

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 FIRST APPEAL NO.1250 OF 2012

- 1) Smt. Chandrabhaga Dasharath More,
Age 42 years, Occupation Household,
- 2) Shri. Vivek Dashrath More,
Age 23 years, Occupation Education,
- 3) Shri. Sandeep Dashrath More,
Age 21 years, Occupation Education,
R/o Laxmi Nagar, Erandole, Taluka
Erandole Dist. Jalgaon.

**...Appellants.
(Ori.Claimants)**

VERSUS

- 1) Shri. Jabbarali Ibrahimali Sayyad,
Age 40 years, Occupation Driver and
Owner of Vehicle, R/o Pimpalkhota
Tq. Erandole Dist. Jalgaon.
- 2) The Oriental Insurance Company Ltd.,
Through Branch Manager,
3rd Floor, Phule Market Jalgaon
Dist. Jalgaon.
- 3) Shri. Malak Rafiq Malak Ayub,
Age Major, Occupation Truck Owner,
R/o Faizpur Tq. Yawal Dist. Jalgaon.
- 4) New India Insurance Company Ltd.,
Through Branch Manager,
Near Dadhiwal Bungalow, Jalgaon.
- 5) Shri. Punju More (Dead)
Age Major, Occupation Household,
R/o Ladli Tq. Dharangaon Dist. Jalgaon.

**...Respondents.
(Ori.Respdts.)**

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Advocate for Appellants : Mr. M. M. Bhokarikar.
Advocate for Respondent No.1 : Ms. Nayana Patil holding
for Ms. Surekha Mahajan.
Advocate for Respondent No.2 : Mr. Upadhye V.N.
Advocate for Respondent No.3 : Mr. N.E.Deshmukh.
Advocate for Respondent No.4 : Mr. A. G. Kanade.
Advocate for Respondent No.6 : Mr. G. V. Wani.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-08-2019.

ORAL JUDGMENT :

1. Present appeal has been filed by the original claimant seeking enhancement in the compensation granted in MACP No.10 of 2005 by learned Member MACT, Jalgaon on 06-08-2010.
2. Present appellants are the widow and sons of deceased Dashrath Punju More who expired in an accident that had taken place at about 5.15 p.m. on 01-12-2004. He was travelling from rickshaw bearing No.MH-19/Q-5974. When the auto rickshaw was trying to overtake a bullock cart, goods truck bearing No.MH-19/2901 came from opposite direction and there was head on collusion between the two vehicles. Dashrath and other persons sitting in the auto rickshaw received serious injuries. They were admitted to the hospital, however Dashrath expired due to the accidental injuries. It is stated that, the said accident had taken place due to the negligence on the part of driver of both the vehicles. Dashrath was 40 years old serving as Assistant Teacher and drawing salary of

Rs.10,000/- per month. Respondent No.1 is the owner and driver of auto rickshaw. Respondent No.2 is the Insurance Company with whom auto rickshaw was insured. Respondent No.3 is the owner of the truck and his truck was insured with respondent No.4. Respondent No.5 was the father of deceased Dashrath who also expired during the pendency of this appeal. Respondent No.6 is said to be the stepmother of Dashrath. The claimants had filed said claim under Section 166 of the Motor Vehicles Act for getting compensation of Rs.12,00,000/- together with interest.

3. Respondent No.1 failed to file written statement. Respondents No.2, 3 and 4 have filed written statement separately. All of them have denied age, occupation and income of the deceased. Respondent No.2 has denied the averments that the auto rickshaw driver was negligent. Statutory defence has also been taken. Respondents No.3 and 4 have denied the allegations that the truck driver was negligent. Respondent No.4 has also taken statutory defence. Respondents No.5 and 6 by their common written statement contended that, they were depending on the deceased and claimed share from the compensation.

4. After the issues were framed, only the claimants led oral as well as documentary evidence. None of the respondents have led

any kind of evidence. Taking into consideration the evidence, the learned Tribunal had come to the conclusion that, Dashrath expired due to the accidental injuries those were caused due to the collusion between the auto rickshaw and the truck. It was also held that, driver of both the vehicles were negligent and the apportionment between them is 60 : 40. It has also been held that, both the Insurance Companies have failed to prove breach of terms of policy, and therefore they are liable to pay compensation jointly and severally with the owners of the respective vehicles. It will not be out of place to mention here that, none of the respondents have filed appeal challenging the above findings of the Tribunal.

5. The learned Tribunal has awarded compensation of Rs.13,09,190/- together with interest @ of 7.5 % per annum from the date of the petition till actual realization of entire amount. Now this Judgment and award though the claimants had got more than they had claimed yet they are dissatisfied with the same and filed the present appeal. Taking into consideration the scope of the appeal and the submissions on behalf of the appellants that the learned Tribunal failed to consider the head of future prospects, so also the non pecuniary damages. As per pronouncements of the Hon'ble Supreme Court and the fact that the Tribunal was duty bound to

award just compensation, though more amount was granted yet it cannot be said to be just, when under these heads additional amount ought to have been given.

6. Per contra, the learned advocates appearing for the respondents No.2 and 4 supported the reasons given by the Tribunal. Learned advocate for respondent No.6 supported the submission on behalf of the appellants and also submitted that appropriate proportion be allotted to her. Thus, taking into consideration these submissions, following points arise for determination, findings and reasons for the same are as follows ;

(1) Whether the compensation granted to the claimants needs further enhancement ?

(2) Whether any modification in the award is required in respect of apportionment of the compensation to the claimants and respondent No.6 ?

