

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 FIRST APPEAL NO. 74 OF 2017

1. Sau. Premlata Rameshchandra Kabra,
Age 54 years, Occupation Household,
2. Shri Rameshchandra Maganlal Kabra,
Age 59 years, occupation Nil,

Both R/o Warad Bk., Tal. Dharangaon
Dist. Jalgaon.

...Appellants.

VERSUS

1. Shri. Bhatu Popat Patil,
Age 40 years, occupation Business,
R/o At and Post. Fagane Tal and
Dist. Dhule.
2. The Oriental Insurance Company Ltd.
Through Divisional Manager,
Hall No. G and H, Central Phule Market,
Jalgaon.

...Respondents.

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Mr. M. M. Bhokarikar, Advocate for appellants.
Mr. Malte, Advocate for Respondent No.2.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 25-06-2019.

ORAL JUDGMENT :

1. Present appeal has been filed by original claimants for enhancement.
2. The original claimants have filed Motor Accident Claim Petition

No.368 of 2011 before Member Motor Accident Claims Tribunal, Jalgaon under Section 166 of the Motor Vehicles Act, 1989. They had come with a case that, deceased Nilesh Rameshchandra Kabra was their son who was aged 32 at the time of accident. He was unmarried. He was doing agriculture work and other businesses, such as, milk supply and was getting Rs.8000/- per month. The original claimants had contended that, deceased was proceeding on his motorcycle bearing No. MH-19/ X- 379 on National Highway No.6, near village Warad, opposite Ramji Food Company, around 3.00 to 3.15 p.m., on 25-01-2011. One truck bearing No. MH-18/ M-3895 came in high speed from back side and gave dash to the motorcycle driven by the deceased. As a result of which, he fell down and died on the spot. It is contended that, the said accident had taken place due to the sole negligence on the part of the truck driver. The said truck was owned by original respondent No.1 and it was insured on the date of the accident with original respondent No.2. Claimants had claimed compensation of Rs.8,50,000/- together with interest @ of 24 % per annum from the respondents No.1 and 2 jointly and severally.

3. The petition proceeded ex-parte against respondent No.1. Respondent No.2 insurance company filed written statement and denied all the averments in the petition. Age, occupation and income of the

deceased was denied specifically. It was also denied that, the said accident had taken place due to the sole negligence on the part of the truck driver. Statutory defence to exonerate it were also taken.

4. Taking into consideration the rival contentions, issues came to be framed. Claimants have produced documentary evidence and examined claimant No.1 to support their contention. No evidence was led by the insurance company. Taking into consideration the evidence and hearing both the sides, the learned Member Motor Accident Claim Tribunal arrived at the conclusion that the said accident taken place due to the negligence on the part of the truck driver, and therefore, the claimants are entitled to get compensation from both the respondents jointly and severally. As per the calculation given in the Judgment, compensation of Rs.4,34,000/- was awarded together with interest @ 8 % per annum from the date of the petition till realization of the entire amount. This Judgment and award is challenged in this appeal on the ground of inadequacy.

5. Heard Mr. M. M. Bhokarika, Advocate for appellants and Mr. Malte, Advocate for respondent No.2.

6. It has been vehemently submitted on behalf of the appellant that the learned Tribunal had not taken into consideration the set principles

which have been laid down by this Court as well as Hon'ble Apex Court. Though evidence was led regarding the occupation of the deceased, the Tribunal has calculated the compensation on the basis of notional income of Rs.4000/- per month. In fact on the date of the accident the notional income ought to have been considered either Rs.5000/- or Rs.6000/- per month. Further the amount towards future prospects has not been counted and included so also under non pecuniary damages, less amount is awarded. Per contra, the learned advocate representing respondent No.2 supported the calculation given by the Tribunal.

7. It is to be noted that, respondent No.2 has not filed any appeal challenging the award. Under such circumstance, when the scope of this appeal is limited to the quantum, following point arise for determination, findings and reason for the same are as follows ;

“Whether the calculation of compensation done by the learned Member Motor Accident Claim Tribunal, Jalgaon is proper and legal or it requires modification ?”

