

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

FIRST APPEAL NO. 338 OF 2017

M/s Shriram General Insurance
Company Limited, through its
Authorized Signatory/Manager,
10003-E, 8, Rico Industrial Area,
Sitapiva, Jaipur (Rajasthan)

Through its Branch Manager/
Authorized Signatory,
Adalat Road, Aurangabad

...Appellant
(Orig. Resp.no.2)

VERSUS

- 1] Rambhau Mhasu Alpe,
age 63 years, occ. Agril.
and stone Mine,
- 2] Vijay Rambhau Alpe,
age 41 years, occ. Agril.
and Stone Mine

Both R/o Rahuri Kd.,
Tq. Rahuri,
Dist. Ahmednagar,

- 3] Girijabapu Raosaheb Pathare,
age Major, occ. Owner,
R/o Pimpri Awghar,
Taluka Rahuri,
Dist. Ahmednagar

...Respondents
(No.1 Orig. Claimant
No.2 Orig. Resp. No.2)

...

Shri S.G.Chapaolgaonkar, advocate for Appellant
Shri Shaikh M.A.Jahagirdar, Adv. for Respondent
nos. 1 and 2
Respondent no. 3 served

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 28.09.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 08.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award, passed by Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar, in Motor Accident Claim Petition No. 230 of 2015, awarding compensation of Rs.3,76,000/- to the claimants, who are the real brother and nephew, respectively, of the deceased.

2. Original Respondent no.1 is owner of auto rickshaw bearing No. MH-17/BD-0641 involved in the accident and original Respondent no.2 is the Insurance Company i.e. the insurer of the vehicle (hereinafter the parties are referred as per their original status in claim petition).

3. Facts, in nut shell, are that on 2.4.2015 deceased Bhima Masu Alpe was proceeding by Nagar-

Manmad road and that time the offending rickshaw came from the back side and dashed against the deceased resulting into serious injuries to the deceased. Deceased was shifted to Rural Hospital, Rahuri and thereafter for better treatment to City Care Hospital, Ahmednagar, where he succumbed to his injuries on 4.4.2015. Therefore, the claimants filed petition under Section 166 (1) (c) of the Motor Vehicles Act, 1988 for compensation alleging that the accident occurred due to rash and negligent driving by driver of auto rickshaw.

4. In this appeal, the judgment of the Tribunal is assailed by the learned counsel for the appellant insurance company only on three grounds.

The first objection raised by Shri S.G.Chapalgaonkar, learned counsel for the insurance company is that, though accident occurred on 2.4.2015, the first information report was lodged by claimant no.2 on 23.5.2015 and this inordinate delay is not explained by the claimants. He submits that no material is placed on record to establish that the offending rickshaw was involved

in the above said accident. No eye witness is examined by the claimants who witnessed the occurrence.

His second objection is that claimant no.1 is younger brother and claimant no.2 is nephew of the deceased, and therefore, they cannot be dependents of the deceased. Learned counsel for the appellant submits that both the claimants are major having independent immovable property and they were not dependent on the income of the deceased, who was younger brother of claimant no.2. According to the learned counsel for the appellant, therefore, the claimants cannot be dependents, who can claim compensation for the accidental death of the deceased. He placed reliance on the judgment in the case of **Anil and Others vs New India Assurance Company Limited and Others [(2018) 2 SCC 482]**, **Faridabegum s/o Shaikh Yousuf and others vs Daulat Khan s/o Sardar Khan (died) through L.Rs. Azamat Khan s/o Daulat Khan [2014 (6) Mh.L.J.751]**, **Pukh Raj Bumb vs Jagannath Atchut Naik and others [2014 (4) Mh.L.J. 447]** and **Farzana d/o Abbas Bhai**

and another vs Maharashtra State Road Transport Corporation [2016 (4) Mh.L.J. 602]

The third objection raised by the learned counsel for the appellant is that under conventional heads exorbitant compensation has been granted by the Tribunal, which is not in consonance with the law laid down by the Apex Court in the case of "**National Insurance Company Ltd. Vs Pranay Sethi and others**" [2018 (3) Mh.L.J. 70]. He points out that spot panchanama was prepared after two days delay and no vehicle is seized under the panchanama. He also submits that the investigating officer, who filed charge sheet against the accused, is not examined by the claimants to substantiate their contention.

5. In reply, Shri Shaikh, learned counsel for the claimants submits that the spot panchanama of spot of the occurrence shows that the auto rickshaw number is specifically mentioned in the spot panchanama which was standing by the side of road at the time of preparation of panchanama. He

submits that even postmortem was conducted earlier at 11.00 a.m. and in postmortem report, cause of death is mentioned as road traffic accident, and therefore, there cannot be doubt that deceased died in motor vehicular accident.

