (1).***

8] After giving anxious consideration to the rival contentions propounded on behalf of both sides, it reveals that the appellants attempted to raise three-fold objections to the findings expressed by the Tribunal while awarding compensation under Section 166 of the Act, 1988, in favour of claimants. The objections are as below :-

[i] The notional income @ Rs. 6,000/- p.m. determined by the Tribunal was at the lower side and not within the ambit of “just compensation” as contemplated under section 168 of the Act, 1988.

[ii] The Tribunal did not take into consideration addition of amount of future prospects to the income of deceased Vinod for determination of multiplicand.

[iii] The improper and erroneous calculation of amount under the conventional head of “non-pecuniary damages”.

9] At the inception, it is worth to mention that the findings recorded by the Tribunal in regard to rash and negligent driving of respondent No.2 i.e. driver of the ST Bus as well as age and notional income @ Rs. 6,000/- p.m. determined by the Tribunal all are not challenged on behalf of respondent MSRTC in this case, nor any appeal came to be filed by respondents. Therefore, there is no impediment to appreciate these findings of Tribunal being conclusive one for respondent MSRTC.

10] Admittedly, the deceased Vinod was 20 years old bachelor indulged in the agricultural profession. He was also doing the business of selling milk for livelihood. It has been alleged that deceased Vinod was earning Rs. 15,000/-p.m. from his dairy business. The claimant Parmeshwar adduced his evidence on record before the Tribunal. He has also examined witness Jairam Bhagwan Kale in support of his claim. It has brought on record that deceased Vinod used to deliver daily two liters quantity of milk @ Rs. 35/- per liter at the house of witness Jayram Kale. But, in absence of corroboration, it would difficult to ascertain credibility of witness Jairam Kale. In contrast, his evidence appears to be cryptic and slender in nature. Moreover, claimants produced documents of certificates issued from concerned dairy as well as receipts about sell and purchase of cattles. Unfortunately, bare production of these documents on record, would not

sub-serve the purpose for want of credible evidence to fortify these documents. Eventually, these documents remained unproved on record for lack of substantive evidence.

11] It has been asserted on behalf of appellants that the strict proof of facts is not required in motor accident claim proceedings. These are the summary proceeding in nature and if there is some sort of evidence available on record to arrive at the conclusion, that itself is sufficient for favourable inference. It is true that the proceedings under Act 1988 are summary in nature and, therefore, evidence should not be scrutinized in the manner as is done in a civil suit or criminal proceeding, like rule of preponderance of probability or rule of proof beyond reasonable doubt. But, it does not mean that without any persuasive evidence, the claim petition can be adjudicated bare on the basis of unproved documents produced on record.

12] In the instant case, there were no endeavour to unfurl the circumstances relating to the source of income of deceased Vinod to determine the multiplicand. The act of bare production of extract of documents on record without its proof would not itself sufficient for appreciation. No substantive evidence proximate to genuineness or trust-worthiness of documents was available on record. In absence of some sort of legal evidence persuasive in nature on record it would difficult to draw inference relating to source of income of deceased Vinod, as alleged on

behalf of appellants/claimants. In such peculiar circumstances, It is hard to believe that the notional income of deceased Vinod would be Rs. 8,000/- p.m. instead of Rs. 6,000/- p.m. as calculated by the Tribunal in this case. Hence, objection raised in regard to determination of inappropriate multiplicand is unsustainable and incomprehensible one.

13] Now, turning to the another spectrum of the matter pertains to future prospects of deceased Vinod, it is to be noted that, initially, it was not permissible to add amount of future prospects to the income of deceased who was self employed or was on a fixed salary except in rarer and exceptional cases. Their Lordships of Honourable Apex Court, in the case of “Smt Sarla Varma” (cited supra), in para.11 has observed as below :-

“11. In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted.

Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

14] But subsequently, their Lordships of Hon'ble Apex Court while dealing with the reference made in the case of ***Smt. Reshma Kumar Vs. Madan Mohan, (2013) 9 SCC 65***, noticed divergence of opinion relating to determination of compensation under Section 163-A and 166 of the Act, 1988. Moreover, in the case of ***Rajesh Vs. Rajgurusingh, (2013) 9 SCC 54***, it has been held that in case of self employed persons, if the deceased - victim of the accident is below 40 years of age there must be addition of 50% to the actual income of the deceased while calculating the future prospects. However, in view of dichotomy in regard to principles of addition to actual income towards future prospects, matter came to be referred to the Larger Bench of Hon'ble Apex Court for authoritative pronouncement. The Five Judges Bench of Hon'ble Apex Court in the case of ***National Insurance Company Versus Pranay Sethi and others (2017) SCC On-line 1270***, delineated the legal guidelines that in case the deceased was self employed or on fixed salary and he was below 40 years of age, there should be addition of 40% of his established income towards future prospects and in case deceased was in between 40 to 50 years age, addition of 25% would be reasonable. The observations of Their Lordships in para 59 are reproduced below :-

"59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under [Section 168](#) of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in-apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human

attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable”.

