

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

FIRST APPEAL NO.514 OF 2017

- 1 Asha w/o Gopal Pawar,
 Age 23 yrs., Occ. Household,
- 2 Anita d/o Gopal Pawar,
 Age 8 yrs., Occ. Nil,
 U/G of real mother claimant No.1
- 3 Dilip Bhagwan Pawar,
 Age 47 yrs., Occ. Nil,
- 4 Vimalbai w/o Dilip Pawar,
 Age 44 yrs., Occ. Household

All are r/o Birwali, Tq. Ausa,
Dist. Latur.

... **Appellants.**

... **Versus** ...

- 1 V. Ansaneyalu V. Sanjeev Raidu,
 Age : major, Occ. Driver,
 R/o Agraharam, Tq. Kazipeth,
 Dist. Kadappa (A.P).
 (Deleted as per order dated 23.10.2018.)
- 2 Mrs. Sirigiri Reddy w/o Pratap Reddy,
 Age : major, Occ. Business,
 R/o D.No.54/26 Nabi Kata,
 Kadappa (A.P)
- 3 Universal Sompo General Insurance Co.Ltd.,
 Through its Branch Manager,
 Unit 201, 4th Floor, Sangam Complex,
 127 Andheri Kurla Road,
 Andheri (East), Mumbai.

... **Respondents.**

...

Mr. M.R. Deshmukh, Advocate for the appellants

Respondent No.1 – deleted as per order dated 23.10.2018

Respondent No.2 - absent

Mr. V.N. Upadhye, Advocate for the respondent No.3

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 24th JUNE, 2019

PRONOUNCED ON : 22nd JULY, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimants for enhancement in the compensation.

2 The appellants-original claimants had filed M.A.C.P. No.132/2014 before Ex-officio Member, Motor Accident Claims Tribunal, Latur for compensation under Section 166 of Motor Vehicles Act, 1988. The claimants are the legal heirs of Gopal Dilip Pawar. It was contended by them, that he was a supervisor serving with Yogesh Transports, Pune and was getting salary of Rs.12,000/- per month. He was proceeding in a pick up van bearing No.MH 24/J-9349 towards Aurangabad for sale of vegetables at about 4.30 a.m. on 31.03.2014. When the vehicle reached near village Adul, a truck bearing No.AP 04/TU-1824 came from wrong

side in high speed and gave dash to the pick up van from which Gopal was travelling. Gopal sustained injuries and admitted to hospital, however, he succumbed to the injuries. Under those circumstances, the claimants had claimed compensation and restricted it to Rs.5,00,000/- for court fee. It was also stated that respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being the insurance company of the offending vehicle are liable to pay compensation to them, jointly and severally.

3 Respondent Nos.1 and 2 filed common written statement, whereas respondent No.3 filed separate written statement denying all the averments in the petition. Age, occupation and income of the deceased was challenged, so also dependency of the claimants on him. They have denied the fact of accident and manner in which it had taken place as narrated in the petition. The insurance company has taken statutory defences. It was also contended by them that the accident took place due to negligence on the part of pick up van and therefore, driver, owner and insurance company of the pick up van are necessary parties to the proceedings.

4 After the issues were framed, claimants adduced documentary as well as oral evidence. No evidence was led by respondent Nos.1 to 3. Taking into consideration the evidence adduced by the claimants, the

learned Tribunal has allowed the petition and directed the respondent Nos.1 to 3 to pay amount of Rs.5,00,000/- as compensation, jointly and severally, together with interest. Feeling that the said compensation is very much on the lower side, the appeal has been preferred by the appellants-claimants for its enhancement.

5 It will not be out of place to mention here, that there is no cross appeal or cross objections by the respondents and therefore, the scope of the present appeal is limited to the quantum.

6 Heard learned Advocate Mr. M.R. Deshmukh for the appellants and learned Advocate Mr. V.N. Upadhye for respondent No.3-insurance company. Name of respondent No.1 came to be deleted as per the order passed by this Court on 23.10.2018 and the respondent No.2 though served remained absent.