His next submission is that when prima facie involvement of the offending vehicle is proved by the claimants on the basis of preponderance of probability, without examining any witness the insurance company cannot falsify the first information report and the certified copy of the spot panchanama. According to him, the delay in lodging the first information report is well explained in the first information report itself.

Next contention of the learned counsel for the claimants is that under Section 166 (1) (c) of the Motor Vehicles Act, 1988, any legal representative of the deceased can file application for compensation and the deceased being joint family member of the family of the claimants, after his death, the claimants being his legal representatives, who represent his estate and being sufferers due to accidental death of the deceased,

can claim compensation as dependents of the deceased. He has placed reliance on the judgment in the case of **Gujarat State Transport Corporation, Ahmedabad vs Ramanbhai Prabhatbhai and others** [AIR 1987 SC 1690].

Next contention of the learned counsel for the claimants is that the court may correct compensation which can be awarded under conventional heads. However, he also submits that notional income is not properly considered by the Tribunal and even future prospect is not considered. Therefore, while assessing the just and fair compensation, it may be reasonably enhanced.

6. While considering the involvement of the offending vehicle in the accident resulting into death of the deceased, it has come to my notice that on behalf of the claimants Rambhau Alpe (PW 1) stepped in the witness box to prove the occurrence of the incident on 2.4.2015. From his cross-examination, it emerges that he is not eye witness

to the accident. However, at the same time, it cannot be ignored that the claimants have placed on record the certified copy of first information report, dated 23.5.2015 lodged by claimant no.2, wherein the registration number of the offending rickshaw is specifically mentioned. Even the certified copy of the spot panchanama (Exh.25) shows that at the time of preparation of panchanama, the offending rickshaw was standing on the spot by the side of road and registration number of the offending rickshaw is also specifically mentioned in the spot panchanama prepared on 4.4.2015.

7. After going through the pleadings of claimants, it emerges that the first information report is part of the pleadings of claim petition. Therefore, in view of law settled by the Apex Court in the case of **"National Insurance Company Limited vs Rattani and others"** [2009 (3) Mh.L.J. (SC) 754], the certified copy of the first information report can be looked into for the purpose of arriving at finding of fact under which circumstances the

accident occurred. Similar view is also taken by this Court in the case of **"United India Insurance Company Limited vs Sayaji Shinde"** [2009 (3) Mh.L.J. 539] that certified copy of the first information report and spot panchanama can be read in evidence without its formal proof.

8. The petition being under Section 166 (1) (c) of the Motor Vehicles Act, in view of Section 169 of the Act while deciding such claim petitions, summary procedure is to be followed and it is merely inquiry under Section 168 of the Act. Even the strict rules of Evidence Act and pleadings are not applicable during inquiry under these provisions.

9. Therefore, after going through the first information report together with the spot panchanamas Exhs. 24 and 25, which indicate registration number of offending vehicle, prima facie substance is placed on record by claimants to prove the involvement of offending vehicle in motor

vehicle accident resulting into death of the deceased. The inquiry under motor accident claim being summary inquiry, only on the basis of preponderance of probability, involvement of the offending vehicle is to be proved by the claimants. Therefore, once initial burden is discharged by claimants on the basis of the first information report and spot panchanama, the onus shifts on insurance company to disprove this fact by leading evidence in rebuttal.

10. However, on behalf of the insurance company, no witness is examined to rebut this evidence. So also, recitals of the first information report and spot panchanama are also corroborated by postmortem report (Exh.26), which clearly indicates that the deceased died due to motor vehicular accident. Even the postmortem of the dead body of the deceased is performed at 11.00 a.m. On 4.4.2015 i.e. after death of the deceased in the hospital. Thus, there is no possibility of fabrication of evidence to prove involvement of the offending vehicle in the present claim

petition. As the deceased was immediately shifted for medical treatment at Rural Hospital, Rahuri and subsequently at City Care Hospital, Ahmednagar by the claimants themselves, the delay in lodging the first information report cannot be view with suspicion. Even in the first information report itself the claimants have explained the delay in lodging first information report on the ground that the deceased being issueless unmarried person the claimants were busy to complete the last religious rites of the deceased after his death. Even the delay in preparation of spot panchanama (Exh.25) cannot be viewed with suspicion, because the deceased died on 4.4.2015, and thereafter spot panchanama was prepared by police after knowledge of serious nature of the occurrence. If somebody is to be blamed for delay in recording first information report and preparation of spot panchanama, then it is only the police machinery and not the claimants. The police could have lodged first information report on 4.4.2015 when spot panchanama indicates that police were well aware about the involvement of offending vehicle

which resulted into death of the deceased on 4.4.2015.

