

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.757 OF 1996

Kamal Yashwant Patil

....Appellant

V/s.

Suryakant Hindurao Patil and Ors.

....Respondents

...

Ms Jeenal Upadhyay I/b. Mr. Rajesh S. Patil for the Appellant.

Mr. Rahul Patil I/b. Mr. Umesh Mankapure for the Respondent Nos.2A and 2B.

Ms Poonam Mittal for the Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th AUGUST, 2019.

ORAL JUDGMENT:-

The Appellant herein who is the original claimant has impugned the judgment and award dated 28th June, 1994 passed by the M.A.C.T., Sangli in Motor Accident Claim No.187 of 1987. By the impugned judgment and award, the Claims Tribunal has directed the Respondents to pay to the Appellant-original Claimant compensation of Rs.48,800/- with interest @ 12 % per annum from the date of the petition till final realization.

2. Brief facts necessary to decide this appeal are as under:

The Appellant, hereinafter referred to as the Claimant, is the widow of

Yeshwant Laxman Patil, who expired in a motor vehicular accident on 26th April, 1987 involving tractor bearing No.MXW 422, which was owned by the Respondent No.2, driven by the Respondent No.1 and insured by the Respondent No.3. It was the case of the Claimant that the accident was caused solely due to rash and negligent driving of the tractor by the Respondent No.1. She claimed that the deceased was 40 years of age. He was an agricultural labourer earning income of Rs.600/- per month. She therefore filed an application under Section 166 of the M.V. Act claiming total compensation of Rs.1,00,000/- with interest.

3. The Respondent Nos.1 and 2 denied that the accident was caused due to rash and negligent driving of the driver of the tractor. The Respondents claimed that the deceased and two other labourers were sitting in the trolley of the tractor. It is alleged that the deceased stood up to pluck mangoes while the tractor was in motion. He lost balance and fell down and came under the wheels of the trolley. The Respondent No.3 has claimed that the death of Yeshwant was due to his own negligence.

4. The Respondent No.3 claimed that its liability is restricted

to the terms and conditions of the policy. The Respondent No.3 further claimed that at the time of the accident the tractor was driven by Subhash A. Patil, son of the Respondent No.2. The Respondent No.3 further claimed that the driver had no valid and effective driving license and that it was not liable to indemnify the insured for breach of terms and conditions of the policy.

5. Upon appreciating the evidence on record, the learned Member of the Claims Tribunal held that the tractor was driven by the Respondent No.1 and not by Subhash Patil. The Tribunal has further observed that the accident was caused due to rash and negligent driving by the driver of the tractor. The Tribunal considered the income of the deceased as Rs. 400 per month on an assumption that as a labourer the deceased would have worked only for twenty days and earned Rs.18/- to Rs.20/- per day. The Tribunal determined the monthly contribution to family as Rs. 200/-. The Tribunal considered the age of the deceased as 45 and adopted multiplier of 12 on the premise that the deceased would have worked as a labourer till about the age of 58 to 60. The Tribunal awarded compensation of Rs.28,800/- for the loss of dependency and adding Rs.20,000/- on other conventional heads viz. Loss of consortium, love and affection awarded

total compensation of Rs.48,800/-. Being aggrieved by the judgment and award the Claimant has preferred this appeal.

6. At the outset it may be mentioned that the Respondents have not filed any appeal or cross objection challenging the finding that the accident was caused due to rash and negligent driving by the Respondent No.1. There is also no challenge to the finding that the Respondent No.3 is liable to indemnify the insured. The only question is about the quantum of compensation payable to the Claimant.

7. I have heard the learned counsel for the claimant and the respondents. I have also perused the impugned judgment and the material placed on record. The claimant has deposed that the deceased was an agricultural labourer and that he used to earn wages of Rs.25 per day. Her evidence indicates that he used to keep Rs.5 for his personal expenses and give her Rs.20/- to meet daily household expenses. In my considered view there was no reason for the tribunal to disbelieve this witness and to consider the income of the deceased at Rs. 18- 20 per day and further to observe that the deceased would at the most get work only for 20 days. The tribunal has lost sight of the fact that the labourers who depend on meager daily wages for their

sustenance do not enjoy the luxury of taking weekly off or long breaks. The reason given by the tribunal that the agricultural work may not be available on daily basis also cannot be accepted. It has to be borne in mind that even if agricultural work is not available throughout the year, the daily workers whose very survival depends on their daily earnings, are always on look out for other kinds of work. They earn their livelihood doing whatever work available throughout the year. Hence, the tribunal was not justified in considering the income of the deceased as Rs. 400/ per month.

