

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

**FIRST APPEAL NO.22 OF 2005
WITH
CIVIL APPLICATION NO. 23 OF 2005**

Shri Behram Jamshedji Tarapore (deceased)
through his legal heirs
Smt. Thrity B. Tarapore & ors. ..Appellants

v/s.

M/s. Safe Speed Carrier Pvt. Ltd. & Anr. ..Respondents

Mr. Tejas Dande a/w. Bharat Gadhavi for the Appellant/Applicant.
Ms. Leena Temkar i/b. Kalyani Parmar for the Respondent No.1.
Ms. Harshada Rane for the Respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 27th SEPTEMBER, 2019.**

ORAL JUDGMENT.

1. The appellant herein has challenged the judgment and award dated 7.1.2002 passed by the learned Member of the Claims Tribunal, Mumbai in Claims Application No. 2518 of 1992. By the impugned judgment and award the Claims Tribunal has awarded compensation of Rs.9,61,000/- with interest at the rate of 6% per

anum from January 2000 till final realization of the amount.

2. The appellant nos.1 and 2 (since deceased) were the parents, the appellant no.3 is the widow and the appellant nos.4 and 5 are the children of the deceased Neville Behram Tarapore, who died in a motor vehicular accident on 12.7.1994, involving vehicle No.DL-1-G-2239. The said vehicle was owned by the respondent no.1 and insured by the respondent no.2 insurance company. The deceased was 46 years of age. He was working in the Central Bank of India at Vile Parle Branch and was drawing salary of Rs.9000/- per month. On 12.7.1994, while he was returning home from his duty, the offending vehicle dashed against his motor cycle and he expired as a result of the injuries sustained in the accident. The appellants claimed that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The applicants therefore filed a Claim Petition under Section 166 of the Motor Vehicles Act against the owner and insurer of the offending vehicle claiming total compensation of Rs.25 lakhs.

3. The respondents did not contest the proceeding. The Tribunal, after analysing and appreciating the evidence adduced by the appellants recorded a finding that the accident was caused due to the rash and negligent driving by the driver of the offending vehicle. The Tribunal also held that the death of the deceased was caused due to the injuries sustained in the accident. The Tribunal held that the deceased with earning Rs.9000/- per month. The Tribunal deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased and applied multiplier of 12 and assessed loss of dependency at Rs.9,64,000/-. The Tribunal awarded compensation of Rs.10,000/- towards loss of spousal consortium, Rs.10,000/- towards loss and affection and Rs.2000/- towards funeral expenses. The Tribunal thus awarded total compensation of Rs.9,61,000/-.

4. The Tribunal held that though the Insurance Company had not filed the written statement, the appellants had not taken steps to get the claim petition decided at the earliest. The Tribunal held that the evidence of the appellant was recorded only in the month of June 2001. The Tribunal therefore held that it is not proper to saddle the

insurance company with interest from the date of the application. The Tribunal has also observed that the widow has been offered a job in the bank on compassionate ground and that she can maintain herself on the salary. Based on these findings, the Tribunal fixed the rate of interest @ 6% per anum payable from January 2000 till final realization of the amount. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellants have preferred this appeal under Section 173 the the Motor Vehicles Act, 1988.

5. I have perused the record and considered the submissions advanced by the learned counsel for the respective parties. The first and foremost question which falls for consideration is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

6. It is not in dispute that the deceased Neville was 46 years of age. As per the decision of the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC 121***, the multiplier applicable for the person between the age group of 46- 50 years is 13. The

Tribunal has therefore erred in applying the multiplier of 12. It is also to be noted that though the deceased was a permanent employee, employed in the Central Bank of India, the Tribunal has not made any addition towards future prospects. The evidence on record also indicates that the deceased was survived by his aged parents, widow and two minor children. Considering the number of dependents $1/4^{\text{th}}$ income was required to be deducted towards expenses of the deceased and not $1/3^{\text{rd}}$ as done by the Tribunal. The compensation awarded by the Tribunal on other conventional heads viz. loss of consortium, funeral expenses etc is also meagre. The compensation awarded by the Tribunal is not just and fair. Hence it is necessary to compute just compensation on the basis of the binding principles and formula laid down by the Apex Court in catena of judgments.

7. The evidence of PW3 Tushar Behram reveals that the deceased had joined the Bank on 11.9.1968. His gross salary on 30.6.1994 was Rs.9,649.89 and an amount of Rs.1254 was deducted from his salary towards income tax and Rs.50/- towards professional tax.

After deducting the amount paid towards income tax, the net income comes to Rs.8345.89 per month, which is rounded to Rs.8346/- i.e. Rs.1,00,152/- per annum.