11. In the circumstances, I have no hesitation to hold that applying the principle of preponderance of probability, it is duly established by claimants that the offending vehicle was involved in the motor vehicular accident which resulted into death of the deceased. The cases of **Anil vs New India Assurance Company Limited and Faridabegum vs Daulat Khan** (supra) are distinguishable on facts, because in the first case even postmortem of the deceased was not conducted and there was no hospital record available to indicate the nature of injuries and cause of death of the deceased due to accidental injuries. The facts of that case clearly establish the fabrication of false case to claim the compensation. In the second case, there was no substance on record to prima facie show involvement of the offending vehicle. On the other hand, in that case in para 15 of the judgment, this Court

has considered the judgment of Apex Court in "**Ravi vs Badri Narayan and others**" [2011 (4) Mh.L.J. (SC) 514], wherein Apex Court observed that if the Court finds that there is no indication of fabrication, then even if there is delay in lodging first information report, the claim cannot be dismissed simply on that ground.

12. In the case at hand, as observed above, there are no circumstances on record to indicate fabrication of false case for claiming compensation under the Motor Vehicles Act, and therefore, merely on the ground of delay in lodging first information report, the claim petition cannot be dismissed. In **Pukhraj vs Jagannath** (supra), this court also observed that strict proof of accident may not be required to be given by the claimant and the claimant can prove his case by preponderance of probability. As observed above, in the case at hand, the claimants have proved their case on the basis of preponderance of probability. Therefore, even the third case relied by the learned counsel

for the appellant can be distinguished on facts.

13. Accordingly, I conclude that the claimants have proved the involvement of offending vehicle in the motor vehicular accident, dated 2.4.2015, which resulted into death of the deceased.

14. While considering the objection regarding dependency of the claimants, it has come to my notice that in the claim petition itself in para 14 (c) the claimants have specifically pleaded that deceased Bhima Alpe was the real brother and uncle of claimants, respectively, and they formed Hindu Joint Family. The deceased was bachelor and claimants are the only legal representatives of the deceased. It is also specifically pleaded that the claimants and deceased used to run jointly the business of stone mine and agriculture and the claimants are dependents on said income. Thus, there is sufficient pleading on the part of claimants to claim dependency.

15. Even in the evidence, claimant Rambhau (PW 1) has specifically reproduced the same version. No doubt, in his cross-examination he has admitted that four acre agriculture land is recorded in the name of his daughter-in-law and four acre land is recorded in the name of claimant no.2. However, on the basis of this admission, conclusion cannot be drawn that there was partition between the claimants and the deceased. In Hindu Joint Family properties can be recorded in the name of different family members. On the other hand, under Hindu Law, Hindu family is presumed to be joint and burden lies on the party which claims that it was divided to prove the same. Despite searching cross-examination of claimant Rambhau (PW 1) nothing could be elicited to prove that deceased and claimants were separate from each other in respect of residence as well as properties. On the other hand, despite cross-examination of claimant Rambhau (PW 1), fact remained unshattered that claimants and deceased formed Joint Hindu Family and they jointly were having business of stone mine and agriculture. There cannot be any

documentary evidence to prove such joint business and joint family. Therefore, considering the presumption of jointness available under Hindu Law, I have no hesitation to hold that the evidence placed on record is sufficient to establish that the claimants and deceased used to live jointly and they formed Hindu Joint Family and the properties of the claimants and the deceased were joint family properties.

16. In the circumstances, certainly there was contribution on the part of the deceased in the family income. Only because claimants are major, inference cannot be drawn that they were not dependents on the income of the deceased. On the other hand, in Hindu Joint Family all the members depend on income of the Hindu Joint Family. Therefore, when the deceased, being one of the member of the Joint Family, died in motor vehicular accident, certainly the joint family of the claimants sustained loss and being legal representatives and Class II legal heirs of the deceased, claimants can claim compensation as

"dependents". The Apex Court in **Gujarat State Road Transport Corporation vs Ramanbhai and others** (supra) approved the judgment passed by Gujarat High Court in **"Megjibhai Khimji Vira and Anr. Vs Chaturbhai Taljabhai and ors."** [AIR 1977 Gujarat 195]. Para 3 of the said judgment reads thus :

"3. The only point canvassed before us in this Special Leave Petition is that the Tribunal and the High Court were in error in awarding compensation in favour of the brothers of the deceased, since in law they were not entitled to any compensation under the provisions of the Fatal Accidents Act, 1855 and in support of the said contention, reliance was placed by the petitioner on the decision of the Madhya Pradesh High Court in *Budha v. Union of India and others* A.I.R. 1981 M.P. 151. In the present case the High Court of Gujarat while passing its order has preferred to follow its own decision in *Megjibai Khimji Vira and another v. Chaturbhai Taljabhai and others* A.I.R. 1977 Gujarat 195 in which it had held that all the heirs and legal representatives of the deceased could maintain the claim petition under Section 110-A of the Act and had awarded compensation in favour of the nephews of the deceased. On account of the divergence of opinion prevailing in the High Courts on the question involved in this case we have found it necessary to give reasons in support of our decision on this Special Leave Petition."