15] Eventually, in order to bring consistency and uniformity while computation of just compensation as envisaged under Section 168 of Act 1988, the Larger Bench of Hon'ble Apex Court, ruled and elucidated in para. No.61 of the Pranay Sethi's case referred supra as below :-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(I) xxx xxx xxx xxx

(ii) xxx xxx xxx xxx

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.

15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

16] In the light of aforesaid judicial pronouncement of Hon'ble Apex Court it is perceivable that the arguments canvassed on behalf of learned counsel Shri Deshmukh for appellants, in regard to future prospects of deceased Vinod appears to be reasonable and acceptable one. There are elements of appreciation in his contentions propounded on behalf of appellants.

17] Admittedly, deceased Vinod was the milkman and agriculturist by profession. He was self employed person. It is to be noted that the Tribunal received the opportunity to deal with the issue of addition of grant of income for future prospects of deceased Vinod in the Award passed on 19-03-2015 i.e. prior to judicial pronouncement by Hon'ble Apexd Court in Pranay Sethi's case. It appears that learned Member of the Tribunal kept reliance upon the ratio laid down in the Sarla Varma's case (supra), in which addition of amount for future prospects was not permissible for self employed deceased. But subsequently, after authoritative pronouncement in Pranay Sethi's case (supra), the Hon'ble Apex Court set the controversy at rest and laid down the concept of standardization with vital object to bring certainty, stability and consistency while determining the multiplicand for computation of just and reasonable compensation in the motor accident claim cases.

18] Pursuant to subsequent development in regard to principle for addition to be made to actual income of deceased existing at the time of his death towards future prospects, there is no impediment to add 40% of the amount of established income of deceased Vinod calculated @ Rs.6,000/- per month. It would be reiterated that deceased Vinod was 20 years old youngster and as per the aforesaid authoritative pronouncement in aforesaid Pranay Sethi's case, addition of 40% amount would be reasonable in this case.

19] The appellants/claimants also raised objection about the inadequate amount awarded by the Tribunal under the "non pecuniary" head of damages. Learned counsel Shri Deshmukh urged that the Tribunal should have awarded Rs.15,000/- each towards funeral expenses as well as loss of estate. Therefore, he requested to modify the Award to that extent.

20] As discussed above clause (viii) referred in Para.61 in Pranay Sethi's case, the Hon'ble Apex Court issued direction to take into consideration, the amount of Rs.15,000/- each for funeral expenses as well as loss of estate. But, in the matter in hand, the Tribunal awarded an amount of Rs.10,000/- for funeral expenses and Rs.12,000/- for loss to old stick. Undisputedly, the claimants are old aged parents of deceased Vinod, who was bachelor at the time of alleged mishap. Therefore, it would be preposterous to read the caption "loss to old stick" sans "loss of estate".

The amount awarded under the head “loss to old stick” would be equated and appreciated as amount awarded towards “loss of estate” for the claimants. The separate compensation under different heads as “loss to old stick” and “loss of estate” is impermissible and not compatible with the object and purpose of social legislation being “just compensation” payable to the claimants for accidental death of their son. Hence, in view of directions of Hon'ble Apex Court, the claimants ought to have receive amount of Rs.15,000/- each towards funeral expenses and loss of estate.

21] In view of aforesaid discussion, it would be apposite to proceed for following mathematical calculation in the tabular form to facilitate in ascertaining multiplicand to determine the amount of just compensation payable to the claimants. The Tribunal held the notional income of the deceased Vinod @ Rs.6,000/- per month, which is not disputed on behalf of respondent MSRTC.

No.	Particulars		Amount (in Rs)
A	Total income per year	6000 X 12	72,000/-
B	40% to be added in total income per year	72,000 + 28,800	1,00,800/-
C	½ deductions towards personal and living expenses	1,00,800 ÷ 2	50,400/-
D	Pecuniary loss after applying multiplier of '18' as deceased was just 20 years old	50,400 x 18	9,07,200/-
	Total compensation payable to claimants		9,07,200/-
	Add : Funeral expenses		15,000/-
	Add : Loss of Estate		15,000/-
	Total Sum payable to claimants		9,37,200/-
	Less : Amount awarded by Tribunal		6,70,000/-
	Amount to be enhanced		2,67,200/-

22] In the above premises, it is to be concluded that the claimants are entitled to get the compensation of Rs.9,37,200/- for the loss caused to them following accidental death of their beloved son Vinod. However, the Tribunal calculated the sum payable to the claimants @ Rs.6,70,000/- towards compensation. Therefore, it is imperative to allow the claimants for enhancement of compensation amount to the tune of Rs.2,67,200/- in this case. Definitely, it would be just and reasonable compensation for untimely death of their 20 years old son Vinod.

The aforesaid amount of compensation shall be inclusive of amount received by the claimants on account of "No Fault Liability". The entire compensation amount of Rs.9,37,200/- shall carry the interest @ 9 % per annum from the date of decision till its realization. Rest of the Award is hereby made confirmed and absolute. In sequel, the appeal stands partly allowed. The impugned Judgment and Award be modified in above terms. Appeal stands disposed of accordingly with no order as to costs.

[K.K.SONAWANE]
JUDGE

grt/-