IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2210 OF 2018

New India Insurance Company Ltd.,
Shrirampur, District Ahmednagar
through its Divisional Manager/Authorized
Signatory, Mahesh Auto Compound,
Adalat Road, Aurangabad. **... APPELLANT**
(Ori. Respondent No.2)

VERSUS

1. Sunanda Shivaji Gadakh,
Age : 48 years, Occu : Household,

2. Urmila Shivaji Gadakh,
Age : 24 years, Occu. Education,

3. Sharmila Shivaji Gadakh,
Age : 23 years, Occu. Education,

4. Vaishnavi Shivaji Gadakh,
Age :13 years, Occu. Education,
Being minor through her legal guardian
Mother Sunanda Gadakh

All R/o. Gautamnagar, Post Kolpewadi,
Taluka Kopargaon, District Ahmednagar

5. Mulchand Chena Pawar,
Age : Major, Occu. Agriculture,
R/o Adarsha Colony,
At post Kannad, District Aurangabad **... RESPONDENTS**
(Rspdt Nos. 1 to 4 Ori. Claimants
Rspdt No.1 Ori. Rspdt No.1)

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Advocate for appellant : Mr. S.G. Chapalgaonkar
Advocate for Respondent nos. 1 to 4 : Mr. Deo h/f. Mr. Ajay T. Kanawade

...

CORAM : MANGESH S. PATIL, J.

DATE : 02.12.2019

JUDGMENT :

Heard both the sides.

2. The insurance company of the offending vehicle is impugning the judgment and award passed by the Motor Accident Claims Tribunal in a petition filed by the respondents under Section 166 of the Motor Vehicles Act.

3. The facts leading to the filing of this appeal are as under :

It is alleged that on 06.02.2014 at about 9.00 pm near Kolpewadi Sugar Factory the deceased was knocked down by a tractor with trolleys while he was crossing a bridge. He sustained fatal injuries and succumbed. The driver of the tractor, owned by the respondent no. 5 was responsible for causing accident. The respondents/claimants filed a petition. By the impugned judgment the Tribunal allowed the petition and directed the appellant insurance company and the respondent no. 5 owner of the tractor and the trolley to pay to them Rs.11,80,860/- together with interest @ 8% per annum from the date of the petition till realization of the entire amount of the award. The Tribunal has also apportioned amount of the compensation amongst the respondent no. 4.

4. The learned advocate for the appellant insurance company vehemently submits that the Tribunal has grossly erred in assessing the compensation in tune with the decision in the case of **National Insurance Company Limited V/s. Pranay Sethi and Ors.; AIR 2017 SC 5157** particularly while assessing the compensation under non-pecuniary damages. He would

submit that when the Supreme Court in the case of Pranay Sethi (supra) has standardized the heads of compensation for loss of consortium, funeral expense and loss of estate, the Tribunal ought not to have awarded compensation exorbitantly under these heads at the rate of Rs.1,00,000/- for the widow towards loss of consortium, Rs.1,00,000/- to each of the children for loss of love and affection. Therefore, necessary correction should be made in respect of the compensation under these heads.

5. The learned advocate for the appellant further submits that there was a serious dispute as regards validity of the driving lisence of the driver of the tractor and the Tribunal failed to consider even that aspect.

6. The learned advocate for the respondents/claimants submits that in fact, the ratio in the case of Pranay Sethi (supra) stands diluted to the extent of compensation to be assessed under non-pecuniary heads, by a subsequent decision in the case of **Magma General Insurance Company Limited V/s. Nanu Ram @ Chuhru Ram and Ors.; 2018 ACC 184**. He would submit that in this case decision of Pranay Sethi (supra) has been considered and for the reasons detailed therein, it has been held that the loss of consortium for the widow and for the children and parents would be different and separate. It has also considered that something will have to be paid even for loss of love and affection and consequently the compensation ought to have been awarded under these non-pecuniary heads in consonance with the observation in the case of Magma General Insurance (supra).

7. The learned advocate would then submit that the Tribunal has not taken into consideration the future prospects which going by the age of the deceased could have been added by 15% as laid down in the case of Pranay Sethi (supra). If compensation under these heads is now assessed afresh, for loss of income and for loss of non-pecuniary heads, the just compensation would be more than what has been awarded by the Tribunal. Though he does not intend to and request for fixation of compensation afresh, the just compensation assessed in tune with Pranay Sethi and Magma (supra) would be more than what has been awarded by the Tribunal and can be set off against what has been decided and therefore there is no need to cause any interference by changing the heads and the figures.

