IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.852 OF 2013

National Insurance Co. Ltd. ...Appellant
Versus
1)Rajeshree Rajendra Chavan
Age-32.
2)Mast. Rajvardhan Rajendra
Chavan Age-15 ...Respondents
3) Mast. Harshavardhan Rajendra
Chavan Age-12,
4) Mr. Vyankat Anandrao Chavan
Age-80
5) Hirabai Vyankat Chavan Age-74.
.....
Mr. Amol Gatne for the Appellant.
Mr. Avinash B. Avhad for the Respondent Nos.1, 3 and 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 3rd APRIL, 2018.

ORAL JUDGMENT:-

By this appeal, filed under Section 173 of the M.V. Act, 1988 the Appellant / Insurance company has challenged the judgment and award dated 30th April, 2011 in M.A.C.P. No. 365 of 2009 whereby the M.A.C.T., Satara has awarded compensation of Rs.5,48,000/- with interest at the rate of 7.5% per annum from the date of filing of petition till realization of the entire amount.

2. Respondent No.1 is the widow, Respondents No.2 and 3 are

the minor children and the Respondents No.4 and 5 are the parents of Rajendra Chavan, who died in a motor vehicle accident on 24th August, 2009. These Respondents were the claimants in a petition filed under Section 166 of Motor Vehicles Act, 1988 and shall be hereinafter referred to as the claimants.

3. It is the case of the claimants that Rajendra Chavan was a pillion rider on the motorcycle bearing No.MH/12/BE/6434 driven by Arun Thopate. When they reached at Pandharpur Phata, one Mahindra Scorpio Jeep bearing No.MH/11/T/3000 came from opposite side and dashed against the motor cycle, as a result Rajendra Chavan and Arun Thopate sustained injuries and both expired on the spot. It was alleged that the accident was caused due to the rash and negligent driving of the Mahindra Scorpio Jeep. The claimants alleged that Arun was a building supervisor and that Rajendra Chavan was his assistant. The claimants have alleged that Rajendra Chavan was earning Rs.6,000/- per month. The claimants being dependents of Rajendra Chavan had claimed total compensation of Rs.8 lakhs.

4. The Appellant / insurance company denied that the accident was caused due to rash and negligent driving by the driver of Mahindra Scorpio Jeep. The Appellant -insurance company also denied

the income of the deceased and stated that the compensation claimed by the claimants was exorbitant.

5. On appreciation of evidence, the Tribunal held that the accident was caused due to rash and negligent driving of the Mahindra Scorpio Jeep. The Tribunal did not accept the contention of the claimants that the monthly income of Rajendra Chavan was Rs.6,000/-. The Tribunal computed the compensation on the basis of notional income of Rs.4,500/- per month. After deducting 1/3rd of the said income towards his personal expenses and upon applying multiplier of 16, the Tribunal computed loss of dependency as Rs.5,76,000/-. In addition, the Tribunal awarded an amount of Rs.15,000/- towards loss of love and affection and Rs.7,000/- towards funeral and miscellaneous expenses. The Tribunal, therefore, awarded total compensation of Rs.5,98,000/-. Being aggrieved by the said judgment and award, the Insurance company has preferred this appeal.

6. Mr. Amol Gatne, the learned counsel for the Appellant contends that the insurance company is not liable to pay the compensation as the Claimants have failed to prove that the accident was caused due to rash and negligent driving of the Mahindra Scorpio Jeep. He further contends that while determining the notional income,

the Tribunal failed to consider the fact that the deceased was only X^{th} standard pass. He contends that the Tribunal has computed the compensation on the basis of notional income, which is excessive and by applying a wrong multiplier. He has relied upon the decisions of the Apex Court in ***Laxmi Devi and Ors. Vs. Mohammad Tabbar and Anr. (2008) 12 SCC 165*** and ***Sarla Verma v/s. DTC (2009) 6 SCC 121.***

7. Mr. Avinash Avhad, the learned counsel for the Respondents submits that the deceased was working as an Assistant to a building Supervisor Arun Thopate and that he was earning Rs.6,000/- per month. He contends that the Trial Court has considered the income of the deceased as Rs.4,500/- per month, which is less than the actual income of the deceased. He submits that the notional income of Rs.4,500/- per month cannot be considered as excessive. He concedes that the multiplier applicable was 15.

8. I have perused the records and considered the submissions advanced by the learned counsels of the respective parties. It is true that in an application under Section 166 of the MV Act, the burden is on the claimant to prove that the accident was caused due to rash and negligent driving of the offending vehicle. However, it has to be borne in mind that in such case the Claimant is not required to prove the case

beyond reasonable doubt. As held by the Apex Court in ***Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*** *(2009) 13 SC 530,* in a Petition under Section 166 of the Act, the standard of proof is not beyond reasonable doubt. In such cases, the Claimants are merely required to establish their case on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. The decision in ***Bimla Devi*** (supra) was relied on by the Apex Court in subsequent decisions in ***Parmeshwari v. Amir Chand**, **(2011) 11 SCC 635*** and ***Kusum Lata V. Satbir, (2011) 3 SCC***.

