IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 FIRST APPEAL NO.4232 OF 2016

Divisional Controller
Maharashtra State Road
Transport Corporation
Division Office,
At Aurangabad. .. APPELLANT
[ORIG.RESPONDENT NO.1]

VERSUS

1] Mukta wd/o Sanjay Mandlik
Age 28 years, Occu.Household,
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.1
[ORIG.CLAIMANT NO.1.]

2] Santosh S/o Sanjay Mandlik,
Age 12 yrs, Occu.Student
u/g of Respondent no.1
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.2
[ORIG.CLAIMANT NO.2.]

3] Shravni d/o Sanjay Mandlik
Age 10 years, Occu.Student,
u/g of Respondent no.1
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.3
[ORIG.CLAIMANT NO.3.]

4] Shravan s/o Sanjay Mandlik
Age 7 yrs, Occu.Student
u/g of Respondent no.1
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.4
[ORIG.CLAIMANT NO.4.]

5] Hausarav Bayaji Mandlik
Age 66 yrs, Occu.Nil
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.5
[ORIG.CLAIMANT NO.5.]

6] Jaibai Hausarav Mandlik
Age 61 yrs, Occu.Nil,
R/o Hanuman Nagar, Post Hiradpuri
Tq.Paithan, District Aurangabad .. RESPONDENT NO.6
[ORIG.CLAIMANT NO.6.]

7] Suryabhan Raut,
Age Major, Occu.Service/Driver
R/o Through Divisional Controller
M.S.R.T.C. Divisional Office. .. RESPONDENT NO.7
[ORIG.RESPONDENT NO.2.]

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Mrs.Ranjana D. Reddy,Advocate for Appellant
Mr.G.R.Syed, Advocate for Respondents nos.1 to 6

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CORAM : MANGESH S. PATIL, J.
DATE : 28.11.2019

P.C. :-

Heard. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The Road Transport Corporation has preferred this appeal being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal in a proceeding initiated by the respondent claimants under Section 166 of the Motor Vehicles Act.

3] At the outset the learned advocate for the appellant Corporation fairly concedes that it does not intend to impugn the judgment and award to the extent of the cause of the accident holding the driver of the Corporation to be solely responsible for causing the accident in the facts, circumstances and evidence on the record.

4] However, the learned advocate for the appellant submits that the Tribunal has grossly erred in assessment of the compensation. Inspite of there being no sufficient and cogent evidence it has estimated the income of the deceased to be Rs.6000/- per month, though he was not in any permanent employment, and though his occupation only was a seasonal one. Applying the principles laid down in the case of National Insurance Company Ltd. V/s Pranay Sethi and others; (2017) 16 SCC 680, 50% of the future prospects could not have been added. She would then submit that even the compensation under conventional heads do not conform to the direction in Pranay Sethi. The decision in Pranay Sethi was rendered subsequent to the passing of the impugned judgment and award but the Tribunal ought to have taken into consideration the decision in Sarla Varma (Smt) and Ors. Versus Delhi Transport Corporation and another; (2009) 6 SCC 121 which also awarded only some amount under the conventional heads like loss of estate and funeral expenses etc. but the Tribunal has awarded hefty compensation under those heads. She therefore submits that compensation be calculated in accordance with principles laid down in the cases of Sarla Varma and Pranay Sethi.

5] The learned advocate Mr.Syed for respondents submits that there is no error in calculating the compensation under the head of loss of income. There was enough evidence to show that the deceased was atleast doing some seasonal work. He was contractor supplying labour and bullock carts in the sugar cane cutting season. A witness was also examined in that respect who was an Officer of the Sugar factory which had engaged his services.

6] I have carefully gone through the record and the proceeding. Since it is only a matter of assessment of just compensation, the scope of this appeal is very limited. The deceased was aged 27 years and a multiplier of 17 has been correctly applied as per the decision in the case of Sarla Varma and Pranay Sethi. (supra).