8. The learned advocate for the claimant would then submit that the defence of want of valid and effective driving licence has not been duly substantiated by the appellant insurance company. No attempt was made to call the driver or the owner to produce the driving licence and therefore it has miserably failed to substantiate the defence.

9. I have carefully gone through the impugned judgment and award.

10. So far as the defence of breach of terms and conditions on the ground that the driver of the tractor and the trolley was not holding valid and effective driving licence, suffice to observe that no attempt was made by the appellant insurance company to substantiate this defence by calling the owner or the driver of the vehicle to produce a copy of the licence.

Therefore, for this reason alone, no fault can be found with the observation and conclusion of the Tribunal in holding the appellant insurance company to have failed to substantiate this defence.

11. The learned advocate for the appellant then submits that it was the responsibility of the owner to cooperate the insurance company in view of the provisions of Section 174 (c) of the Motor Vehicles Act and therefore for want of such cooperation there is a breach of the terms and conditions of the policy and the Insurance company would stand exonerated.

12. However as has been pointed out by the learned advocate for the respondents/claimants no such specific plea was taken before the Tribunal and even no attempt was made to prove it by calling upon the owner to make compliance in accordance with these provisions. Therefore the appellant is not entitle to drive any benefit by placing a bald reliance on this provision of the Act.

13. As far as compensation is concerned, the Tribunal has assessed the compensation as under :

Sr. No.	Head	Compensation awarded
i)	Pecuniary loss Rs.73,260 x 11 = Rs.8,05,860. (income Rs.8,140/- per month x 12 = Rs.97,680/- minus Rs.24,420/- being 1/4 of the annual income which the deceased would have spent for himself.)	Rs.8,05,860/-
ii)	Loss of consortium for widow	Rs.1,00,000/-
iii)	Loss of love and affection for three children Rs.1,00,000/- each	Rs.3,00,000/-
iv)	Funeral expenses	Rs.25,000/-
	Total compensation	**Rs.12,30,860/-**

14. It is quite conspicuous that in spite of there being sufficient evidence that the deceased was in the permanent employment and was getting a salary as a fixed income, in disregard to the decision in the case of Pranay Sethi (supra) the future prospects have not been considered by the Tribunal. Going by his age, 15% of his income should have been added while assessing the pecuniary loss i.e. Rs.1221/- per month.

15. It is pertinent to note that by referring to the decision in Pranay Sethi (supra), in the matter of Magma General Insurance (supra) award of compensation under non-pecuniary heads has been reconsidered and decided. It has been specifically laid down that the loss of consortium *qua* the spouse, children and parents would be separate and distinct and each one of them would be entitled for such loss of consortium which has been styled as spousal consortium, parental consortium and filial consortium. Accordingly, in that matter, two dependents have been awarded Rs.50,000/- each aggregating Rs.1,00,000/- under the head of loss of love and affection and the loss of filial consortium has also been assessed in aggregate at Rs.80,000/- being Rs.40,000/- for the two claimants. The just compensation taking into account all the aforementioned aspects and by following Pranay Sethi and Magma (supra) would be as under :

Sr.No.	Head	Compensation awarded
1]	Pecuniary loss	Rs.9,10,239/-
2]	Spousal Consortium	Rs.40,000/-
3]	Parental Consortium	Rs.1,20,000/-
4]	Loss of love and affection for 4 claimants	Rs.2,00,000/-

5]	Loss of Estate	Rs.15000/-
6]	Funeral expenses	Rs.15000/-
	Total (aggregate) Compensation	**Rs.13,00,239/-**

16. Suffice for the purpose to observe that a Division Bench of this Court in the case of **The New India Assurance Co. Ltd Vs. Ashish Ravindra Kulkarni ; 2019 (1) ABR 506** has also noted the consequence of the decision in the case of Magma General Insurance (supra) and the same course will have to followed.

17. In the result, since the just compensation on the basis of the evidence, and by following the decision in the case of Pranay Sethi and Magma General Insurance Company (supra) is more than what has been assessed by the Tribunal, in my considered view instead of shuffling the heads and reassessing the compensation under each of the head it can be said that the compensation awarded in aggregate by the Tribunal being less than what is a just compensation, there is no substance in the appeal and it is liable to be dismissed.

18. Appeal is dismissed. The original claimants are allowed to withdraw the amount deposited in this Court by the appellant insurance company. All pending applications are disposed of.

(MANGESH S. PATIL, J.)

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