IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3237 OF 2016

1) Smt. Shobha w/o Sanjay Lipne,
Age 23 years, Occupation Household,

2) Rishikesh s/o Sanjay Lipne,
Age 4 years, Occupation Nil,

3) Kum. Snehal d/o Sanjay Lipne,
Age 2 years, Occupation Nil,
Minor Nos.2 and 3 under Guardianship
of mother applicant No.1 as above.

4) Kisan s/o Sonaji Lipne,
Age 47 years, occupation Agriculture,

5) Sau. Kamal w/o Kisan Lipne,
Age 43 years, Occupation Household,

All R/o Kaudgaon Tq. Pathardi
Dist. Ahmednagar. ...Appellants.
(Orig.Claimants)

VERSUS

1) Rahul s/o Laxman Walke,
Age Major, Occupation Business,
R/o Ravish Housing Society,
Near Kinetic Chowk,
Nagar-Pune Road, Ahmednagar.
(**Dismissed As Per Court's Order Dated 14-08-2019.**)

2) Reliance General Insurance,
2nd Hoby, Ambar Plaza,
Near S. T. Stand, Ahmednagar. ...Respondents.
(Orig.Respondent)

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Mr. D. R. Jaybhar, Advocate for appellants.
Mr. R. H. Dahat, Advocate for respondent No.2.

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CORAM : SMT.VIBHA KANKANWADI, J.
Date : 17-10-2019.

JUDGMENT :

1. Present appeal has been filed by the original claimants seeking enhancement in the compensation granted by the learned Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No.711 of 2009, dated 29-07-2011.

2. The applicants are the widow, children and parents of one Sanjay Kisan Lipne. Said Sanjay was 28 years old person running a shop by name ‘Ujjwal Sweets’ and getting income of Rs.20,000/- per month. Sanjay was going from his shop situated at Savedi to Ahmednagar City on 05-08-2009 on his motorcycle bearing No.MH-16/AB-9058. When he came near Top-Up Petrol Pump at about 1.30 p.m., one Indica Car No.MH-16/Q-3000 came from Ahmednagar side in high speed rashly and negligently and gave dash to Sanjay. As a result of which Sanjay received serious injuries. He was taken to Civil Hospital Ahmednagar, however he was declared dead. The offence has been registered against Indica Car driver. Applicants being dependents on deceased Sanjay, claimed compensation of Rs.10,00,000/- from original respondents i.e. the owner and Insurance Company of the car respectively.

3. Respondent No.1 and respondent No.2 filed separate written statements, however they have denied the fact of accident, the manner in which it had taken place as narrated in the petition, age, occupation and income of the deceased. The Insurance Company

has further taken statutory defences.

4. Taking into consideration the rival contentions, issues were framed. Only the claimants have led evidence as well as documentary evidence on record. Taking into consideration the evidence, the learned Tribunal has come to the conclusion that, the accident had taken place due to the rashness and negligence on the part of driver of the car. It is held that, Sanjay expired due to the injuries sustained in the accident. Insurance Company has failed to prove that, there was any breach of terms of policy. Hence, both the respondents were held liable to pay the said amount of compensation. Being aggrieved by the quantum of compensation awarded by the learned Tribunal, the present appeal has been filed.

5. Heard learned advocate Mr. D. R. Jaybhar for appellants and learned advocate Mr. R. H. Dahat for respondent No.2 the Insurance Company.

6. As against respondent No.1, the appeal has been dismissed. Learned advocate appearing for respondent No.1 made statement on 25-07-2019 that, he had received the instructions that the respondent No.1 has expired. Thereafter, no steps were taken though time was granted, and in view of the conditional order dated 14-08-2019, the appeal stood dismissed as against respondent No.1. Though the point has not been argued yet note of the same is required to be mentioned here that, in view of Section 155 of the

Motor Vehicles Act, the appeal will not stand abated as a whole as in absence of the insured also the matter can proceed here. In *New India Assurance Co. Versus Kasturi Bai Tiwari, decided by High Court of Madhya Pradesh*, reported in *LAWS (MPH)-2010-2-125*, wherein the effect of death on certain cause of action has provided in Section 155 of the Motor Vehicles Act was considered, and it was held that, *"the matter can proceed against the Insurance Company only."* Similar ratio was laid down by High Court of Kerala in, *Pathukutty M. Vs. Abdurahiman V. P.*, reported in *LAWS (KER)-2018-9-340*. Further reliance has been placed on the recent decision of this Court in, *Pushpa Bajirao Thorat and Others Vs. Dnyaneshwar Kondaji Auti (died) and Another*, reported in *2019 (2) M.L.J. 418*, wherein it has been held that,

