

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.120 OF 2018

Reliance General Insurance Company,
Through its Manager,
Reliance General Insurance Company,
Adalat Road, Aurangabad.

... **Appellant.**

... **Versus** ...

- 1 Nikita Digvijay Jambure,
Age 27 yrs., Occ. Household,
- 2 Varad Digvijay Jambure,
Age 5 yrs., Occ. Nil,
Minor, Under Guardianship of
respondent No.1 – natural mother.
- 3 Subhash Vishnurath Jambure (**dead**)
- 4 Sau. Alka Subhash Jambure,
Age 62 yrs., Occ. Household,

All are r/o 2033, Davare Galli,
Ahmednagar.
- 5 Manesh Harichandra Borude,
Age – major, Occ. rider/owner,
R/o Burudgaon road, Dhor Vasti,
Tq. Nagar, Dist. Ahmednagar.

... **Respondents.**

...

Mr. R.H. Dahat, Advocate for the appellant

Mr. D.A. Bide, Advocate for the respondent Nos.1, 2 and 4

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JULY, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent No.2-insurance company challenging the Judgment and Award passed by learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P No.795/2012 dated 03.03.2017.

2 Present respondent Nos.1 to 4 are the original claimants who had filed petition for getting compensation under Section 166 of the Motor Vehicles Act, 1988. The claimants are the legal representatives of Digvijay Subhash Jambure who was a 28 years old Engineer serving with Ventile Company Private Limited, Tarakpur, Ahmednagar and was drawing salary Rs.10,500/- per month. The claimants contended that deceased Digvijay with his friend Dipak Bhusari was proceeding on motorcycle No.MH 12/GD-7104 at about 10.00 p.m. on 04.07.2012 from Nagar to Jamgaon from Nagar-Kalyan road. Digvijay was riding the said vehicle. It is stated that he was in a moderate speed and he was observing traffic rules. When they reached near Nimgaon Wagha shivar another motorcycle bearing No.MH 16/AR-3111 came from back side. Respondent No.1 was riding the same in rash and negligent manner as

well as in high speed. He could not control the speed of vehicle and gave dash to motorcycle ridden by the deceased. As a result of the dash deceased as well as the pillion rider fell down and sustained grievous injuries. Deceased was taken to Dr. Pathak's hospital at Ahmednagar, where he was declared dead. Respondent No.1 has been prosecuted by police. All the claimants were dependent on the earnings of the deceased, since the accident took place due to negligence of respondent No.1 being himself the owner also and the vehicle was insured with respondent No.2. They had claimed compensation from the respondents jointly and severally to the tune of Rs.25,00,000/-, however, restricted the same to Rs.18,00,000/-.

3 The matter proceeded without written statement as against respondent No.1. Respondent No.2 filed written statement and denied all the averments in the claim petition. The insurance company has denied the age, income, dependency of the claimants. It is also denied that the said accident had taken place due to the negligence on the part of respondent No.1. Other statutory defences have also been taken.

4 Taking into consideration the rival contentions, issues were framed. Only claimants have led oral as well as documentary evidence. Taking into consideration the evidence on record and hearing both sides

the learned Tribunal has held both the respondents liable to pay compensation to the applicants jointly and severally and compensation of Rs.25,70,000/- has been awarded together with interest @ 8% per annum from the date of the claim till actual realization of the entire amount. This Judgment and Award is challenged in this appeal.

5 Heard learned Advocate Mr. R.H. Dahat for the appellant and learned Advocate Mr. D.A. Bide for the respondent Nos.1, 2 and 4.

6 It has been vehemently submitted on behalf of the respondents that since the respondent Nos.1 and 2 did not lead any evidence the appeal is restricted to the quantum. It was submitted that the learned Tribunal has accepted fact that deceased was on probation and could have been made permanent only after putting requisite number of years in the service and therefore the future prospects ought to have been awarded as per ratio in **National Insurance Co. Ltd. V/s. Pranay Sethi [2017 ACJ 2700]** i.e. 40% of the income. Further, it is submitted that the non pecuniary damages should be also as per the decision in **Pranay Sethi**.

7 Per contra, the learned Advocate appearing for the respondents-original claimants submitted that the learned Tribunal has applied correct law and arrived at an appropriate and just compensation.

He relied on the decision in **Magma General Insurance Company Ltd. vs. Nanu Ram, 2018 SCC Online SC 1456** ;wherein even after Pranay Sethi's Judgment, amount of Rs.1,00,000/- was awarded towards loss of love and affection, Rs.80,000/- towards consortium and further it was observed that the Supreme Court does not want to interfere with the amount of compensation, that has been already awarded.

8 Note is taken that the evidence adduced by the claimants on the point that Digvijay expired in vehicular accident and the said accident was caused due to the negligence on the part of respondent No.1 who was riding the motorcycle which was owned by him and it was insured with respondent No.2 has been proved. So also note is taken about the fact that the respondent No.2 had failed to prove that the respondent No.1 had committed breach of terms of policy. Hence, it is not necessary to deal with these point in this appeal. Taking into consideration the limited scope of quantum following point arise for determination. Findings and reasons on the same are as follows.

