IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1475 OF 2002

Sarita Devi Bothra and Ors. …Appellants
Versus
Daga Kantilal Balchand and Anr. ...Respondents
…..
Mr. T.J. Mendon for the Appellants.
Mr. H.G. Misar for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th /29th AUGUST, 2019.

ORAL JUDGMENT:-

The Appellants herein have challenged the judgment and award dated 20th December, 2001, passed by the Learned Member of M.A.C.T., Thane, in Motor Accident Claim No. 99 of 1994. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.1,35,900/- with interest at the rate of 9% per annum from the date of the petition till final realization.

2. The Appellant No.1 is the widow, the Appellant Nos. 4 and 5 are the children and the Appellant Nos. 2 and 3 are the parents of the deceased Munilal Bothra, who expired in an accident on 11/08/1993, involving scooter No. MH-01E-5979. The Appellants-Claimants state

that the deceased-Munilal was 30 years of age. He was employed as a Manager in Bikaner Assam Road Lines and was drawing salary of Rs.3000/- per month. The deceased was a pillion rider on the scooter bearing No.MH-01-E-5979. The said scooter hit another vehicle, as a result the deceased fell down and succumbed to the injuries sustained in the accident. The Appellants claimed that the accident was caused due to rash and negligent driving by the rider of the scooter, which was owned by the Respondent No.1 and insured by the Respondent No.2. The Appellants, therefore, filed an application under Section 166 of the M.V. Act, 1988 and claimed total compensation of Rs.6,00,000/- from the owner and insurer of the offending vehicle.

3. The Respondent No.1 did not contest the proceeding despite due service. The Respondent No.2-Insurance Company claimed that the accident was caused due to rash and negligent driving by the driver of the other unknown vehicle. The Respondent No.2 therefore denied its liability to pay any compensation.

4. Based on the aforesaid pleadings, the Tribunal framed the issues. Upon considering the evidence adduced by the Appellants-Claimants the Tribunal held that the accident was caused due to rash

and negligent driving by the rider of the scooter bearing No. MH-01E-5979. The Tribunal held that the deceased was 30 years of age. The Tribunal considered the income of the deceased as Rs.2500/-. Upon deducting 1/ 3^{rd} of the amount towards personal expenses of the deceased and applying multiplier of 12, the Tribunal computed loss of dependency as Rs.2,44,800/-. The Tribunal awarded an amount of Rs.10,000/- towards loss of consortium, compensation of Rs.15,000/- towards loss of estate and an amount of Rs.2000/- towards funeral expenses. Thus, the Tribunal held that the Appellants are entitled for total compensation of Rs.2,71,800/-.

5. The Tribunal has observed that the deceased was a pillion rider of the scooter, which was driven by AW-3 Diwakar in rash and negligent manner. The Tribunal held that the Appellants need to be penalised for negligence on the part of the rider of the scooter. The Tribunal therefore deducted 50% of compensation and awarded total compensation of Rs.1,35,900/- with interest at the rate of 9% per annum. Being aggrieved by the impugned judgment and award, the Appellants /original claimants have filed this appeal under Section 173 of the M.V. Act.

6. Heard the learned counsel for the Appellants/original Claimants. He submits that the Tribunal has erred in presuming that the monthly income of the deceased was of Rs.2500/- despite the evidence that the deceased was working as a Manager and earning Rs.3000/- per month. The learned counsel for the Appellants-Claimants contends that the Tribunal ought to have awarded allowance towards future prospects. He further submits that considering the number of dependents, the Tribunal ought to have deducted 1/4th of the income towards personal expenses of the deceased. Relying upon the decisions of the Apex Court in ***National Insurance Co. Ltd. V. Pranay Sethi and other, 2017 ACJ 2700*** and ***Magma General Insurance Co. Ltd. V. Nanu Ram Alias Chuhru Ram & Ors. 2018 SCC OnLine SC 1546,*** the learned counsel for the Appellants submits that the Appellant Nos.2 and 3 are entitled for compensation towards parental consortium. The learned counsel for the Appellants further submits that the Tribunal has grossly erred in deducting 50% compensation for negligence of the driver of the offending vehicle.

