IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.659 OF 2003

Asha Maruti Alhat and ors. ....Appellants
V/s.
Ratnakar Pralhad Nikumbh and ors. ....Respondents

Mr. T.J. Mendon for the appellants.
Mr. C.M. Lokesh i/b. Mr. G.S. Hegde for respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 22nd AUGUST, 2019

ORAL JUDGMENT :-

. The appellants herein who are the original claimants have challenged the impugned judgment and award dated 17/02/1999 passed by the learned Member, MACT, Nashik in MACP No.421/1991.

2. The appellant no.1 is the widow and the appellant nos.2 to 5 are the minor children of the deceased Maruti Alhat. It was the case of the appellants that on 08/07/1988, while said Maruti Alhat was returning home from Nashik city on his Moped, one ST bus bearing no.MTQ-6256 came from the opposite direction at a fast speed and dashed against his Moped. Said Maruti expired as a result of the multiple injuries sustained in the said accident. The deceased was 27 years of age. He was employed as a driver on the Assembly Track in Mahindra

and Mahindra Co. at Satpur. He was drawing salary of Rs.2,000/- p.m. and in addition bonus of Rs.5,000/- per year.

3. The offending vehicle i.e., ST bus No.MTQ-6256 was driven by the respondent no.1 and was owned by the respondent no.2. The appellants had claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The appellants therefore filed an application under Section 166 of the Motor Vehicles Act claiming total compensation of Rs.3,00,000/-.

4. The respondent no.1 denied that he had driven the bus in rash and negligent manner. He claimed that the deceased took a sudden turn towards MIDC and in the process his Moped dashed against the bus. He claimed that the accident was caused solely due to rash and negligent driving by the deceased. The respondent no.2 did not file any written statement. The respondent no.3 is the insurer of the Moped driven by the deceased. The respondent no.3 claimed that it is not liable to pay any compensation as the accident was caused due to rash and negligent driving by the driver of the bus.

5. The Tribunal, after considering the evidence adduced by the

appellants – claimants dismissed the application as against the respondent no.3. The Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle i.e. ST bus No.MTQ-6256. The Tribunal has further held that the deceased was 27 years of age and he was earning Rs.1,500/- per month. The Tribunal held that the salary of the deceased would in the coming years increase to Rs.2,000/-. The Tribunal deducted 1/3rd amount towards personal expenses of the deceased and upon applying the multiplier of 10, assessed loss of dependency to Rs.1,60,000/-. The Tribunal, therefore, awarded total compensation of Rs.1,60,000/- with interest @ 12 % p.a. from the date of the petition till final realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants have preferred this appeal.

6. Heard Mr. T.J. Mendon, the learned counsel for the appellants and Mr. C.M. Lokesh, the learned counsel for respondent no.2. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. It is not in dispute that Maruti Alhat had expired due to the

injuries sustained in a motor vehicular accident involving ST bus No.MTQ-6256 which was driven by the respondent no.1 and owned by the respondent no.2. The respondent nos.1 and 2 have not filed any appeal and cross objection challenging the finding that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle and/or its liability to pay the compensation. The challenge in this appeal is mainly to the quantum of compensation awarded by the Tribunal.

8. The main issue for consideration is whether the compensation computed by the Tribunal is just and fair. Admittedly, the deceased was 27 years of age. The Tribunal has applied the multiplier of 10 when the appropriate multiplier as per ***Sarla Verma (supra)*** is 17. The deceased has left behind five dependents i.e., a widow and four minor children. Hence, deduction towards personal expenses ought to have been 1/4th and not 1/3rd. Furthermore, the Tribunal has not awarded any compensation towards loss of consortium, funeral expenses and loss of estate. The Tribunal has justified the compensation of Rs.1,60,000/- by holding that investment of this amount in any nationalized bank would have fetched interest of Rs.1,600/- per month, which is equivalent to the monthly income of the deceased.

9. In ***Padmadevi Shankarrao Jadhav and ors. v/s. Kabalsing Gormilsing Sardarji and ors. (1985 ACJ 382),*** the Apex Court has observed thus :-

> *" 9. So far as the quantum of compensation is concerned, a very peculiar method is followed by the learned Member. To say the least, he has not followed any well-established principle. Deciding the compensation wholly on the basis of the interest the lump sum will receive or derive is an unscientific "method. We had an occasion to consider a somewhat similar question in Maharashtra State Road Transport Corporation v. Babalal F.A. No. 73 of 1983, decided on 6-11-1984) in which also a contention was raised that ultimately the compensation should be quantified by giving a second thought as to what interest will be received on the lump sum. After making a reference to the decision in Joki Ram v. Smt. Naresh Kanta and others, the decision of the Andhra Pradesh High Couri in 1983 AP 297: Srisailam Devastanam v. Bhavani Pramilamma and others and the decision of the Supreme Court in Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi and Ors. this Court held that deduction on the basis of interest theory is wholly unwarranted because of the rapidly falling rate of the value of the rupee. There is a good interest rate only for long term investments. Meanwhile there is increase in prices and cost of living and consequent fall in the value of rupee. This out weighs the rate of interest, even on long term investment. Further, because of illiteracy and ignorance, prudent investment itself is an exception and not a normality. Therefore, it is not possible to lay down a general rule that while fixing just and fair compensation, it should always be based on the basis of the interest which will be derived or received if the lump sum is prudently invested.*

