

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1254 OF 2017

Laxmibai w/o Rama Tokalwad,
Age 50 years, Occupation Household,
R/o Borgaon Tq. Nanded Dist.Nanded. ...Appellant.
(Orig.Claimant)

VERSUS

- 1) Champabai w/o Weljibhai Varu,
Age Major, Occupation Business &
Owner of Truck No.MTG 8957,
R/o 305, Dewhadi, Tumsar Road,
Tq. Tumsar, Dist. Bhandara.
- 2) The New India Assurance Company
Ltd., Through Its Divisional Manager,
Divisional office At Lahoti Complex,
Vazirabad, Nanded. ...Respondents.

....
Mr. M. D. Godhamgaonkar M.D., Advocate, for Appellant.
Mr. A. B. Kadethankar, Advocate, For Respondent No.2.
....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
04-09-2019.**

**Date of Pronouncing The Judgment :
15-10-2019.**

JUDGMENT :

1. Present appeal has been filed by the original claimant for enhancement in the compensation granted by Ex-Officio Member of Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No.62 of 2010, dated 17-03-2016, whereby her petition

under Section 166 of the Motor Vehicles Act came to be partly allowed.

2. The facts giving rise to the present appeal are that ;

The claimant – appellant is the widow of one deceased Rama s/o Mhaisaji Tokalwad. Rama was an agriculturist. He was getting about Rs.10,000/- per month. He was returning back to home by walk at about 11.30 a.m. on 24-10-2009. He was dashed by a truck bearing No. MTG- 8957. As a result of which he sustained grievous injuries. He was initially taken to Primary Health Center, Tamsa and then he was shifted to Nanded. He was discharged from the hospital, however he was taking treatment as outdoor patient. But then he succumbed to his injuries on 19-11-2009. The said truck was owned by respondent No.1 and it was insured with respondent No.2 on the date of the accident. The widow has claimed compensation of Rs.3,00,000/- with interest @ 12 % per annum.

3. Respondent No.1 filed written statement at Exhibit 19, whereas respondent No.2 filed separate written statement at Exhibit 16. They both have denied the occurrence of the accident as narrated in the petition. It has been stated that, as deceased had suddenly fallen on the road, he had sustained injuries. They denied the allegation that, truck driver was rash or negligent. The Insurance Company has also pleaded that, there was no nexus between death and injury sustained by the deceased. The statutory defence has also been

raised claiming exoneration from payment of compensation.

4. After the issues were framed, only claimant has led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Tribunal has held that, claimant has proved that the accident had taken place due to the rashness and negligence on the part of the driver of the truck. Respondent No.2 - Insurance Company failed to prove that, there was any breach of condition of policy, thereby both the respondents were held liable to pay compensation to the claimant. Amount of Rs.61,000/- with interest @ 8 % per annum from the date of the petition till actual realisation of the entire amount has been granted as compensation. Hence, present appeal for enhancement.

5. Taking into consideration the fact that, none of the respondents have challenged the said Judgment and award on any count, especially the finding to issues No.1 and 2, scope of the present appeal is limited and those issues which have attained the finality, cannot be gone into.

6. Heard learned advocate Mr. M. D. Godhamgaonkar for appellant and learned advocate Mr. A. B. Kadethankar for respondent No.2. Respondent No.1 though served, failed to appear.

7. Learned advocate appearing for the appellant has submitted that, the learned Tribunal has failed to consider the evidence on

record. Merely on the basis of so called admission given by the widow; only amount towards consortium, funeral expenses and reimbursement of medical bill has been granted. The fact that, deceased was cultivating his lands has not been considered taking into consideration the 7/12 extracts of the lands produced on record. He relied on the decision in, *Kumari Kiran Through Her Father Harinarayan Versus Sajjan Singh And Others*, reported in (2015) 1 *Supreme Court Cases* 539, wherein notional income of an agriculturist was taken @ Rs.5,000/- per month.

8. Per contra, the learned advocate appearing for respondent No.2 supported the reasons given by the learned Tribunal and submitted that, since the claimant herself has admitted that deceased was 80 year old person and was not doing any work, question of his earning and then applying the multiplier method did not arise for the Tribunal.