9. In the instant case it is not in dispute that the Mahendra Scorpio Jeep bearing No.MH/11/T/3000 was driven by Ashpak Inamdar, Opponent No.1 in the claim petition. Said vehicle had dashed against Suzuki Motorcycle bearing No.MH/12BE/6434, and had resulted in the instant death of the rider Ashok as well as the pillion rider Rajendra. It is also not in dispute that Crime No.98 of 2009 was registered against the Opponent No.1 under Sections 279, 304 A of the IPC at Khandala Police Station.

10. It is pertinent to note that the Opponent No.1 was examined before the Tribunal. He has admitted in his cross

examination that the accident could have been avoided if he were to drive the vehicle properly by taking appropriate care. From the aforesaid admission an inference can be drawn that the Opponent No.1 had driven the vehicle without taking due care and caution. Consequently the Tribunal has rightly attributed negligence to the Opponent No.1 being the Driver of the offending vehicle.

11. As regards the quantum of compensation, the evidence on record indicates that the deceased was 40 years of age. He had passed Xth standard. The Claimants had claimed that Rajendra was working as an Assistant of Building Supervisor Arun Thopate and that he was earning Rs.6,000/- per month. In the connected petition filed by the widow of Arun it was claimed that the monthly income of Arun was Rs.9,000/-. In the light of these facts, the Tribunal has disbelieved and rightly so, the contention of the Claimants that Arun used to pay salary of Rs.6,000/- per month to the deceased Rajendra. Hence the Tribunal computed the loss of dependency on the basis of notional income as Rs.4,500/- per month.

12. In ***Laxmi Devi*** (supra), based on the facts of the case, the notional income of the deceased was considered as Rs.3000/- per month. Notional income fixed in the said case cannot be applied as a

yardstick in each and every case. Suffice it to say that there is no straight jacket formula for fixing the notional income. In fixing the notional income the Court is required to consider several factors such as age, qualification, skills, etc. and it also involves some guess work and hypothetical consideration. The Apex Court in ***New India Assurance Co. Ltd. vs. Yogesh Devi and Others, 2012 ACJ 702*** *has observed as follows:*

> *7. This Court in Jasbir Kaur's case, 2003 ACH 1800 (SC), held that the Tribunal is required to make a just and reasonable award determining the compensation to be paid to the dependants of the victim of a fatal motor vehicle accident. Explaining the concept of just and reasonable award in the context of a motor vehicle accident claim, this Court held as follows:*
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> *" (7) It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ' damages' which in turn appears to it to be ' just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be 'just' and it cannot be a bonanza: not a source of profit; but the same should not be a pittance. The courts and Tribunals have a duty to weigh the various factors and quantity the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical*

> *calculations. It would depend upon the particulars facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of ' just' compensation which is the pivotal consideration. Though by use of the expression ' which appears to it to be just' a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of wild guesses, whims and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrariness. If it is not so it cannot be just (See Helen C.Rebello v. Maharashtra State Road Trans.Corpn., 1999 ACJ 10 (SC))*."

13. In the instant case, the deceased was 40 years of age and studied till Xth standard. The fact that the Claimants have failed to prove his earnings does not mean that the deceased was not capable of earning. The Tribunal has considered the notional income of the deceased as Rs.4,500/- per month, which on an average works out to Rs.150/- per day. Considering the age of the deceased, cost of living, incessant effort of any prudent person to earn income to sustain himself and his family etc., the notional income of Rs.4,500/- per month is neither excessive nor exorbitant.

14. The evidence on record indicates that the deceased was 40 years of age hence, as per the decision of the Apex Court in ***Sarla Verma*** *(supra)* the appropriate multiplier would be 15 and not 16 as

held by the Tribunal. Hence, considering the annual income of the deceased as Rs.54,000/- and after deducting 1/3rd towards his personal expense and applying multiplier of 15 loss of dependency works out to Rs.5,40,000/- and not 5,76,000/- as determined by the Tribunal.

15. It is to be noted that the Claims Tribunal has not awarded any compensation towards loss of consortium and loss of estate. The amount of Rs.7,000/- awarded towards funeral expenses is also on lower side. Hence, the amount of Rs.36,000/- is adjusted as against these conventional heads.

16. Under the circumstances and in view of discussion supra, the Appeal has no merits and is accordingly dismissed.

17. The statutory amount of Rs.25,000/- deposited at the time of filing of the appeal before this Court may be transferred to M.A.C.T., Satara.

(SMT. ANUJA PRABHUDESSAI, J.)