IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1097 OF 2018

1. Rekha w/o Shyamsunder Zawar,
Age 34 years, Occupation Household,

2. Poonam d/o Shyamsunder Zawar,
Age 13 years, Occupation Education,

3. Priya d/o Shyamsunder Zawar,
Age 11 years, Occupation Education,

4. Radhika d/o Shyamsunder Zawar,
Age 09 years, Occupation Education,

(Applicants No.2 to 4 being minor
u/g of Applicant No.1 Mother)

All residing At Kabra Nagar, Nanded. ...Appellants.
(Ori.Claimants.)

VERSUS

1. Kunal s/o Vijay Malpani,
Age 27 years, Occupation Business,
R/o Malpani Building, Vazirabad,
Nanded.

2. National Insurance Co. Ltd.,
Branch Office at Nanded. ...Respondents.
(Ori.Respdts.)

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Advocate for Appellants : Mr. S. S. Rathi.
Advocate for Respondent No.2 : Mr. A. B. Gatne.
Advocate for Respondent No.1 : Absent.

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CORAM : SMT.VIBHA KANKANWADI, J.

Date Of Reserving The Judgment : 27-06-2019.

Date Of Pronouncing The Judgment : 05-08-2019

JUDGMENT :

1. Present appeal has been filed by the original claimants for enhancement in the compensation awarded by learned Ad-hoc District Judge -2 and Ex-officio Member of Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No.341 of 2005, dated 04-07-2009, whereby their petition under Section 166 of Motor Vehicles Act, 1988 came to be partly allowed.

2. The factual matrix leading to the present case are that, the claimants are the widow and children of deceased Shyamsunder Zawar. Shyamsunder was serving as a Manager on the construction work of "Swastik Decorators Hyderabad," and was getting salary of Rs.5000/- per month. He was 35 years old person. Shyamsunder was standing near Ambika Karyalaya, Nanded with friend Rajesh Kabra around 9.45 p.m. on 11-05-2005. At that time one Minidoor auto bearing No.MH-26/B-3346, owned by respondent No.1 and insured with respondent No.2, came in high speed and gave dash to Shyamsunder from back side. As a result of which, Shyamsunder fell down and sustained grievous injuries. He was rushed to Government Hospital but succumbed to his injuries at about 10.15 p.m. The driver of the Minidoor has been prosecuted by police. The claimants had in all claimed compensation of Rs.7,00,000/- together with interest @ of 12 % per annum.

3. Respondent No.1 by filing written statement admitted the ownership of the vehicle and submitted that, it is insured with respondent No.2. It was also admitted that, the accident had taken place in which ultimately Shyamsunder succumbed to the injuries. It was also admitted that, Shyamsunder died due to the dash given by his vehicle but it was denied that, his driver was rash and negligent.

4. Respondent No.2 filed written statement and denied all the averments in the petition. Age, occupation, income of the deceased was denied. It was also denied that, the said accident had taken place due to the sole negligence on the part of the driver of the Minidoor. It was also contended that, since there is breach of terms of policy, the Insurance Company is not liable to pay compensation.

5. Only the claimants have adduced evidence, respondents did not, and after hearing both sides, the learned Tribunal has come to the conclusion that, the claimants have proved that the said accident took place due to the sole negligence on the part of the driver of the Minidoor. There was no breach of terms of policy, and therefore, by allowing the petition partly, respondents No.1 and 2 were directed to pay compensation of Rs.3,86,000/- together with 7.5 % per annum interest from the date of the registration of the petition till actual realization of the entire amount, jointly and severally. Present

appeal has been filed to get the said amount of compensation enhanced.

6. Heard learned advocate Mr. S. S. Rathi for appellants and learned advocate Mr. A. B. Gatne for respondent No.2. Learned advocate for respondent No.1 was absent when the matter was called out.

7. It has been vehemently submitted on behalf of the appellants that, the learned Tribunal failed to consider that, deceased was getting salary of Rs.5000/- per month, and in order to prove the same, they had examined the partner of Swastik Decorators. He has produced two vouchers, but his testimony has been unnecessarily disbelieved by the learned Tribunal. The learned Tribunal has not considered the future prospects, so also the non pecuniary damages have not been properly awarded. He, therefore, prayed for enhancement in the compensation.

8. Per contra, learned advocate appearing for the respondent No.2 Insurance Company supported the reasons given by the learned Tribunal for arriving at the figure of the compensation.

9. It is to be noted that, the respondents have not challenged the findings which have gone against them, and therefore, the scope of the present appeal is limited to the extent of the quantum. Under

such circumstance, following point arise for determination, findings and reasons for the same are as follows ;

> "Whether the learned Tribunal was justified in awarding compensation of Rs.3,84,000/- only to the claimants on the basis of evidence adduced ?"

