

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

FIRST APPEAL NO.393 OF 2017

- 1 Smt. Usha Gunvant Bari (Kolhe),
Age 39 yrs., Occ. Household,
- 2 Ku. Prajakta Gunvant Bari (Kolhe),
Age 18 yrs., Occ. Education,
- 3 Ku. Kaveri Gunvant Bari (Kolhe),
Age 16 yrs., Occ. Education,
- 4 Ku. Durga Gunvant Bari (Kolhe),
Age 12 yrs., Occ. Education,

(Appellant No.1 is mother and natural
guardian of appellant Nos.2 to 4)

All are r/o Plot No.16, Ashok Nagar,
Near Datta Mandir, Jalgaon, Dist. Jalgaon.

... Appellants.

... **Versus** ...

- 1 Abdul Amir Sk. Lallu Khan,
Age 41 yrs., Occ. Business,
R/o W.N.7, Jama Masjid, Gangapur City,
Savai Madhopur, Rajasthan – 322 201.
- 2 The Branch Manager,
The New India Assurance Company Ltd.,
Mandore Market, Dadhiwala Bungalow,
Mehrun Road, Jalgaon, Dist. Jalgaon.
- 3 Sou. Banabai Narayan Bari (Kolhe),
Age 68 yrs., Occ. Nil,
- 4 Narayan Dhondur Bari (Kolhe),
Age 71 yrs., Occ. Nil,

Both are r/o Plot No.16, Ashok Nagar,
Near Datta Mandir, Jalgaon, Dist. Jalgaon.

... **Respondents.**

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Mr. M.M. Bhokarika, Advocate for the appellants
Mr. R.L. Adhe, Advocate for the respondent No.1 – absent
Mr. A.S. Usmanpurkar, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 01st JULY, 2019

PRONOUNCED ON : 01st AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimants claiming enhancement in the compensation granted in M.A.C.P. No.292/2007 by learned Member, Motor Accident Claims Tribunal, Jalgaon dated 17.12.2013.

2 The claimants are the legal heirs of one Gunwant Narayan Bari. They had filed the said petition for compensation under Section 166 of the Motor Vehicles Act, 1988. They had contended that deceased was travelling on motorcycle No.MH 19/W-6548 as pillion rider, driven by his brother on 04.02.2007 on Raver to Savda road. When they reached near Parsa Nala within the limits of village Vivare, at that time truck bearing No.RJ 29/G-

0161 gave dash to them while coming from opposite direction and in an attempt to overtake another vehicle going ahead to it. As a result of the said accident, Gunwant and his brother fell down from the vehicle and Gunwant had sustained severe injuries. He was taken to Raver Rural Hospital and then shifted to Dr. Milind Waykole's Hospital and then to Dr. Vivek Choudhari's Hospital. He was then referred to Sahayog Critical Centre as well as Malati Accident Hospital owned by Dr. Pratap Jadhav. He had undergone operation for his right thigh, skin etc.. He had also undergone the plastic surgery. However, ultimately while in treatment with Dr. Umesh Chaudhary, he expired on 28.04.2007, due to the accidental injuries. It is stated that deceased was watch maker, assisting his father in Avdhut Watch Company and he was getting income of Rs.5,000/- per month. He was aged 39 years at that time. It was contended that the respondent No.1 is the owner of said offending vehicle and said vehicle was insured with respondent No.2 on the date of the accident. Amount of Rs.8,00,000/- was claimed as compensation.

3 Respondent No.1 filed written statement denying the fact of accident, allegations about rashness and negligent manner of driving on the part of truck driver. However, he has stated that the driver was holding valid and effective driving licence, so also the truck was insured with respondent No.2.

4 Respondent No.2 in its written statement denied all the averments in the claim petition and it was contended that said accident had taken place due to the negligence on the part of motorcycle rider. It was also contended that it is the result of contributory negligence, so also the statutory defences were taken.