7] The deceased is stated to be engaged in a business of supply of contract labour and bullock carts to sugar factory. A witness of that sugar factory was also examined who duly certified that the deceased indeed was supplying labour and bullock carts to the sugar factory during the season for 4 to 5 years prior to his death. Nothing could be elicited during his cross examination so as to disbelieve him. Again, there were some bills and hand written record maintained by the deceased produced on the record (Exh.33 and 35) which *prima facie* demonstrates that he was in fact paying several persons engaged by him. Based on such objective material, by resorting to some guess work, the Tribunal has assessed the notional income of the deceased to be Rs.6000/- p.m. In my considered view there was enough material to arrive at such a conclusion and there is no apparent illegality.

8] So far as future prospects are concerned, the learned advocate for the Corporation submits that the deceased was merely doing a seasonal work and cannot be regarded as either a self-employed or having any permanent income and therefore, no future prospects could have been added.

9] A careful perusal of the directions in Pranay Sethi would reveal that future prospects are to be added at 50% of actual income where the deceased had permanent job whereas in case of self-employed or a person having fixed salary a notional 40% has to be added in case of a deceased who was below 40 years. I cannot comprehend and do not find any substance in the submission of the learned advocate for the Corporation as to how though the deceased was in a seasonal occupation he cannot be regarded as self employed person when there is evidence to show that he was regularly engaged in this work which in its nature was a seasonal one, for number of years. The respondent claimants would be entitled to claim future prospects at the rate of 40%. The Tribunal has added 50% therefore to that extent the calculations need to be done by adding future prospects at only 40% of the annual income which comes to Rs.72,000/- plus 28,800/- = 1,00,800/-. Then taking into account the fact that the number of the dependents on the deceased are more than 4 only 1/4th portion from his income will have to be deducted towards the personal expenses and thus the compensation under head of loss of income would come to Rs.12,54,600/-=(1,00,800-27000=73,800X17).

10] It appears that the Tribunal by relying upon the decisions of the Supreme Court has awarded compensation under the conventional heads like loss of consortium for respondent no.1 at Rs.1 lakh, loss of love and affection for rest of the respondents at Rs.1 lakh a piece for the children and Rs.50,000/- to the mother. It has also awarded Rs.1 lakh towards loss of estate and Rs.25,000/- towards funeral expenses.

11] However, bearing in mind the fact that the Supreme Court has now considering the decision in Pranay Sethi (supra) has added compensation under few new heads, we have to follow the decision in Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram and Ors; 2019(4) Mh.L.J. 1, which now recognizes spousal consortium, parental consortium and fillial consortium and entitles them to claim Rs.40,000/- each. It also recognizes the loss of love and affection and holds claimants entitle to claim Rs.50,000/- each. Thus the just compensation would be as under :

Sr.No.	Head	Compensation awarded
1]	Pecuniary loss	Rs.12,54,600/-
2]	Spousal Consortium	Rs. 40,000/-
3]	Parental Consortium for 3 children @ Rs.40,000/-each.	Rs. 1,20,000/-
4]	Filial Consortium for parents @ Rs.40,000/- each	Rs. 80,000/-
5]	Loss of Love & Affection @ Rs.50,000/- each for 6 claimants	Rs. 3,00,000/-
6]	Loss of Estate	Rs. 15,000/-
7]	Funeral expenses	Rs. 15,000/-
	Total Compensation :	Rs.18,24,600/-

12] The appeal is partly allowed. The quantum assessed by the Tribunal in impugned judgment and award shall stand modified and instead the respondent claimants shall be entitled to claim Rs.18,24,600/-. Apportionment amongst the claimants shall stand as it is. No costs.

13] The appellant Corporation has already deposited the amount of compensation with interest in this Court some of which has been allowed to be withdrawn by the respondents claimants. The amount sufficient to adjust the compensation assessed now be paid to the respondents claimants and the balance be refunded to the appellant Corporation.

[MANGESH S. PATIL, J.]

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