IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 417 OF 2014

1] Gouri W/o Girish Mahajan,
Age : 28 years, Occu.: Household,
R/o Yeshwant Nagar, Basmat Road,
Parbhani, Tq. & Dist. Parbhani

2] Pushkar S/o Girish Mahajan,
Age : 5 years, Occu. : Nil,
Under Guardian of his real Mother
Gouri W/o Girish Mahajan i.e. Appellant No.1,
R/o as above,

3] Malti W/o Madhukarrao Mahajan,
Age : 67 years, Occu.: Household,
R/o as above .. Appellants
(Orig. Claimants)

VERSUS

1] Prakash S/o Marotrao Thamke,
Age : 37 years, Occu.: Business,
R/o Laxmi Nagar, Old Pedgaon Road,
Parbhani, Tq. & Dist. Parbhani

2] United India Insurance Company Ltd.,
Through its Branch Manager,
Branch at Dayawan Complex,
Station Road,
Parbhani, Tq. & Dist. Parbhani .. Respondents
(Orig. Respondents)

...

Mr. P.C. Mayure, Advocate for appellants
Mr. M.P. Kale, Advocate for respondent no.1
Mr. S.R. Bagal, Advocate for respondent no.2

...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 26-02-2018

ORAL JUDGMENT :

1. This is an appeal by claimants in motor accident claims petition no. 63 of 2011 for enhancement of compensation awarded to them under judgment and award dated 29-04-2013 by motor accident claims tribunal, Parbhani.

2. Girish Mahajan son of appellant no. 3, husband of appellant no.1 and father of appellant no.2, while travelling in an ambulance taking his sister for medical treatment to Aurangabad met with an accident on road and he died due to injuries suffered by him in the same. It is the case of claimants that Girish Mahajan had been an educated person having master in science [M.Sc.] degree in computer science and had been working with zilla parishad, Parbhani, drawing a salary of Rs.15,100/- per month. He was 38 year old at the time of accident and had been the only earning member in their family. Compensation, thus, to the tune of Rs. 32,00,000/- had been claimed under the motor accident claims petition.

3. Respondent no.1 - the owner of ambulance had denied the claims made under the petition and imputed negligence to driver of the other/offending vehicle.

4. Respondent no.2 insurer/insurance company also denied the allegations in *toto* alleging that the trailer owner had been responsible for the accident and it had requested to apportion the compensation between the respondents, claiming further that the driver of the offending vehicle had not been holding valid and effective licence.

5. Tribunal, with reference to the pleadings by parties, had framed issues, as to whether Girish Mahajan died of vehicular accident, whether respondent no.2 - insurer proved that driver of offending vehicle was not holding effective and valid driving licence and as to the quantum of compensation. The tribunal found that Girish Mahajan died of vehicular accident and the claimants are entitled to Rs.17,90,000/- towards compensation, holding the respondents jointly and severally liable to pay the same. It has been found by the tribunal, the claim by respondent no.2 - insurer about driver of offending vehicle not holding valid licence, to be not proper.

6. The tribunal after scanning evidence found that deceased Girish Mahajan had been earning Rs.13,000/- per month and that he was 38 year old while he died in the accident. The tribunal, therefore, has observed thus :-

" *14. Admittedly, the deceased was 38 years old at the time of accident,*

> *therefore, multiplier would be 15. The deceased had four dependents, therefore, he must be spending 1/4th of the amount on himself. The multiplicand would be Rs.9750/- (Rs.13,000 - Rs.3250). Yearly multiplicand would be Rs.1,17,000/-. The petitioners are entitled to compensation of Rs.17,55,000/-. The petitioners are also entitled to Rs.5000/- for funeral expenses, Rs.5000/- for transporting dead body and Rs.25,000/- for loss of consortium, love and affection. Thus the total compensation comes to Rs.17,90,000/-.*"

7. Learned counsel Mr. Mayure appearing for the claimants - appellants contends that the tribunal had been grossly erroneous in not considering claim on future prospects at all. He submits that the tribunal has committed error in considering that the distinction can be had with reference to permanent employment or otherwise. He submits that the consideration which has weighed with the tribunal is not a proper consideration having regard to that no such distinction can be made and that no such case had ever been pleaded.

8. Learned counsel further goes on to contend that as a matter of fact, the compensation awarded in respect of funeral expenses, loss of consortium, love and affection is grossly inadequate. He submits that as in the case of *Rajesh and others Vs. Rajbir Singh and others* reported in *(2013) 9 SCC 54,* for loss of consortium, an amount of Rs.1,00,000/-, for loss of care and guidance to minor children - Rs.1,00,000/-, Rs.25,000/- towards funeral expenses, the tribunal, ought to have granted similar amount under those heads to the claimants.

9. He further contends that the rate of interest which has been awarded by the tribunal is on far too lower side whereas having regard to inflation rate, interest ought to have been brought in tune with bank rates and on the reasonable side, interest ought not have been less than 9% per annum. He further submits that the tribunal ought to have granted interest from the date of accident rather than as awarded after failure to pay up the compensation amount within three months.