5 Taking into consideration the rival contentions, issues were framed. Only claimants led evidence. Taking into consideration the evidence and hearing both sides the learned Member has partly allowed the petition. Respondent Nos.1 and 2 were directed to pay compensation of Rs.5,00,000/- inclusive of amount of Rs.50,000/- towards No Fault Liability, jointly and severally, together with interest @ 7.5 % per annum, from the date of the petition, till actual realization of entire amount. The present appeal has been filed for enhancement by the claimants.

6 Heard learned Advocate Mr. M.M. Bhokarikar for appellants and learned Advocate Mr. A.S. Usmanpurkar for respondent No.2. Learned Advocate for respondent No.1 was absent.

7 It has been vehemently submitted on behalf of the appellants that the learned Tribunal erred in holding notional income of Rs.3,000/- per month as the income of the deceased. In fact, it was specifically deposed that he was a Watch maker, serving in the shop of his father, but getting

independently income of Rs.5,000/- per month. The said statement ought to have been accepted by the Tribunal. Further, the actual medical expenses, which are proved on record, are to the extent of Rs.1,07,142/-. Reimbursement has been given to the tune of Rs.80,166/- only. The learned Tribunal did not consider that amount towards future prospect. So also, the non pecuniary damages have been awarded on lesser side.

8 Per contra, the learned Advocate appearing for respondent No.2 submitted that there were in all six dependents on the income of the deceased and therefore $\frac{1}{4}^{\text{th}}$ of the income ought to have been deducted towards personal expenditure. The actual medical expenses have been reimbursed to the claimants. The accident had taken place in the year 2007 and therefore the notional income, that has been taken @ Rs.3,000/- per month, was justified. There was no question of applying future prospect to deceased. Thus, the learned Advocate appearing for the respondent No.2 has supported the reasons and calculations given by the learned Tribunal.

9 Taking into consideration the scope of appeal, following point arises for determination. Findings and reasons for the same are as follows.

Whether the learned Member was justified in awarding compensation of Rs.5,00,000/- only or the said amount of compensation deserves enhancement ?

REASONS

10 As aforesaid, the appeal is restricted to the quantum only. The finding to the effect that the accident had occurred due to the negligence on the part of the truck driver and Gunwant expired due to accidental injuries, so, the claimants are entitled to get compensation, has not been challenged in appeal. Further, the insurance company has not filed any appeal nor even led any evidence to show that there was any breach of terms of policy. Under such circumstance, both the respondents were responsible for payment of compensation to the claimants, jointly and severally.

11 Now, turning towards quantum it is to be noted that though the claimants had contended that the deceased was serving as Watch maker in the shop of his father and was getting Rs.5,000/- per month, except the bare words of PW 1 Usha, widow of the deceased, no evidence was produced. In fact, if the deceased was serving with father, then claimant No.1, who is the father of the deceased, ought to have entered the witness box to prove the monthly income of his son. When no concrete and conclusive evidence regarding income has been proved, the learned Tribunal was justified in invoking the notional income theory in this case. Now, it is required to be seen, as to what could be the notional income. Definitely, the accident had taken place in the year 2007. However, we cannot equate deceased to a

labour, when at least the claimants are contending that he was serving in the shop of his father. Under the said circumstance, notional income is required to be taken @ Rs.4,000/- per month.

12 Though the decision by the Tribunal has been given on 17.12.2013 and at that time **Reshma Kumari vs. Madan Mohan, 2013 (9) SCC 65** and **Rajesh vs. Rajveer Singh, 2013 (9) SCC 54** were holding field, no amount is allotted towards future prospects. Reasons have also not been given, as to why future prospects have not been awarded. Now, at the time of decision of the appeal, when the decision in Constitution Bench of **National Insurance Co. Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 680** is holding the field, it is binding on this Court and therefore, the calculation of the compensation will have to be made on the basis of guidelines laid down in **Pranay Sethi's** Judgment. Taking into consideration deceased Gunwant as self employed, 40% of the income is required to be added towards future prospect. That amount comes to Rs.1,600/- (40% of Rs.4,000/-). Therefore, income of the deceased would be Rs.5,600/- (Rs.4,000/- + Rs.1,600/-). Yearly it would be Rs.67,200/- (Rs.5,600/- x 12 months). Further, taking into consideration the fact that there were six members at the time of his death depending on him, the amount i.e. deducted towards personal expenditure would be $\frac{1}{4}^{\text{th}}$ as per the decision in