7 It has been vehemently submitted on behalf of the appellants that the learned Tribunal erred in holding that as the evidence regarding income of the deceased has not been adduced, notional income should be taken as Rs.3,000/- per month. Further, the non pecuniary damages have also not been awarded properly, taking into consideration the guidelines issued by Apex Court.

8 Per contra, the learned Advocate appearing for the insurance company supported the reasons and the computation of the compensation made by the learned Tribunal.

9 Taking into consideration the scope of the appeal following point arises for determination. Findings and reasons for the same are as follows.

Whether the learned Tribunal was justified in granting compensation to the extent of Rs.5,00,000/- only to the claimants ?

10 Here, the claimants had come with a case that deceased was serving as a Supervisor with Yogesh Transports, Pune and was getting Rs.12,000/- per month and had examined CW 2 Pandharinath Alane to support their said contention. The learned Tribunal has come to the conclusion that, that is not the sufficient evidence. Basically, the evidence of the employer is important. Though he has stated that deceased Gopal was serving with him and he used to pay salary of Rs.12,000/- per month from 01.05.2012 to 31.03.2014, in his cross examination he has given clear admission that he has not maintained muster roll. He has no documentary evidence to show that he has made payments of salary @

Rs.12,000/- per month to Gopal. Only the certificate issued by him has been produced on record. That certificate has no meaning in view of the fact that being a businessman he was supposed to maintain accounts and show true entries in the same. He has neither placed his Shop Act licence to prove that he runs such a business nor he has produced any such document to show that Gopal was in his employment. Under such circumstance, the learned Tribunal's conclusion that notion income theory is required to be invoked, is preferably correct. However, it is now required to be said that whether the notional income is to be considered @ Rs.3,000/- per month or not. The accident in this case had taken place on 31.03.2014. We may take note of decision in **Laxmidevi and another vs. Mohd. Tabbar and others, 2008 (2) TAC 394 SC**, wherein notional income of unskilled labour was taken as Rs.100/- per day. However, thereafter in **New India Assurance Company Ltd. vs. Smt. Reshma Devi and others, 2017(3) ADJ 685**, Hon'ble Supreme Court upheld the decision of Division Bench of Allahabad High Court. After taking into consideration the rise in price index, increase in wages and salaries in general took, it was held that the average income of even a daily labour in 2014 when the accident took place cannot be presumed to be less than Rs.200/- per day.

Further, in Santosh Devi vs. National Insurance Company Limited and others, 2012(6) SCC 421 the Hon'ble Supreme Court observed that,

“Although the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc..”

With these observations, it can be concluded that when the Government under Employment Guarantee Scheme periodically increases the daily wages of the unskilled labour, then definitely in 2014 the notional income would have been doubled to the notional income which was fixed in the earlier period as Rs.3,000/- per month. Under such circumstances, the learned Tribunal ought to have held that Gopal would have earned at

least Rs.6,000/- per month. Now, this Court holds it accordingly.

11 Now, taking into consideration the decision in **National Insurance Co. Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 680** and the fact that Gopal was unskilled labour or self employed 40% of the income is required to be added towards future prospect. That amount comes to Rs.2,400/- and therefore, the monthly income of deceased Gopal for our calculation purposes would be Rs.8,400/- per month (Rs.6,000/- per month + Rs.2,400/- per month). Yearly it would be Rs.1,00,800/-. At the time of death of Gopal, claimants i.e. four in number were dependent on him and therefore, taking into consideration the ratio laid down in **Pranay Sethi (supra) with Sarla Verma vs. Delhi Transport Corporation and others, 2009 TAC 677 SC**, $\frac{1}{4}^{\text{th}}$ amount is required to be deducted towards personal expenditure. That amount comes to Rs.25,200/- ($\frac{1}{4}^{\text{th}}$ of Rs.1,00,800/-). Therefore, the dependency of the claimants would be to the extent of Rs.75,600/- (Rs.1,00,800/- - Rs.25,200/-).