10. Claimants have examined CW.1 Rekha Zawar, who is the widow of Shyamsunder. She has categorically stated that, her husband was earning Rs.5000/- per month. No doubt she has stated that, her husband had maintained diary towards receipt of monthly payment, but then she said that it is lost. In order to support her contention, she examined CW.3 Rajesh Lakhotiya. In fact at Exhibit 37, they had filed affidavit of one Anilkumar Lakhotiya but it appears that, he was not available for cross, and therefore, another partner of Swastik Decorators was examined. He has categorically stated that, Shyamsunder was their employee, who used to act as Manager to supervise the construction work of the Mangal Karyalaya. The firm used to pay Rs.5000/- per month as salary to Shyamsunder and he was also provided with a rent free accommodation. He has produced two vouchers dated 01-05-2005 and 01-04-2005. He has categorically stated that, those vouchers bear signature of deceased. In his cross-examination he has admitted that, the salary certificate Exhibit 45 does not bear his signature. He undertook to produce Income Tax Returns of the firm

in which they had shown the salary paid to Shyamsunder, but ultimately it appears that, he did not produce and on this count his testimony has not been believed by learned Tribunal. What the learned Tribunal did not see is the fact that, the vouchers Exhibit 46 and 47 were having the signatures of this witness as well as the signature of deceased. Those were the sufficient documents to arrive at a conclusion that the salary of deceased was Rs.5000/- per month. In fact the salary certificate Exhibit 45 which was signed by another partner can be said to be a 'secondary evidence' for the reason that the said certificate should have been prepared on the basis of Exhibits 46 and 47 vouchers. Non-filing of Income Tax Returns by this witness, ought not to have been taken adverse for the claimants as they were not responsible for the same. When the 'primary evidence' in the nature of vouchers at Exhibit 46 and 47 were produced and they were duly proved by CW.3 Rajesh, the learned Tribunal ought to have based its calculation of compensation on salary @ of Rs.5000/- per month.

11. Taking into consideration the vouchers Exhibits 46 and 47, the salary of the deceased is taken at Rs.5000/- per month. It appears from the testimony of CW.3 Rajesh that, it was a fix salary and therefore taking into consideration the decision in, *National Insurance Company Ltd. Versus Pranay Sethi and others,* reported in *2017 SCC Online SC 1270 : 2017 ACJ 2700,* together with a fact that,

deceased was 35 years old person ; 40 % of the salary is required to be given as future prospects. That amount comes to Rs.2000/-. After adding the future prospects, his income would be Rs.7000/- per month (Rs.5000/- per month + Rs.2000/- per month). Yearly the income would be Rs.84,000/- (Rs.7000 per month x 12 months).

12. All the claimants were dependent on Shyamsunder, therefore taking into consideration the number of family members depend on Shyamsunder as four (04), and the ratio laid down in *Sarla Verma and others v. Delhi Transport Corporation and another,* reported in (*2009) 6 SCC 121,* as well in case of *Pranay Sethi (Supra),* 1/4th share is required to be deducted as personal expenditure. That amount comes to Rs.21,000/- (1/4th of Rs.84,000). Therefore the dependency of the present claimants would be Rs.63,000/- per annum (Rs.84,000 – Rs.21,000). Further in view of the above said decisions and taking age of deceased at 35 years, the just multiplier in this case would be '16'. After applying the multiplier, the future loss of income for the present claimants would be Rs.10,08,000/- (Rs.63,000 X 16). Further in view of the decision in case of *Pranay Sethi (Supra)*, the non pecuniary damages that can be awarded would be Rs.70,000/- in all, that is Rs.15000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses. Thus, the total amount of compensation to which the claimants are entitled is Rs.10,78,000/-.

13. The learned Tribunal has awarded only Rs.3,86,000/-. The observations of the Hon'ble Apex Court in, *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and* , reported in *(1994) 2 Supreme Court Cases 176*, are required to be considered here wherein it has been stated that,

> "The determination of the quantum of compensation must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbors and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales". All this means that the sum awarded must be fair and reasonable by accepted legal standards.

Further in, *Reshma Kumari and Ors. Vs. Madan Mohan and Anr.,* reported in *(2013) 9 SCC 65*, it has been observed that,

> "Section 168 of the Motor Vehicles Act, 1988 provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case."

14. It is the duty of the Claims Tribunal to award 'just

compensation' to which the claimants are entitled to. At the same time, the claims Tribunal should try to give complete justice, and while doing so Tribunal can grant compensation beyond what was claimed in the petition. It should not be restricted to the Court fee that has been paid. The deficit Court fee can be recovered. Under such circumstance, the award that has been passed in this case cannot be said to be 'just and fair', and therefore, deserves to be set aside in respect of quantum and required to be modified as aforesaid. Hence, following order.

ORDER

1) Appeal is hereby allowed.

2) The Judgment and award passed in Motor Accident Claim Petition No.341 of 2005, by learned Ad-hoc District Judge-2 and Ex-Officio Member, Motor Accident Claims Tribunal, Nanded on 04-07-2009, is hereby set aside and modified to the extent of quantum only as follows ;

"Respondents No.1 and 2 shall pay jointly and severally amount of Rs.10,78,000/- (in words rupees ten lakhs seventy eight thousand) (inclusive of amount of Rs.50,000/- already granted to the claimants under Section 140 of Motor Vehicles Act) to the petitioners No.1 to 4 with interest @ of 7.5 % per annum from the date of the petition till actual realization of entire amount.

3) The amount already deposited towards the Judgment and award be adjusted towards the amount

now granted.

4) After deposit of the entire amount, amount of Rs.2,00,000/- (in words rupees two lakh) be deposited in fixed deposit in any Nationalize Bank of her choice in the name of Petitioner No.1 for a period of three (03) years with liberty to take quarterly interest.

5) After the maturity, the entire amount with interest be given directly to her without waiting for any orders from the Court / Tribunal.

6) From the rest of the amount, amount of Rs.1,00,000/- (in words rupees one lakh) each be given to claimants No.2, 3 and 4 (who are now major) by Account Payee cheque towards their share.

7) Rest of the entire amount together with interest be given by Account Payee cheque to claimant No.1.

8) Appellants to deposit the deficit Court fees in this Court within a period of one (01) month from the date of this order.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.