8. The Claimant had deposed that she was not working or earning. She had very candidly deposed that the deceased would keep Rs. 5/ for his personal expenses and give her Rs 20/ per day to meet daily household expenses. Without considering this evidence, the Tribunal has deducted half of the income towards personal expenses of the deceased and determined family contribution as Rs.200/- per month. Suffice it to say, the meager income would make it difficult rather impossible for the deceased to spend even 1/3rd on his personal expenses. In such circumstances, the tribunal was not justified in deducting half of the income towards personal expenses of the deceased or in determining the family contribution as Rs.200/ per

month.

9. The Claimant had deposed that the deceased was 40 years of age at the time of his death. The deceased was an illiterate rustic agriculturist. The Claimant had no records to prove the age of the deceased and as a normal practice in rural areas, gave the age by approximation. In her evidence, which was recorded about six years after the accident, she had stated her age to be 40. She had further stated that the age difference between her and her husband was of 10 years. It was under these circumstances that the Tribunal has considered the age of the deceased as 45 years. Having considered the age of the deceased as 45, the tribunal has adopted multiplier of 12 on the premise that the deceased would have worked till the age of 58 to 60 years. This method cannot be approved in view of the decision of the Apex Court in *Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009(6)Scale 129*, reiterated and approved by the constitution Bench in *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. 2017 SCC 1270*. As per the aforesaid decisions the appropriate multiplier to be used for age group of 41 to 45 years is 14.

10. The deceased was just about 45 years of age at the time of

his death. It cannot be perceived that his income would remain stagnant or static over the period, as he would always work harder to enhance his income for sustenance and over the years there would be increase in his income. Considering the age of the deceased, nature of his employment and following the pronouncement in *Pranay Sethi* (supra), an addition of 25% of the established income is required to be made towards future prospects.

11. The evidence on record indicates that on the date of the accident, the income of the deceased, was Rs.750/- per month. After deducting Rs. 150 per month towards his personal expenses, the annual income comes to Rs. 7200/-. Upon adding Rs1800 towards future prospects and applying multiplier of 14, the loss of dependency works out to Rs. 1,26,000/-. In addition, the Claimant is entitled for compensation of Rs. 70,000 on the other conventional heads, viz. loss of consortium, loss of estate and funeral expense. The claimant is therefore entitled for total compensation of Rs.1,96,000/-, which is more than the compensation claimed by the Claimant.

12. In *Ramla vs National Insurance Co. Ltd AIR (2019) SCC 404* 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 a 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 an enhanced amount. The Court are duty bound to award just compensation (see the judgments of this Court in the cases of (a) Nagappa v. Gurudayal Singh (b) Magma General Insurance v. Nanu Ram (c) Ibrahim v. Raju ."

13. It is thus well settled that there is no embargo to award compensation more than that is claimed by the Petitioner. The only requirement is that the compensation should be just compensation. Considering the facts of the case and having regard to the evidence on record, in my considered view the Claimant is entitled for compensation of Rs.1,96,000/-, which in my considered view is 'just and fair' compensation. Hence, the impugned judgment and award needs to be modified to that extent.

14. Under the circumstances, and in view of discussion supra, the appeal is allowed. The compensation payable to the Claimant is

enhanced to Rs. 1,96,000/-The Respondent No.3 has already paid to the Claimant an amount of Rs.68,936/-, which is inclusive of interest. The Respondents are jointly and severally directed to pay to the Claimant the balance amount of Rs.1,47,200/- with proportionate interest thereon @12% per annum from the date of the Petition till the date of the payment/realization. Considering that the Claim is of the year 1987, the Respondents are directed to deposit the amount of compensation before the Claims Tribunal, Sangli within a period of six weeks from the date of this judgment. Liberty is granted to the Claimant to seek withdrawal of the compensation. The Tribunal shall make the payment only after ascertaining the identity of the Claimant.

(SMT. ANUJA PRABHUDESSAI, J.)

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