7. The Learned counsel for the Respondent No.2 submits that the deceased was a pillion rider on the scooter involved in the accident. He contends that the pillion rider was not covered under the policy

and as such the Insurance Company is not liable to indemnify the insured or to pay any compensation to the Appellants.

8. The submission of the learned counsel for the Respondent needs outright rejection, as a plain reading of the written statement indicates that the Respondent No.2 had not raised the defence that the pillion rider was not covered under the policy. The Respondent No.2 had not disputed its liability to indemnify the insured. The only defence raised by the Insurance Company was that the accident was caused due to rash and negligent driving by the driver of the other vehicle.

9. The evidence on record reveals that Munilal Bothra was a pillion rider on the scooter bearing No.MH-013-5979, which was driven by AW3. The said scooter had met with an accident and said Munilal had expired as a result of the injuries sustained in the said accident. The Tribunal has recorded a specific finding that the accident was caused solely due to rash and negligent driving by the rider of the scooter and that the Respondent No.2 being the insurer is liable to indemnify the insured. The respondent No.2-Insurance Company has not filed any appeal or cross objection challenging these findings. In the light of above, the Respondent-Insurance Company cannot be

exonerated from its liability to indemnify the insured.

10. The evidence of AW1-Saritadevi Bothra indicates that the deceased was working in Bikaner Assam Roadlines and was earning Rs.3,000/- per month. The Appellants/Claimants had also examined AW2-Ashok Chordia, Accountant of the said Company. This witness has also confirmed that the deceased was working in the said Company as a branch manager and earning salary of Rs.3,000/- per month. The evidence of AW1 and AW2 vis-a-vis salary certificate at Exh.24 amply proves that the deceased was drawing salary of Rs.3,000/- per month. The Claims Tribunal has accepted the evidence of AW1 and AW2 as regards the income of the deceased as Rs.3,000/- per month. However, without assigning any reasons or without there being any justification, the Tribunal has considered rather presumed that the income of the deceased was Rs.2,500/-.

11. In the case ***Sarla Verma V/s. Delhi Transportation Company (2009) 6 SCC 121 :-***

> *"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several*

subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third(1/3rd) where the number of dependant family members is 2 to 3, one fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

12. ***In Reshma Kumari Vs. Madan Mohan, 2013 ACJ 1253*** the three Judge Bench of the Apex Court has directed that in so far as

deduction for personal and living expenses is concerned, the Tribunal shall ordinarily follow the standards prescribed in paragraphs 14 and 15 in the judgment of ***Sarla Verma*** *(supra).* In ***Pranay Sethi*** (supra) the constitution Bench of the Apex Court has reiterated that as far as the guidance provided for personal and living expenses are concerned the Tribunal and Court should be guided by the conclusion in para 40 (vi) of ***Reshma Kumari*** *(supra).*

13. In the present case the widow, two minor children and the aged parents of the deceased were dependant on his income. Since the number of dependants was more than three, the deduction towards personal expenses ought to have been 1/4th and not 1/3rd as deducted by the Tribunal.

14. As regards application of the multiplier, the constitutional Bench of the Supreme Court in ***Pranay Sethi*** (supra) has held thus:-

> *42. "As far as the multiplier is concerned, the Claims Tribunal and the courts shall be guided by Step 2 that finds place in para 19 of Sarla Verma read with para 42 of the said judgment. For the sake of completeness, para 42 is extracted below -*
>
> > *"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, UP SRTC vs. Trilok Chandra (1996) 4*

SCC 362 and New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720) which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. The evidence of AW1 indicates that the deceased was 30 years of age and as per the judgment of the Apex Court in ***Sarla Verma and Pranay Sethi*** (supra)the multiplier applicable was 17. However, the Tribunal has without assigning any reasons applied multiplier of 12.

16. In ***Pranay Sethi (***supra) whilst dealing with the issue of addition of future prospects, the Apex Court has held that the determination of income while computing compensation has to include future prospects so that the method will come in the ambit and sweep of just compensation as postulated under Section 168 of the Act. The relevant para reads thus:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) xxx

(ii) xxx

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) …….”