Sarla Verma and others vs. Delhi Transport Corporation and another,
2009(6) SCC 121 and **Pranay Sethi's** case. That amount comes to Rs.16,800/- ($\frac{1}{4}^{\text{th}}$ of Rs.67,200/-). Therefore, after deducting personal expenditure, dependency of the claimant would be Rs.50,400/- p.a. (Rs.67,200/- - Rs.16,800/-). It appears that there was no concrete proof regarding age of the deceased. Under such circumstance, the age mentioned in the Post Mortem Report as 39 years is required to be considered. Taking into consideration the said age, the just multiplier in this case as per **Sarla Verma's** case and **Pranay Sethi's** case would be '15'. After applying the multiplier the total future loss of income for the claimants would be Rs.7,56,000/- (Rs.50,400/- x 15).

13 As regards non pecuniary damages are concerned, the ratio in **Pranay Sethi's** case would be again required to be considered and amount of Rs.70,000/- is awarded towards loss of consortium, funeral and loss of estate. Further, in this case the proved bills are to the extent of Rs.80,166/-. Though the learned Advocate appearing for the appellants tried to contend that it is Rs.1,07,142/-, it appears to be not correct taking into consideration the documents to that effect on record. Therefore, the said amount, which has been granted by the learned Member towards medical expenses, deserves to be granted as it is. Thus, the claimants were entitled to get compensation of

Rs.9,06,166/-. The learned Tribunal has awarded compensation of Rs.5,00,000/-, which cannot be termed as “just compensation”, taking into consideration the fact that there was some evidence to say that deceased was self employed. Hence, interference is required in the impugned Award. Point is answered accordingly. Appeal deserves to be allowed partly. However, at the same time, it can be said that since the amount is exceeding the claim, that was made to the extent of Rs.8,00,000/-, the deficit Court fee is required to be collected from the claimants. This Court is duty bound to award just compensation and therefore, though a figure has been given by the claimants towards compensation, if they are held to be entitled to get more than that figure, then definitely this Court is empowered to grant the entire amount arrived at based on the sound principles. In appeal memo para No.E calculation has been given by the claimants and according to them, now, they are entitled to get compensation of Rs.11,52,000/-. However, as aforesaid, based on the principles, they are entitled to get compensation of Rs.9,06,166/- and it is rounded up to Rs.9,06,170/-, the appeal deserves to be partly allowed. Taking into consideration the fact, that accident had taken place in the year 2007 and the Award was passed by the Tribunal in 2013, rate of interest, that has been awarded, appears to be reasonable and it does not require any change. With these observations, following order is passed.

ORDER

1 Appeal is hereby partly allowed with proportionate costs.

2 The Judgment and Award passed in M.A.C.P No.292/2007 by learned Member, Motor Accident Claims Tribunal, Jalgaon dated 17.12.2013 is hereby set aside to the extent of quantum only and modified as follows.

“The respondent Nos.1 and 2, jointly and severally, do pay Rs.9,06,170/- (Rupees Nine Lac Six thousand One Hundred and Seventy only) (inclusive of amount of Rs.50,000/- granted under No Fault Liability) to the petitioners.”

3 It is clarified that the rest of the Award passed by the learned Member is hereby confirmed.

4 The amount already paid/ deposited by respondents towards the judgment and award passed by the learned Tribunal, be adjusted in the amount now awarded.

5 Appellants to deposit deficit Court fee within one month in this Court.

(Smt. Vibha Kankanwadi, J.)