The Apex Court held that even the brother and nephew of the claimants can claim compensation as dependents of the deceased. The relevant paragraph of the judgment of the Apex Court is reproduced below :

"12. 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 motor vehicle accident should have a remedy for realisation of compensation and that is provided by Section 110-A to 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 Section 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 Section 110-B of the Act amongst the legal representatives for whose benefit and application may be filed under Section 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 Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others (Supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased. "

17. In view of legal position, I conclude

that the claimants have pleaded and proved that being dependents of the deceased, they can claim compensation. The case of **Farzana Abbas Bhai vs MSRTC** (supra) relied on by the learned counsel for the appellant is distinguishable on above discussed facts.

18. Now question arises regarding just and fair compensation, which can be awarded to the claimants.

19. No doubt, after going through para 22 of the impugned judgment, it emerges that the Tribunal erroneously awarded compensation of Rs.40,000/- towards love and affection and Rs.20,000/- towards funeral expenses. In view of law settled by Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra), only 15,000/- can be awarded under the head of loss of estate and Rs.15,000/- can be awarded under the head of funeral expenses. The award passed by the Tribunal deserves to be modified to that effect.

20. However, it is noticed that while assessing notional income of the deceased, the Tribunal erroneously assessed it as Rs.4,000/- per month. Even no income is added under the head of future prospect.

21. After going through the postmortem notes, it emerges that at the time of death, deceased was 60 years old person and he was well built and able bodied person. It has been brought on record that four acres of land was recorded in the name of the deceased. The claimants have also brought on record that deceased was one of the joint family member, which runs the business of agriculture and stone mine. Even assuming that the deceased being ordinary agriculturist holding four acres of agricultural land, his notional monthly income cannot be less than Rs.6,000/-.

22. The Apex Court in the case of **"Syed Sadiq Etc. vs Divisional Manager, United India**

Insurance Co. Ltd." [AIR 2014 SC 840], notional income of vegetable vendor is assessed as Rs.6,000/- per month. Therefore, applying this ratio to the deceased, I hold that notional income of the deceased is to be assessed as Rs.6,000/- per month. Considering the age of deceased as 60 years, ten per cent income is to be added towards future prospect. Thus monthly income of the deceased is assessed as Rs.6,600/-. Annual income of the deceased is assessed as $\text{Rs.}6600 \times 12 = 79200/-$.

23. Deceased being bachelor, 50 per cent income is to be deducted towards his personal expenses. Thus, contribution of the deceased to joint family is assessed as Rs.39,600/-.

24. Deceased being 60 years old person, multiplier of nine is applicable in the case at hand. Thus loss of dependency is assessed as $\text{Rs.}39600 \times 9 = \text{Rs.}356400/-$.

25. In addition to this, the claimants are also entitled to Rs.15,000/- towards loss of estate

and Rs.15,000/- towards funeral expenses. As the deceased was shifted to Rural Hospital, Rahuri and from there was shifted to City Care Hospital, Ahmednagar for better treatment, reasonable compensation of Rs.10,000/- is to be awarded towards traveling expenses. The claimants have also filed bills of medicine amounting to Rs.46,690/-. Therefore, the claimants are also entitled to Rs.46,690/- towards medical expenses.

26. Thus the claimants are entitled for total compensation as follows :-

Loss of dependency	: Rs. 3,56,400/-
Loss of estate	: Rs. 15,000/-
Funeral expenses	: Rs. 15,000/-
Transportation charges	: Rs. 10,000/-
Medical expenses	: Rs. 46,690/-
Total	----- : Rs. 4,43,090/- (Rs. Four Lac Forty Three Thousand Ninety Only) -----

27. In the circumstances, though appeal preferred by the insurance company deserves to be

dismissed, the award, passed by the Tribunal needs to be modified to enhance compensation to be awarded to the claimants. In view of the judgment in the case of **Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others [2015 (4) SCC 237]**, even in absence of Cross-objection, the court can enhance the compensation as just and fair. Accordingly, First Appeal No. 338 of 2017 is dismissed. However, the judgment and award, passed by the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar in Motor Accident Claim Petition No. 230 of 2015 is modified to enhance the compensation to the extent of Rs.4,43,090/- (Rs. Four Lac Forty Three Thousand Ninety Only) inclusive of no fault liability along with interest of nine per cent per annum, from the date of application till realization of the amount. Parties to bear their respective costs of the appeal. Deficit court fee, if any, be recovered from the claimants as per rules.

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