9. At the outset it is to be noted that, the learned Tribunal was dealing with the petition was under Section 166 of the Motor Vehicles Act, which is under a beneficial legislature. The claimant had come with a case that, deceased was 55 year old person. No doubt when the said fact was denied by the respondents, the claimant ought to have produced some authentic document on record showing his age, but then the other documents which are produced on record could have been considered. C.W.1 Laxmibai w/o Rama Tokalwad in her

cross-examination has admitted that, the age of her husband was 80 and her husband was not doing any work due to his old age. Merely because that admission is on record, the learned Tribunal ought not to have taken it as a true fact on the background that the police papers are not supporting the said fact. It ought to have been considered by the learned Tribunal that even the respondent No.2 was relying on those police papers. Those police papers were not challenged by the Insurance Company which show that, the age of the deceased was 65 years. On what basis the said suggestion was given by the advocate who was representing the Insurance Company itself is a question. It appears that, those questions were only fishing questions and the possibility that without understanding those questions, the lady who is a rustic illiterate lady would have answered it in the affirmative, cannot be ruled out. The FIR, inquest panchanama, post mortem report, discharge card of the deceased, are the documents in which age of the deceased is shown as 65. The Insurance Company has not produced any documentary evidence on record showing that deceased was 80 years old on which basis the said suggestion was put. Therefore, as aforesaid it was the only a chance question of the Insurance Company, and unfortunately, the rustic lady, without understanding the question it appears that, had answered it in the affirmative. In fact when those questions were put, the Tribunal ought to have intervened and would have made the question understandable to the lady, before

recording the evidence, therefore the said admission cannot be considered. Learned Tribunal erred in accepting the said admission in ignorance of the documentary evidence on record. Taking into consideration the police papers, the age of the deceased will have to be taken as a 65 years.

10. Though the claimant had come with a case that, her husband was earning Rs.10,000/- per month yet no documentary evidence has been produced to support the said figure. She has produced on record the 7/12 extract of the agricultural lands which were standing in the name of deceased. They are, Gut No.12/5 admeasuring 1 H 76 R and Gut No.10/3 admeasuring 1 H 24 R, situated at village Borgaon Tq.Himayatnagar Dist. Nanded. Both lands are non-irrigated and crops like Cotton, Toor were taken. Therefore, taking into consideration the said cropping pattern, notional income of the deceased will have to be taken @ Rs.4,500/- per month in view of the fact that the accident had taken place in the year 2009. Yearly income would be Rs.54,000/- (Rs. 4,500 p. m. x 12 months). Here it is to be noted that, in the decision by Constitution Bench, *National Insurance Company Ltd. Versus Pranay Sethi and others*, reported in 2017 SCC Online SC 1270 : 2017 ACJ 2700, future prospects for a person aged 65 and above has not been prescribed, and therefore, no amount can be awarded towards future prospects. Further taking into consideration the decision in, *Sarla Verma and others v. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121,

1/3rd of the said annual income of the deceased is required to be deducted towards personal expenditure. That amount comes to Rs.18,000/- (1/3rd of Rs.54,000/-). Thus, the dependency of the widow would be Rs.36,000/-. Taking into consideration the age of the deceased as 65, the just multiplier in view of *Sarla Verma (Supra)*, would be "7". After applying the multiplier, the total loss of future income for the widow would be Rs.2,52,000/- (Rs.36,000 x 7). Further in view of *National Insurance Company Ltd. Versus Pranay Sethi and others (Supra)*, amount of Rs.70,000/- is required to be given towards non pecuniary damages i.e. Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Thus, the widow is entitled to get compensation of Rs.3,22,000/-. The amount awarded by the learned Tribunal was very much meager, and therefore, it requires enhancement. Hence, following order.

ORDER

- 1) Appeal is hereby allowed.
- 2) The Judgment and award passed in MACP No.62 of 2010, by learned Ad-hoc District Judge-2 and Ex-Officio Member of Motor Accident Claims Tribunal, Nanded, dated 17-03-2016, is hereby set aside and modified to the extent of quantum as follows ;

"The respondents No.1 and 2 should pay jointly and severally compensation of Rs.3,22,000/- (in words rupees three lac twenty two thousand) including 'No Fault Liability' to the claimant with interest @

8 % per annum, from the date of the petition till actual realisation of the entire amount.”

3) The amount deposited, if any, towards the impugned Judgment and award, be adjusted towards the modified award.

4) The claimant to deposit the deficit Court fee within a period of one (01) month from the date of this order.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.