

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

[909] FIRST APPEAL NO. 2111 OF 2018

1 Smt. Ramabai W/o Bhimrao Gonarkar, **Appellants**
Age 52 Years, Occ. Household [ori.claimants]

2 Bhimrao S/o Malhari Gonarkar, Age
55 Years, Occ. Nil

Both R/o Tathagat Nagar Near
Damodhar Nagri, Malegaon Road,
Nanded, Taluka and District Nanded

V E R S U S

1 Rohtashsingh Jainarayan, Age **Respondents**
Major, Occ. Business, owner of [original
Truck bearing No.HR-55/T-6218, Respondent
Resident of House No.1907A/3, Ward Nos.1 & 2]
No.5, Rajeev Nagar, Gurgaon —
122001, Haryana

2 HDFC Egro General Insurance
Co.Ltd., through its Branch
Manager, Office at 1st Floor, 165-
16 Backbay Reclamation, H.T.
Parekh Marg, Church Gate, Mumbai-
1400020 [M.S.]

Mr. S.P. Salgar, Advocate for the Appellants
Mr. S.G. Chapalgaonkar, Advocate for Respondent No.2

CORAM : SUNIL K. KOTWAL, J.

DATE : 4th April, 2019

ORAL JUDGMENT :

The original claimants in Motor Accident Claims Petition ["MACP", for short] M.A.C.P. No.452 of 2014 have filed this appeal for enhancement of compensation, against the judgment and award passed by the Motor Accident Claims Tribunal [Tribunal", for short] Nanded, whereby compensation of Rs.12,09,578/- with interest thereon @ 9% per annum was awarded by the Tribunal. Respondent No.1 is owner and respondent No.2 is insurer of the offending vehicle i.e. truck/container bearing registration No.HR-55/T-6218.

2. Facts leading to institution of Claim Petition are that on 30th September, 2014, the deceased while riding the motorcycle met with an accident due to the dash given by offending container bearing No.MH-55/T-6218. He succumbed to those accidental injuries. At the time of accident, the age of deceased was 27 years. The accident occurred due to rash and negligent driving by driver of the offending vehicle. Therefore, the dependants i.e. his parents filed this claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Accident Claims Tribunal, Nanded.

3. Heard Shri S.P. Salgar, learned counsel for the appellants and Shri S.G. Chapalgaonkar, learned counsel for respondent No.2.

4. Learned counsel for the appellants submits that the quantum of the compensation is wrongly computed by applying multiplier of "11", on the basis of age of the parents of deceased. In the monthly salary of the deceased, 50% amount is not added by the Tribunal, who was drawing monthly salary of Rs.16,633/-. His next objection is that the Tribunal did not award compensation under the non-pecuniary head. He placed reliance on the judgment of Apex Court in **Sarla Varma and others Vs. Delhi Transport Corporation and another (AIR 2009 SC 3104)** and **National Insurance company Limited Vs. Pranay Sethi and others (2018 (3) Mh.L.J. SC 70)**.

6. The learned counsel for the respondent No.2 fairly submits that the deceased was on probation at the time of his death. The Court may enhance the compensation in view of the law settled by Apex Court in the case of **Sarla Varma and others Vs. Delhi Transport Corporation and another** and in the case of **National Insurance company Limited Vs. Pranay Sethi and others [cited supra]**.

7. In the case at hand, no cross-objection or cross-appeal is filed either by respondent No.1 or by insurer. Therefore, the point for consideration before this Court is, what would be just and fair compensation payable to the claimants.

8. Undisputedly, at the time of death, the deceased was 27 years old unmarried person. He was in service of Rajiv Gandhi Mahavidyala Mudkhed, District Nanded as Junior Clerk. By examining Umakant Digamber Sawant [PW-2], who was Principal of that College, the claimants have proved that till the death, the deceased was appointed as Junior Clerk in the same college and his monthly salary was Rs.16,633/-. After going through the Salary Certificate [Exhibit 42], it appears that an amount of Rs.200/- is deducted in every month towards professional tax. Therefore, the month income of the deceased is Rs.16,433/. It follows that his annual income comes to Rs.1,97,196/-. In view of verdict of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** [supra], there should be 50% addition in the actual salary of the deceased towards loss of future prospect, as the deceased was under the age of 40 years. After addition of 50% amount of the annual actual salary of deceased, his annual income comes to Rs.2,95,794/-.

9. As deceased was bachelor at the time of his death, in view of law laid'down in the case of **Sarla Varma** [cited *supra*], half amount is to be deducted towards personal expenses of the deceased, and after deducting that half amount, annual income of the deceased, available to his family, comes to Rs.1,47,897/-.

10. As deceased was 27 years of age at the time of his death, in view of guidelines issued by Apex Court in **Sarla Varma's** case [cited *supra*], multiplier of 17 is applicable in the case at hand. Thus, after applying multiplier of 17, the loss of dependency of the claimants comes to Rs.25,14,249/-.

11. As settled by Apex Court in **National Insurance Company Ltd case** [cited *supra*], the claimants are also entitled to following compensation under conventional head.

[i]	Loss of Estate	Rs.15,000/-
[ii]	Funeral Expenses	Rs.15,000/-

	Total :	Rs.30,000/-

Thus, the claimants are entitled total compensation under different heads as follows :-

[i]	Loss of Dependency	Rs.25,14,249/-
[ii]	Loss of Estate	Rs. 15,000/-
[iii]	Usual Expenses	Rs. 15,000/-

Total :		Rs.25,44,249/-

12. On above compensation, the claimants are entitled for interest @9% per annum from the date of filing of petition till its realization. This compensation shall be inclusive of compensation received by the claimants by way of "No Fault Liability".

13. As deceased was bachelor, in view of law settled by Apex Court in **Sarla Varma's** case [*cited supra*], the appellant No.1, being the mother of the deceased, can be only dependent of the deceased. Thus, only claimant No.1 - Ramabai W/o Bhimrao Gonarkar is entitled to above said compensation amount.

14. In the result, this Appeal is partly allowed. The compensation awarded by the Tribunal is enhanced to the tune of Rs.25,44,249/- with interest thereon @9% per annum from the date of filing of the claim petition till its realization. Only claimant No.1 - Ramabai W/o Bhimrao Gonarkar is entitled to receive

this compensation. Out of this compensation amount, 50% amount shall be invested in fixed deposit in any Nationalized Bank for a period of next five years.

15. Remaining compensation amount shall be paid to claimant No.1 - Ramabai W/o Bhimrao Gonarkar through Tribunal by account payee cheque.

16. Award passed by the Tribunal be modified in abovesaid terms.

17. Parties to bear their own costs in respect of the Appeal.

18. Appeal is disposed of in abovesaid terms.

(SUNIL K. KOTWAL, J.)