Whether the learned Tribunal was justified in awarding amount of compensation to the extent of Rs.25,70,000/- to the claimants ?

9 The claimants have examined PW 2 Vinod Musale, Branch Manager of Ventile Company Private Ltd. in order to prove the income of

the deceased. The salary slip of the deceased was produced through him, so also the appointment letter and other documents of service conditions of deceased. It is to be noted that the pay slip of deceased, that was produced on record, was of the month of June, 2012 having 22.5 working days to the tune of Rs.8,842/-. Therefore, the learned Tribunal has observed that average income of Rs.400/- per day is required to be taken into consideration and therefore the calculation has been made by taking the base of income @ Rs.10,000/- per month. This fact can also be viewed from another angle. Except the amount towards professional tax, no other amount could have been deducted from gross salary while calculating the income as the said salary was under the head of non taxable. The base of the amount that has been taken by the learned Tribunal appears to be correct. Further, the learned Tribunal, based on the decision in **Sarla Verma and Ors. v/s. Delhi Transaport Corporation and Ors [2009 (6) SCC 121]**, added 50% of the income towards future prospect. However, taking into consideration the decision of the Constitution Bench in **Pranay Sethi**, the calculation is now required to be made on the basis of the ratio laid down therein. The documents about service conditions show that deceased was on probation. Therefore, he cannot be considered as a permanent employee. Under such circumstance, taking into consideration the ratio laid down in **Pranay**

Sethi's Judgment at para No.64 (IV), 40% of the income is required to be added as future prospects. That amount comes to Rs.4,000/- and therefore, the monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- per month + Rs.4,000/- per month for future prospect). Yearly it would be comes to Rs.1,68,000/- (Rs.14,000/- X 12 months).

10 At the time of death of Digvijay, there were four members in the family and therefore, taking into consideration the decision in **Pranay Sethi** and **Sarla Verma**, $\frac{1}{4}^{\text{th}}$ of the said income is required to be deducted towards personal expenditure. That amount comes to Rs.42,000/- ($\frac{1}{4}^{\text{th}}$ of Rs.1,68,000/-). Under such circumstance, the dependency of the claimants would be Rs.1,26,000/- (Rs.1,68,000/- - Rs.42,000/-). Deceased was 28 years old person and therefore again taking into consideration the ratio in **Pranay Sethi** as well as in **Sarla Verma** the just multiplier in this case would be "17". After applying the multiplier, total loss of dependency would come to Rs.21,42,000/- (Rs.1,26,000/- X 17).

11 Amount of Rs.70,000/- is required to be added towards non pecuniary damages. In view of the decision in **Pranay Sethi**. In **Magma General Insurance Company Ltd.**, at para No.8.6 the Apex Court has stated, "In exercise of power under Article 142, and in the interest of justice we deem it appropriate to award an amount of Rs.15,000/-

towards Loss of Estate to respondent Nos.1 and 2.” In fact, the same amount is fixed in **Pranay Sethi**. Further, as regards the head “Loss of Consortium”, it has been observed - “..... the amount of compensation to be awarded as consortium will be governed by principles of awarding compensation under Loss of Consortium as laid down in **Pranay Sethi** (supra)”. The segregation has been made and it is stated that -

“In legal parlance, “consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The Hon'ble Supreme Court has explained the meaning of all these concepts. Yet, the above said observation is made that the principles would be governed by **Pranay Sethi** and therefore amount of Rs.70,000/- is awarded towards loss of estate, loss of consortium and towards funeral charges. Thus, the claimants/present respondent Nos.1 to 4 are entitled to get compensation of Rs.22,12,000/-.

12 The learned Chairman, Motor Accident Claims Tribunal, Ahmednagar had decided the petition on 03.03.2017 and at that time **Rajesh vs. Rajveer Singh** as well as **Reshma Kumari vs. Madan Mohan** reported in 2013 (9) SCC 54 and 2013 (9) SCC 65 respectively were holding field. But since the Constitution Bench has held that, “as *Rajesh* has not taken note of decision in *Reshma Kumari*, which was delivered at

earlier point of time, the decision in *Rajesh* is not binding precedent”; the calculation based by the Tribunal on *Rajesh* cannot be allowed to sustain and therefore, the appeal deserves to be partly allowed. The point is answered accordingly. Hence, following order.

ORDER

1 The appeal is hereby partly allowed.

2 The Judgment and Award passed by learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P No.795/2012 dated 03.03.2017 is hereby set aside and modified to the extent of quantum as follows :

"Opponent Nos.1 and 2 shall pay, jointly and severally, compensation of Rs.22,12,000/- (Rupees Twenty Two Lac and Twelve Thousand only) inclusive of amount under No Fault Liability to the extent of Rs.50,000/-."

3 It is clarified that the rate of interest as awarded and so also the disbursement to be made, would be as per the Judgment and Award passed by the learned Tribunal.

4 No order as to costs.

(Smt. Vibha Kankanwadi, J.)