8. The deceased was 46 years of age and was a permanent employee of the Central Bank of India. In ***National Insurance Co. vs. Pranay Sethi, & Ors. 2017 ACJ 2700*** the Apex Court has held that in case of permanent employee aged between 40 and 50 years, addition of 30% has to be made towards future prospects. Thus, on adding 30% of the actual income towards future prospects, the income of the deceased works out to Rs.1,30,197/- per annum. The deceased was survived by his aged parents, widow and two minor children who were dependent on him. Considering the number of the dependents, 1/4th of the salary is required to be deducted towards personal expenses of the deceased. Upon deducting 1/4th towards personal expenses and applying multiplier of 13, the loss of dependency works out to 12,69,424/-. In addition, the appellants are entitled for Rs.70,000/- towards loss of spousal consortium, and Rs.30,000/- towards funeral expenses and loss of estate . The appellant nos. 4

and 5 were minors as on the date of the accident. They were deprived of love, affection and guidance of their father due to his untimely death. As per the judgment of the Apex Court in ***Magma General Insurance Co., Ltd. vs. Nanu Ram 2018 SCC Online SC 1546***, the applicant nos.4 and 5 are entitled for compensation of Rs.40,000/- each towards loss of parental consortium. The appellants are therefore entitled for total compensation of Rs.14,49,494/- which is rounded to Rs.14,50,000/-.

9. The next question for consideration is whether the Tribunal has erred in not awarding interest from the date of filing of the petition under Section 166 of the M.V.Act. Section 171 confers powers on the Tribunal to award interest which as reiterated by the Apex Court in ***Dharampal v/s. U.P. State Road Transport Corporation-(2008) 12 SCC 208***, is a compensation for forbearance or detention of money which ought to have been paid to the claimant. This Section does not specify the rate of interest and vests discretion on the Tribunal to fix the rate of interest and the date from which it is to be awarded with only restriction that the interest is payable only from the date of

filing of the claim petition and not for the pre-litigation period. Considering the fact that the provision relating to the award of compensation under Section 166 of M.V.Act is a benevolent provision, grant of interest from the date of filing of the claim petition should be a rule and denial an exception. In the instant case, the application was filed on 9th August, 1994. The Tribunal has not awarded interest from the date of filing of the application, but has awarded interest from January 2000. The reasons for declining interest from the date of filing of the application are that the appellant herein had not taken steps to get the application decided at the earliest and further on the ground that the widow of the deceased has been appointed on compassionate ground. There is nothing on record to indicate that the appellants herein had delayed the matter or that they had adopted dilatory tactics. The delay in disposing of the application is not attributable to the appellants. Hence the mere fact that the claim application has remained pending either on account of the pressure of the work or for any other reasons, would not be a ground to decline grant of interest from the date of filing of the application.

10. The question whether salary receivable by the claimant on compassionate ground comes within the periphery of M.V.Act to be termed as “Pecuniary advantage” is liable for deduction, has been considered by the Apex Court in ***Vimal Kanwar & Ors. vs. Kishore Dan & Ors. (2013)7 SCC 476*** , wherein interalia it has been held that Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a co-relation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment, but that cannot be termed as “Pecuniary Advantage”, that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

11. In the light of the above, the Tribunal was not justified in declining to award interest from the date of petition on the ground of “compassionate appointment” of applicant no.1. Suffice it to say that

award of interest being a matter of discretion, the Tribunal is required to exercise the discretion judiciously in a fair and reasonable manner. In the instant case, the Tribunal has allowed the respondent Insurance Company in getting undue monetary advantage by depriving the appellants of their legitimate dues despite their being no lapse on the part of the appellants. This cannot be considered as judicial exercise of discretion. Consequently, the order to award interest from January 2000 cannot be sustained.

12. Under the circumstances, and in view of the discussion supra, the following order is passed.

(i) The appeal is allowed.

(ii) The claim is enhanced from Rs.9,61,000/- to Rs.14,50,000/- with interest at the rate of 6% per anum from the date of filing of the application till final realization of the amount.

(iii) The respondent nos.1 and 2 shall jointly and severally deposit before the Claims Tribunal the balance compensation of

Rs.4,89,000/- with interest within eight weeks from the date of uploading of this order. Award stands modified accordingly.

(iii) Liberty is granted to the appellants to apply for withdrawal of the amount before the Tribunal.

. Record & Proceedings be returned to the Tribunal.

. Civil application stands disposed of in view of disposal of the appeal.

Prasanna
P.
Salgaonkar

Digitally
signed by
Prasanna P.
Salgaonkar
Date:
2019.11.11
12:23:48
+0530

(ANUJA PRABHUDESSAI, J.)