

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.602 OF 2017

- 1) Noorunnisa Begum wd/o Syed Farooq,
Age 47 years, Occupation Household,
- 2) Syed Wajid s/o Syed Farooq,
Age 18 years, Occupation Education,
- 3) Syed Fatima d/o Syed Farooq,
Age 17 years, Occupation Education,
(being minor u/g of appellant No.1
i.e. mother)
All R/o Zakir Hussain Nagar,
Sillod Taluka Sillod Dist. Aurangabad
At Present Roshan Gate, Aurangabad. **...Appellants**

VERSUS

- 1) Maharashtra State Road Transport
Corporation (MSRTC)
Through Its Divisional Controller,
Division Office, Aurangabad.
- 2) Ravindra s/o Pandurang Wankhede,
Age Major, Occupation Driver,
R/o Bhusawal S. T. Bus Depot,
Bhusawal Dist. Jalgaon
**(Deleted as per leave granted by
order dated 16-06-2017).** **...Opponents**
(Original Respdt.No.1 and 2)

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Advocate for Appellants : Mr. Deshmukh Mohit R.
Advocate for Opponent No.1 : Ms. Reddy Ranjana D.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 29-07-2019.

JUDGMENT :

1. Present appeal has been filed by the original claimants for enhancement in the compensation granted in MACP No.193 of 2013, by learned Chairman, Motor Accident Claims Tribunal, Aurangabad on 18-08-2015.

2. Appellants are the legal heirs of one Syed Farooq. Appellant No.1 is his widow, appellants No.2 and 3 are their sons. Deceased Syed Farooq was aged 52. He was a businessman. He was carrying out business under the name and style 'New Marathwada Quality Trailer.' He had the additional source of income through agricultural lands. Accident took place on 28-01-2013 at about 10.30 a.m. on Aurangabad-Jalna road. Syed Farooq was proceeding on his motorcycle from Sillod to Ajantha. When he reached near the spot, one S.T.Bus bearing registration No.MH-20-BT-2075 came in high speed from back side and gave dash to the motorcycle. Syed Farooq sustained grievous injuries. He was taken to Krishna Hospital at Aurangabad for treatment. He was treated from 28-01-2013 to 01-02-2013, however he succumbed to the injuries. About Rs.2,00,000/- are stated to have been spent on medical treatment.

It has been contended by the claimants that, the opponent No.2 who was driving the S.T.Bus on the relevant day, was responsible for the accident. Offence vide Crime No.13 of 2013 has been registered against him. The said S.T.Bus belong to opponent No.1. The claimants have therefore claimed the compensation of Rs.30,00,000/- from the opponents jointly and severally.

3. The opponents No.1 and 2 have filed their written statement at Exhibit 16. They have denied the contents regarding manner in which the accident took place, the allegations about rashness and negligence by opponent No.2. They have also denied the age, occupation and income of deceased Syed Farooq. It has been contended by them that the said accident took place due to the rashness and negligence on the part of Syed Farooq while driving his motorcycle. Syed Farooq had lost his control over the vehicle and then fell down on the road. He was on the wrong side on the road as it can be seen from the spot panchanama. They, therefore, prayed for the rejection of the claim.

4. After the issues were framed, claimants have led oral as well as documentary evidence. Opponent No.2 has entered the witness box on behalf of the opponents. Taking into consideration the

evidence on record and hearing both sides, the learned Chairman partly allowed the petition and granted compensation of Rs.14,74,382/- to be paid by opponents jointly and severally. The said amount was inclusive of the amount of 'No Fault Liability'. Interest has been awarded @ 9 % per annum from the date of filing of the petition till actual realization of the amount. This order of compensation has been challenged by way of this appeal for enhancement.

5. Heard learned Advocate Mr. Mohit R. Deshmukh for appellants and learned Advocate Ms. Ranjana D. Reddy for opponent No.1.