10. On the other hand, learned counsel Mr. Bagal, appearing for respondent no.2 submits that all the relevant aspects have been properly considered by the tribunal. The evidence has been properly appreciated and gauged and the decision has been rendered. The compensation awarded does not at all call for any upwardly increase in the amount. He submits that request for future prospects has been properly turned down. The reasons for the same have been appropriate and hardly amenable for revision in appeal. He submits that looking at the present rate of interest being paid by the banks, interest at the rate of 6% per annum granted by the tribunal is not amenable to any alteration and change. Amount of compensation awarded has been rather on higher side and, thus, the claim for enhancement in the rate of interest is not amenable for consideration in the present matter. He further submits that

demand of the appellants for interest from the date of accident exceeds the limits appearing under section 171 of the Motor Vehicles Act, 1988 and, thus, such a request can not be considered and granted.

11. Mr. Bagal, learned counsel, during the course of his submissions has pointed out that while computing the income of deceased - Girish Mahajan, the tribunal has committed a serious error in deducting $1/4^{th}$ of income whereas the same ought to have been $1/3^{rd}$, having regard to the decision of supreme court in the case of *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr.* reported in *AIR 2009 S.C. 3104.*

12. Record and evidence do depict that Girish Mahajan died in the accident, had been a qualified and educated person and had been earning for over 15 years. His continual engagement by zilla parishad is quite an indication of that the receiver of services had been dependent on the deceased and had engaged his services for a long period of over 15 years. So far as his earning being to the tune of Rs.13000/- per month, is hardly liable to be disturbed.

13. However, in view of ruling of supreme court in the case of *Smt. Sarla Verma* (supra), while granting compensation, $1/3^{rd}$ amount

from the amount of Rs.13,000/- i.e. income as computed of deceased - Girish Mahajan, will have to be deducted, accordingly.

14. In the present matter, although placing reliance in the case of *Rajesh Vs. Rajbir* (supra), demand for higher funeral expenses, loss of consortium, love and affection and care and guidance for minor children is made, yet having regard to that amount to be awarded on such heads had been considered by five judge bench of supreme court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in *2017 SCC Online SC 1270 : 2017 (13) SCALE 12* , wherein it is observed, as under:-

> "*51. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-*
>
> > *"17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly*

> *in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."*

57. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

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

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(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."

15. The claimants would be entitled to get the compensation in tune with computation of income pursuant to clause (iv) of paragraph no. 64.

16. In the judgment *Pranay Sethi* (supra), in clause (iv) of paragraph no. 64, reference has been made for computation of addition of income at certain percentage. 40% being warranted in present matter since deceased - Girish Mahajan has been

indisputably of 38 year of age pursuant to said judgment. While granting compensation, the same will have to be taken into account and compensation will have to be computed accordingly.

17. Having regard to clause (viii) of paragraph 64 reproduced above, the request made by claimants for enhancement of loss of consortium, loss of love and affection would not be considered beyond the limits stipulated under the same.

18. The claimants shall also get a sum of Rs. 15,000/- towards funeral expenses including the transportation charges of Rs.5,000/- as referred to by the tribunal, Rs.40,000/- towards loss of consortium and claimants may additionally legitimately claim a sum of Rs.15,000/- towards loss of estate in accordance with clause (viii) of paragraph 64.

19. Thus, computation taken into account while deciding the claim petition will have to undergo modification according to clauses (iv) and (viii) of paragraph 64 of decision in *National Insurance Company Ltd. Vs. Pranay Sethi and ors.* (supra).

20. Salary will have to be computed @ Rs.13,000/- per month, deducting Rs.200/- towards professional tax therefrom the salary would come to Rs.12,800/-. Towards personal expenses, one third of the amount from the salary will have to be reduced, which

would come to Rs.8,534/-. Pursuant to clause (iv) of paragraph No. 64 of judgment in the case of *"Pranay Sethi"* (supra), there shall be addition of 40% income for future prospects. Forty percent of Rs.8534/- would be Rs.3,413/-. As such, the compensation would be computed by taking into account the income @ Rs.11,947/- per month and by multiplying the same with 12, the yearly income will come to Rs.1,43,364/-. Since multiplier of 15 is applicable, the figure 1,43,364/- would be multiplied by 15 which comes to Rs.21,50,460/-. Addition of Rs.70,000/- pursuant to clause (viii) of paragraph no. 64 of *Pranay Sethi*'s judgment (supra) will have to be added which together comes to Rs.22,20,460/-. This figure would undergo deduction of Rs.17,90,000/- i.e. compensation granted by the Tribunal. So the total enhancement in compensation works out to be Rs.4,30,460/- with interest thereon from the date of application which is 18th January, 2011.

21. First appeal accordingly stands allowed to the extent above and is disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/