7. As aforesaid the scope of the appeal is limited. It is also not in dispute to both the parties that, while arriving at the quantum of compensation, the learned Tribunal has taken into consideration the gross salary of the deceased which was proved through salary certificate Exhibit 75 as Rs.10,515/- ; there could have been only deduction towards professional tax i.e. @ of Rs.200/- per month, and therefore, the base has been rightly taken as Rs.10,315/- per month.

However it appears that, the learned Tribunal has not given even a thought regarding future prospects to be added to the said income. In fact learned Tribunal had take a note of the decision in, *Sarla Verma and others v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121, in which there are directions in respect of future prospects to be added yet did not consider the said head. Now the legal position as it stands we are required to take into consideration the decision in, *National Insurance Company Ltd. Versus Pranay Sethi and others*, reported in 2017 SCC Online SC 1270 : 2017 ACJ 2700, especially para No.61 (iii) wherein it has been stated that,

“(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. ”

Here in this case the deceased was 40 years old as it appears from the post mortem report as well as the death certificate which has been produced on record. Therefore, 30 % of the amount of actual salary less tax i.e. Rs.10,315/- is required to be added. That amount comes to Rs.394.5 which is rounded up to Rs.3095/-. Thus, for our calculation

purpose the income of the deceased would be Rs.13,410/- per month, yearly it would be Rs.1,60,920/- (Rs.13410 per month X 12 months).

8. The deduction towards personal expenditure has been rightly taken by the learned Tribunal based on the decision in, *Sarla Verma and others v. Delhi Transport Corporation (Supra)*, that is 1/4th. Now that amount comes to Rs.40,230/-. After deducting the said expenditure towards personal expenditure, the dependency of the claimants and respondents No.5 and 6 would be Rs.1,20,690/-. Further as per the decision in, *Sarla Verma and others v. Delhi Transport Corporation*, and *National Insurance Company Ltd. Versus Pranay Sethi and others (Supra)*, and the age of the deceased, the just multiplier would be 14. After applying the multiplier the total amount of compensation towards dependency would be Rs.16,89,660/-.

9. Further in view of Judgment in *National Insurance Company Ltd. Versus Pranay Sethi and others (Supra)*, the non pecuniary damages would be Rs.70,000/-, therefore after addition the amount of compensation to which the claimants and respondents No.5 and 6 would be entitled to, is Rs.17,59,660/-.

10. The Tribunals are duty bound to award just compensation and in doing so it may exceed to the amount that has been claimed, that

would be within their powers to enhance or award the said amount which is more than claim subject to recovery of deficit Court fee. Under such circumstance, the said award deserves to be modified and the compensation deserves to be enhanced. The claimants in their appeal memo by giving a different calculation which they never gave it before the Tribunal are now claiming compensation of Rs.22,71,240/- and it is also stated that, just compensation would not have been less than Rs.25,00,000/-. It is very much on the higher side and there is absolutely no explanation as to why such calculation was not put before the Tribunal. Under such circumstance the appeal deserves to be partly allowed.

11. Another fact that is also required to be considered is that, though the learned Tribunal has held the claimants as well as respondents No.5 and 6 entitled to get compensation, has not apportioned the compensation amount amongst them, and therefore, that apportionment is required to be made now taking into consideration the present modified amount of compensation. Respondent No.5 – father of deceased Dashrath has now expired, and therefore, we may not carve out any share for him, but then respondent No.6 though she was stepmother of Dashrath, is stated to be dependent on the deceased. Therefore, definitely an amount is

required to be given to her as her share which cannot be equal to the share which can be granted to the widow and the sons. Further the sons have now become major, though they are taking education, they deserves less amount to be apportioned to them than the widow. With these observations and further clarification that the finding as regards holding respondents No.1 and 2 and respondents No.3 and 4 liable to pay compensation 60 : 40, following order is passed.

ORDER

- 1) Appeal is hereby partly allowed.
- 2) The Judgment and award passed in MACP No.10 of 2005 by learned Member MACT, Jalgaon on 06-08-2010 is hereby set aside and modified as follows ;

“Respondents No.1 and 2 on one part do pay jointly and severally 60 % and respondents No.3 and 4 on second part do pay jointly and severally 40 % of the amount of compensation of Rs.17,59,660/- (in words rupees seventeen lakh fifty-nine thousand six hundred and sixty) (inclusive of amount awarded on the principal amount of 'No Fault Liability') to the petitioners -claimants and respondent No.6 equally together with interest @ of 7.5 % per annum from the date of the petition till actual realization of the entire amount.

3) The equal proportion granted to respondent No.6 is hereby set aside, and out of the said amount of compensation, amount of Rs.5,00,000/- (in words rupees five lakh) be awarded to her as her share (it is clarified that, this is without interest and as lump-sum).

4) Further as regards claimants No.2 and 3, amount of Rs.4,00,000/- each (in words rupees four lakh) be given to them towards their share. This is also without interest and from rest of the amount together with interest be paid to the claimant No.1 in the form that 50% of the same be kept in fixed deposit and if the fixed deposit which has been already made as per the award has matured, it be redeposited for a period of five (05) years more.

5) Rest of the 50 % amount be given to her by account payee cheque.

6) After the maturity of the fixed deposit, the entire matured amount together with interest be given to her without further order from this Court or by Tribunal.

7) Appellant to pay deficit Court fee, if any, within a period of one (01) month from today.

8) Deposit if any made towards said award be adjusted towards present award.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.