6. It has been vehemently submitted on behalf of the appellants that the learned Trial Judge has failed to consider the income of the deceased. He used to earn amount of Rs.3,00,000/- per annum from his business and he had the additional source of income of Rs.1,00,000/- per annum from agricultural land. The income tax returns have been filed at Exhibit 32, 33 and 34. However, the learned Chairman had taken the amount which was on the lower side when he ought to have taken it on the higher side or the average of the same. Further now the benefit of decision in *National Insurance Company Limited v. Pranay Sethi and others*, reported in (2017) 16 SCC

680, deserves to be granted to the appellants. The non-pecuniary damages are required to be awarded at the said rate. So also taking into consideration the age of deceased the future income is required to be added in view of the aforesaid Judgment of the Hon'ble Apex Court. Therefore, the enhancement is required to be made.

7. Per contra, the learned Advocate appearing for the opponents supported the reasons given by the learned Chairman and submitted that the average of the income cannot be taken into consideration.

8. Here it is required to be mentioned that opponents have not filed any appeal and, therefore, we need not go into point of rashness and negligence. The scope of this appeal is limited to the enhancement that has been claimed by the original claimants. Therefore, taking into consideration the scope of the appeal, following point is arising for determination, finding and reasons for the same are as follows;

Point :- "Whether enhancement in the compensation granted by the learned Chairman in favour of the appellants is required to be allowed ? If yes, then to what extent ?"

Finding :- Yes, as per final order.

REASONS

9. The facts and the evidence are crystal clear. Though the claimants were claiming that from both the sources of income deceased was earning around Rs.4,00,000/- per annum, yet the documents those have been submitted by them by way of income tax returns, do not support the said contention. The income tax returns for the assessment year 2010-2011 show the income as Rs.1,80,980/-, for the assessment year of 2011-2012 show the income as Rs.1,89,850/-, and for assessment year 2012-2013 the income was Rs.1,99,000/-. The total of the same comes to Rs.5,69,830/-. Therefore, we are required to consider the average of the said income. That average comes to Rs.1,89,943/- which would be the income of deceased per annum. Thereafter, as per the decision in, *Sarla Verma and others v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121, 1/3rd amount is required to be deducted towards personal expenditure, which comes to Rs.61,847=66 Ps., which is rounded up to Rs.61,848/-. Thus, the dependency of the claimants would come to Rs.1,23,695/- per annum.

10. Further, in view of the decision in *Pranay Sethi (Supra)* and taking

into consideration the age of the deceased as 52, 15 % of the income is required to be added towards future prospects. That amount comes to Rs.12,369/-. Thus, after addition of the future prospects, the annual dependancy of the claimants would be Rs.1,36,064/-. Further in view of *Sarla Verma (Supra)* and the age of the deceased, the just multiplier that is required to be applied is 11. After application of the multiplier, the dependancy compensation comes to Rs.14,96,704/-.

11. Certain medical bills have been produced by the claimants which have been proved and the compensation of the same has been awarded by the learned Chairman also. That amount is required to be added, it is to the tune of Rs.1,74,382/-.

12. Further in view of Judgment in *Pranay Sethi (Supra)*, paragraph No.64 (viii), the non-pecuniary damages that are required to be granted are to the tune of Rs.70,000/-. Thus, the total amount of compensation to which the claimants are entitled are to the tune of Rs.17,41,086/-. The amount of compensation is required to be enhanced to that effect and the Judgment and award passed by the learned Chairman deserves to be modified accordingly. The appeal deserves to be partly allowed, accordingly it is allowed as follows.

ORDER

- 1) Appeal is hereby partly allowed.
- 2) Judgment and award passed in MACP No.193 of 2013, by learned Chairman, MACT, Aurangabad, dated 18-08-2015, is hereby set aside to the extent of quantum only and modified as follows ;

“Opponents No.1 and 2 are jointly and severally directed to pay compensation of Rs.17,41,086/-(in words rupees seventeen lakhs forty one thousand and eighty six only) (inclusive of amount already given under 'No Fault Liability' Rs.50,000/-) to the petitioners along with interest @ of 9 % per annum from the date of filing of the petition till actual realization of the entire amount.”

- 3) Rest of the award is maintained as it is.
- 4) The amount already deposited be adjusted towards the amount now enhanced / granted.
- 5) Under the circumstance, no order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.