It is to be noted that, though statement was made by CW-1 Premlata Rameshchandra Kabra that, her son was doing agriculture work and other businesses and earning Rs.8000/- per month, except production of 7/12 extract of three lands there is no other document produced. As

regards milk business, there was absolutely no documentary evidence. It is also to be noted that, as regards agricultural lands are concerned, definitely the claimants are having share in the same lands. Under such circumstance when there is no positive evidence to arrive at a conclusion that the income of the deceased might be Rs.8000/- per month, the learned Member Motor Accident Claim Tribunal was justified in invoking the notional income. It has been rightly observed that, when the accident had occurred in 2011, notional income would have been around Rs.4000/- per month.

8. The learned Member has not taken into consideration the future prospects. No doubt the decision was given by the learned Member on 22-09-2016 and at that time the decision of the full Bench of the Hon'ble Supreme Court in *National Insurance Company Ltd. Versus Pranay Sethi and others, in Special Leave Petition (Civil) No.25590* of 2014 and other, decided on 31-10-2017, had not come yet it could be seen that, at that time definitely *Reshma Kumari* and others v. Madan Mohan and another, reported in (2013) 9 SCC 65 and *Rajesh and others Versus Rajbir Singh and others*, reported in (2013) 9 SCC 54 were holding grounds. The learned Member have not even taken into consideration those decisions to arrive at a proper and just figure of the income. Definitely though in present case deceased can be said to be

self employed, future prospects ought to have been granted. Now when the decision in Pranay Sethi's case is holding field, the calculation will have to be made on the basis of the ratio laid down in this authority. Therefore, taking into consideration the directions as per para 64 (iv) in Pranay Sethi's Judgment, 40 % of the said income taking into consideration the age of the deceased as 32, is required to be added. That amount comes to Rs.1600/- (40 % of Rs.4000/-) and the monthly income of deceased would be Rs.5600/- (4000 + 1600), yearly income would be Rs.67,200/- (5600 p.m. x 12 months). Further taking into consideration the directions in Pranay Sethi's Judgment coupled with the directions in *Sarla Verma and others v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121, it is to be noted that deceased was bachelor and the petitioners are his parents, half of the yearly income is required to be deducted towards the personal expenditure and therefore the dependency of the petitioners would be to the extent of Rs.33,600/-. Further taking into consideration the directions in Pranay Sethi as well as Sarla Warma, the just multiplier taking into consideration the age of the deceased would be 16, and therefore, applying the multiplier the total loss of income would be Rs.5,37,600/- (33,600 X 16). Further taking into consideration the decision in Pranay Sethi, the non pecuniary compensation would be to the extent of Rs.30,000/- only. Here it is

clarified that, amount of Rs.40,000/- which has been prescribed in Pranay Sethi's Judgment for loss of consortium is not available for the present petitioners. Therefore, the claimants – appellants would be entitled to get compensation of Rs.5,67,600/-. The Tribunal has awarded amount of Rs.4,34,000/- and as aforesaid it is not as per the decisions by the Hon'ble Apex Court, and therefore the appeal deserves to be partly allowed. Point is answered accordingly. For the aforesaid reasons, following order is passed.

ORDER

- 1) Appeal is hereby partly allowed.
- 2) The Judgment and award in Motor Accident Claim Petition No.368 of 2011, passed by Motor Accident Claims Tribunal, Jalgaon, dated 22-09-2016, is hereby set aside to the extent of quantum of compensation only and modified as follows;
 - (i) The respondents No.1 and 2 should pay amount of Rs.5,67,600/- jointly and severally to the claimants.
 - (ii) It is clarified that, rest of the award is kept as it is.
- 3) The amount, if any already paid, be adjusted in the amount granted under the award.
- 4) Decree be drawn accordingly.
- 5) No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.