12 The learned Tribunal has taken age of Gopal as 23, as it was told by his father and it is also stated in Post Mortem report as well as inquest panchnama. However, it is to be noted that claimant No.2 is his daughter who is aged 6 when the petition was filed on 04.07.2017. Accident had taken place on 31.03.2014. If we calculate, then Gopal

would be around 17 at the time of birth of claimant No.2. In fact, then he would have married prior to her birth and under such circumstance, the age that has been given in police documents as well as in the testimony of PW 1 Dilip is unacceptable. He might be within the age group of 25-30 when he expired and therefore, the just multiplier, in this case, would be '17'. After applying the said multiplier the total future loss of income for the claimants would be Rs.12,85,200/- (Rs.75,600/- x 17). Further, in view of the decision in **Pranay Sethi** (supra), amount of Rs.70,000/- is required to be added towards non pecuniary damages. Thus, the claimants are entitle to get compensation of Rs.13,55,200/-.

13 The learned Tribunal erred in computing the amount of compensation on the basis of notional income of Rs.3,000/- per month only. Therefore, it cannot be said to be a “just compensation”. Further, it will not be out of place to mention here that though the claimants had restricted, their claim to the extent of Rs.5,00,000/-, the Tribunal as well as this Court are duty bound to award “just compensation” to the claimants. The deficit Court fee can be recovered from the claimants and on the ground of restricted Court fee, their just claim for just compensation cannot be denied. It can also be seen that the learned Tribunal had not considered the future prospects of the claimants and had not apportioned the compensation amount amongst claimants as well as the interest of the

minor claimant was also not protected. Interest is also awarded at a lesser rate. Under such circumstances, the entire award deserves to be set aside. Taking into consideration the fact that the accident had taken place in the year 2014, just rate of interest would be Rs.7.5% per annum. With these observations following order is passed.

ORDER

1 Appeal is allowed.

2 The Judgment and Award passed in M.A.C.P No.132/2014 by learned Adhoc District Judge-1 and Ex-Officio Member, Motor Accident Claims Tribunal, Latur dated 20.10.2016 is hereby set aside.

3 The said petition stands allowed with costs.

Respondent Nos.1 to 3 should pay amount of Rs.13,55,200/- (Rupees Thirteen Lac Fifty Five Thousand and Two Hundred only) to the claimant Nos.1 to 4, jointly and severally (together with amount of Rs.50,000/- under No Fault Liability) together with interest @ 7.5% per annum from the date of the petition till actual realization of the entire amount.

4 After the amount is deposited, out of the said amount, amount

of Rs.3,00,000/- be invested in the name of minor claimant No.2 by showing claimant No.1 her mother as guardian, in Fixed Deposit, in any Nationalized Bank of the choice of claimant No.1, till the attaining of majority by claimant No.2. Claimant No. 1 is at liberty to take quarterly interest.

5 From the rest of the amount, amount of Rs.2,50,000/- each be given to the share of claimant Nos.3 and 4 and it be distributed as follows :

“50% of the amount to the share of claimant Nos.3 and 4 be given by Account Payee cheque to them and rest of the 50% be invested in Fixed Deposit in their respective names, in any Nationalized Bank of their choice for a period of five years.”

6 From the rest of the amount, amount of Rs.3,00,000/- be invested in the name of claimant No.1, in the bank of her choice, for a period of five years.

7 After maturity of all the above said Fixed Deposits on their respective dates, the entire matured amount together with interest, if any, be given to those claimants, without reference to the Court.

8 Rest of the amount, after Fixed Deposits are made, be given to claimant No.1 by Account Payee cheque.

9 Amount deposited, if any, in this matter be adjusted towards the amount now awarded.

10 Appellant to deposit the deficit Court fee within a period of one month from today.

11 Award be drawn accordingly.

(Smt. Vibha Kankanwadi, J.)

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