> *"On the death of owner of offending vehicle in whose favour a certificate of insurance had been issued, was only a formality since liability to satisfy the award to be passed was on the insurance Company, and the company cannot avoid it.*"

In *Pushpa Bajirao Thorat and Others Vs. Dnyaneshwar Kondaji Auti (died) and Another*, reported in *2019 (2) M.L.J. 418*, wherein it has been held that,

> *"On the death of owner of offending vehicle in whose favour a certificate of insurance had been issued, was only a formality since liability to satisfy the award to be passed was on the insurance Company, and the company cannot avoid it.*"

7. Now turning towards the present appeal which has been filed only for enhancement, a fact is required again to be noted is that, the respondent No.2 has not filed any appeal challenging the finding to the issue that the accident was caused due to the rash and negligent act on the part of the car driver, so also breach of terms of policy, therefore, the liability of the respondent No.2 is joint and several.

8. Learned advocate appearing for the appellant has submitted that, though the evidence indicated that, deceased was running a sweet shop yet the learned Tribunal has invoked notional income theory in this case. Future prospects are not considered and so also the non pecuniary damages have not been properly awarded. The multiplicand is also not applied properly taking into consideration the catena of Judgments.

9. Per contra, the learned advocate appearing for the respondent No.2 supported the reasons given by the learned Tribunal and submitted that, no interference is required.

10. At the outset, it can be said that, though the claimants had come with a case that deceased was running sweet shop by name ‘Ujjwal Sweets’, yet no documentary evidence to support the same contention has been led. The claimants have not even produced documentary evidence in the nature of Shop Act licence taken in the name of deceased in respect of the said shop i.e. ‘Ujjwal Sweets’.

The learned Trial Court has rightly held on the basis of evidence of CW.2 Pravin Lodha that, he owns shop ‘Ujjwal Sweets’ and earlier deceased was preparing sweets in his shop. Though further it was told by him that, in view of oral agreement, the shop was given to deceased to run and then the deceased was getting the profit from the said shop was disbelieved yet deceased was taken as skilled caterer and his income has been rightly taken at Rs.6000/- per month. However, it appears that the learned Tribunal did not consider the future prospects. They are now required to be considered in view of the decision in *National Insurance Company Ltd. Versus Pranay Sethi and others,* reported in *2017 SCC Online SC 1270 : 2017 ACJ 2700,* and the fact that the age of the deceased was 28, 40 % of the income is required to be added as future prospects. That amount comes to Rs.2400/- per month and the monthly income of the deceased then would be Rs.8400/-. Yearly it would be Rs.1,00,800/- (Rs.8400 per month x 12 months). There were five persons who were dependent on the deceased, and therefore, in view of the decision in, *Sarla Verma and others vs. Delhi Transport Corporation and another,* reported in (*2009) 6 SCC 121,* 1/4th of the income is required to be deducted towards personal expenditure. That amount comes to Rs.25,200/-. The total dependency of the applicants then would be Rs.75,600/-. Taking into consideration the age of the deceased as 28, in view of *Sarla Varma (Supra)* the multiplier would be '18'. The total future loss of income or dependency for the claimants would be Rs.13,60,800/-. Further an amount of Rs.70,000/- is required to be awarded towards non pecuniary damages as per the decision in, *Pranay Sethi (Supra)*. Thus, the claimants were entitled to get compensation of Rs.14,30,800/-. The amount granted by the learned Tribunal i.e. Rs.8,30,000/- is very much meager. Though the claimant had claimed compensation of Rs.10,00,000/- only, the Tribunal is duty bound to award 'just compensation', and therefore, by recovering the deficit Court fee, the amount can be awarded to the claimants. Under the said circumstance, the appeal deserves to be allowed. Hence, following order.

ORDER

(1) Appeal is hereby allowed.

(2) The Judgment and award passed in Motor Accident Claim Petition No.711 of 2009, by learned Member, Motor Accident Claims Tribunal Ahmednagar on 29-07-2011, is hereby set aside to the extent of quantum only and it is modified as follows ;

"The respondents No.1 and 2 being owner and insurer of the offending vehicle shall pay jointly and severally to the claimants an amount of Rs.14,30,800/- (in words rupees fourteen lakh thirty thousand eight hundred) (inclusive an amount of Rs.50,000/- (fifth thousand) towards 'No Fault Liability', which is already received by the claimants) along with interest @ of 7.5 % per annum from the date of the application till actual realization of the entire amount.”

(3) The amount already deposited should be adjusted towards this modified award.

(4) It is clarified that, rest of the award is kept as it is.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.