17. Similarly, in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and Ors. 2018 SCC Onlin SC 1546*** the Apex Court has held that :-

“8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance “consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation.

Parental consortium is granted to the child upon the premature death of parent for loss of parental aid, protection, affection, society, discipline, guidance and training.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehilce accidents under the Act. "

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles onwhich compensation could be awarded on loss of Fillal Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "Loss of Consortium' as laid down in Pranay Sethi (supra).

……"

18. In the instant case the Tribunal has not awarded any compensation towards future prospects and loss of parental consortium. It is also to be noted that the deceased was a pillion rider and was not in any manner responsible for the accident. It was certainly not a case of contributory negligence, which warranted 50% deduction of compensation. The Tribunal has overlooked the fact that Section 166 of the M.V. Act is a beneficial and not a penal provision. The findings of the Tribunal that the Appellants need to be penalised for rash and negligent driving of the rider of the offending vehicle is arbitrary and perverse and cannot be sustained. Under the circumstnaces, in my considered view the compensation awarded by the Tribunal is not just, fair and reasonable. Hence, it is necessary to compute the compensation on the basis of the binding principles and formula laid down by the Apex Court.

19. The evidence on record indicates that the deceased was earning Rs.3,000/- per month. His annual income therefore, works out to Rs.36,000/- per annum. There is no evidence on record to indicate that he was a permanent employee. Considering his age and nature of employment and in the light of the judgment in ***Pranay Sethi*** (supra) an addition of 40% will have to be made to the established income towards future prospect. Considering the income of the deceased Rs.36,000/- per annum and adding 40% towards future prospect, the amount works out to Rs.50,400/-. Considering the fact that widow, two minor children and aged parents were the dependents, 1/ 4th is required to be deducted towards personal expenses of the deceased. The deceased was 30 years of age and as per the judgment of ***Sarla Verma,*** the multiplier applicable is 17. Hence, after deducting 1/ 4th towards personal expenses and applying multiplier of 17, loss of dependency comes to Rs.6,42,600/-. The Appellant No.1 -widow of the deceased is entitled for compensation of Rs.40,000/- towards loss of spousal consortium. The Appellant Nos.4 and 5 are the minor children of the deceased. They were about 2 ½ and 4 ½ years of age as on the date of the accident and were deprived on father's love, care, protection and guidance due to his untimely accidental death. The Respondent Nos.4 and 5 are therefore entitled for compensation of

Rs.40,000/- each towards loss of parental consortium. In addition, the claimants are entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses.

20. Under the circumstances and in view of discussion supra of the Appellants are entitled for total compensation of Rs.7,92,600/-. The Appellants had claimed total compensation of Rs.6,00,000/-. In

Ramla vs. National Insurance Co. Ltd. AIR (2019)SCC 404 :-

> *“ **6.....**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 is 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 Courts are duty bound to award just compensation (see the judgments of this Court in the cases of Nagappa v. Gurudayal Singh (b) Magma General Insurance v. Nanu Ram, (c) Ibrahim v. Raju.”*

21. Considering the facts and circumstances of the case, in my considered view, the compensation of Rs.7,92,600/- is just and fair compensation. The impugned judgment needs to be modified to that extent. Hence, the following order:-

(i) The appeal is allowed.

(ii) The compensation awarded by the Tribunal is enhanced from 1,35,900/- to Rs.7,92,600/- with interest @9% per annum from the date of the petition till final realisation.

(iii) The Respondent Nos.1 and 2 shall jointly and severally deposit the enhanced compensation with proportionate interest thereon, before the Claims Tribunal within a period of eight weeks from the date of the order.

(iv) The Appellants are at liberty to apply to the M.A.C.T., Thane, for withdrawal of the compensation, upon payment of additional court fee, if payable under the statute. Considering that the claim is of the year 1994, M.A.C.T., Thane to disburse the amount only after verifying the identity of the Appellants.

(v) The award of the Tribunal under challenge in this appeal stands modified accordingly.

(vi) Record and proceedings be returned.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab Digitally signed by Megha Parab Date: 2019.10.11 12:02:24 +0530