10. The Apex Court in catena of judgements has held that multiplier method which is logically sound and legally well-established, is the

proper method of computation of compensation for pecuniary loss of dependency. In the instant case, the evidence on record indicates that the deceased was employed with Mahindra and Mahindra Co. The claimant no.1 had deposed that the deceased was drawing salary of Rs.2,200/- to Rs.2,500/- per month. She had produced the salary slip at Exhibit – 35. The claimants had examined AW3 – Ramesh S. Bapat, the Accounts Assistant at Mahindra and Mahindra Co. He has confirmed that the deceased was working in the said company as a daily rated worker. He has also confirmed the contents of the pay slip at Exhibit – 35.

11. The deceased left behind the widow and four minor children. The total number of dependents being 5, in terms of the judgment of the Apex Court in ***Sarla Verma & Ors vs Delhi Transport Corp.,*** 1/4th amount needs to be deducted towards personal expenses of the deceased. Having regard to the facts and circumstances, the Tribunal has committed apparent error in deducting 1/3rd towards personal expenses of the deceased and consequently the compensation assessed by the Tribunal is not just and fair. Hence, it is necessary to compute the compensation on the basis of the binding principles and formula laid down by the Apex Court.

12. The deceased was 27 years of age as on the date of the accident. The evidence on record reveals that he was employed with Mahindra and Mahindra as a daily rated worker. From the evidence of AW1 – Asha Maruti Alhat, AW3 – Ramesh Shankar Bapat viz-a-viz the salary slip at Exhibit – 35, his monthly salary can be considered as Rs.2,000/- p.m. Adding 40% to the established income, the amount works out to Rs.2,800/-.

13. Considering the number of dependents and deducting 1/4th towards personal expenses of the deceased, the income works out to Rs.2,100/- per month i.e., Rs.25,200/- per annum. The deceased was 27 years of age. Applying multiplier of 17, loss of dependency works out to Rs.4,28,400/-. The appellant no.1, being the widow is entitled for compensation of Rs.40,000/- towards loss of spousal consortium. The appellant nos.2 to 5 are the minor children of the deceased, who were within the age group of 1 ½ years to 7 years. They have been deprived of parental love, affection and guidance due to sudden demise of their father. Hence, in view of the judgment of the Apex Court in ***Magma General Insurance Co. Ltd. V/s. Nanu Ram 2018 SCC Online SC 1546,*** they are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. In addition, the appellants

are entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The appellants are therefore entitled for total compensation of Rs.6,58,400/- as against their claim for Rs.3,00,000/-.

14. In ***Ramla v/s. National Insurance Co. Ltd. AIR (2019) SCC 2014,*** the Apex Court has observed thus :-

> *" There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation" The Motor Vehicles Act is beneficial and welfare legislation. A "just compensation" is one which is reasonable and welfare legislation. A "just compensation one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim and enhanced amount. The Court are duty bound to award just compensation (see the judgements of this Court in the case of Nagappa v. Gurudayal Singh (b) Magma General Insurance v. Nanu Ram, (c) Ibrahim V. Raju. "*

15. In the instant case, the deceased was barely 27 years of age. He has left behind the widow and four minor children, who were entirely dependent on him. Considering the facts and circumstances of the present case, in my considered view, the compensation of Rs.6,58,400/- is just and fair compensation. Respondent no.2 - MSRTC is therefore liable to pay to the claimants balance amount of

Rs.4,98,400/- in addition to the amount already deposited before the Tribunal. Hence, the following order is passed :-

(a) The appeal is allowed.

(b) The claim is enhanced from Rs.1,60,000/- to Rs.6,58,400/-.

(c) The respondent no.2 - MSRTC shall deposit before the Tribunal the enhanced compensation of Rs.4,98,400/- with interest @ 12% from the date of the petition till final realization within eight weeks from the date of uploading of this order. Award stands modified accordingly.

(d) The Tribunal shall invest 10% of compensation with proportionate interest accrued thereon in the name of each of the appellant nos.2, 3, 4 and 5 in any nationalized bank for a period of three years.

(e) Liberty is granted to the appellants to apply for withdrawal of the compensation before the Tribunal on payment of additional Court fee, if any.

16. First Appeal stands disposed of in the above terms. Record and proceedings be returned to the Tribunal.

Preeti H. Jayani

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Date: 2019.10.16 16:50:20 +0530

(SMT. ANUJA PRABHUDESSAI, J.)