

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.600 OF 2007

1. Sunanda wd/o Anil Pagrut
Aged about 40 yrs.
Occupation : Housewife
2. Ashwini d/o Anil Pagrut
Aged about 18 yrs.
Occupation : Student
3. Kanchan d/o Anil Pagrut
Aged about 5 years (Minor)
Through her mother Sunanda Pagrut
4. Sumitra wd/o Onkarrao Pagrut
Aged about 65 yrs (Minor)
Occupation : Household work

All R/o Gokul Colony, Akola
Dist. Akola

... Appellants.

-vs-

1. Omprakash s/o Motilal Tiwari
Adult, Occupation : Driver
R/o near Saraswati Dairy Mukteshwar
Buidling, R. K. Remta Road,
Ghatkopar (E), Mumbai 66
2. M/s Transafe Express,
Arihant, 5th floor, Ahamadad Street,
Mumbai – 71
3. M/s Newman Lefine Pvt. Ltd.
758, Marshel House,
Calcutta 700 001
4. National Insurance Company Ltd.
Thr. Divisional Manager, Akola,
Dist. Akola

5. Sunil Prabhakar Rao Pathak,
Aged 40 yrs., Occ. Doctor
R/o Dai Hind Chowk, Old City
Tal. Akola, Dist. Akola

... Respondents.

Shri A. B. Patil, Advocate for appellants.

Shri D. N. Kukday, Advocate for respondent No.4/Insurance Company.

CORAM : A.S.CHANDURKAR, J.

DATE : February 04, 2019

Oral Judgment :

This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) has been filed by the claimants seeking enhancement in the amount of compensation as granted by the Motor Accident Claims Tribunal in M.A.C.P. No.192/2000.

2. On 22/01/2000 four persons were proceeding in a car when at about 8.30 pm a truck coming from opposite direction gave a dash to it. The said car was owned by Dr Sunil Pathak who was injured in the said accident. Two persons viz. Pramod Bhuibhar and Anil Pagrut suffered grievous injuries and they succumbed to the same. The legal heirs of Anil Pagrut filed M.A.C.P. No.192/2000 under Section 166 of the said Act seeking grant of compensation. After considering the evidence on record the Claims Tribunal awarded a sum of Rs.7,21,500/- as compensation. Not being satisfied with the said quantum of compensation the claimants have filed the present appeal.

3. Shri A. B. Patil, learned counsel for the appellants submitted that considering the nature of evidence on record, the claimants were entitled for higher compensation. Vide Exhibit-54 salary certificate of said Anil was placed on record. He was working as a Junior Clerk with the Staff Selection Commission. He was receiving salary of Rs.8,742/-/- per month. The deductions made from that amount while awarding compensation were not in accordance with law. Considering the age of the deceased it was clear that the claimants were entitled for higher compensation. Placing reliance on the decisions in *Sarla Verma (Smt) and ors. vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121* and *National Insurance Company Ltd. vs. Pranay Sethi and ors. (2017) 16 SCC 680* it was submitted that the amount of compensation deserves to be suitably enhanced.

4. Shri D. N. Kukday, learned counsel for the respondent No.4- Insurance Company supported the impugned judgment. He submitted that the evidence led by the claimants was duly considered by the Claims Tribunal and fair compensation was awarded. No further enhancement was liable to be granted thereon. He therefore submitted that the appeal was liable to be dismissed.

5. In the light of aforesaid submissions, the following point arises for consideration :

“ Whether the appellants are entitled for higher compensation ?”

6. I have heard the learned counsel for the parties at length and I have perused the evidence on record. The award as passed by the Claims Tribunal granting compensation of Rs.7,21,500/- is not under challenge by the insurer. The fact that the deceased was travelling in the car which met with an accident and the other factual aspects with regard to the salary of the deceased and his date of birth are not in question. The only aspect required to be considered is the determination of just and fair compensation. The date of birth of the deceased as per Exhibit-50 was shown as 31/08/1959 which indicates that he was aged about 41 years when the accident took place. His engagement as a Junior Clerk is also not questioned. The salary certificate at Exhibit-54 indicates gross salary of Rs.8,742/- p.m. After deducting the amount towards profession tax of Rs.150/- the net salary would be Rs.8,592/- per month. In the light of the decision in ***Pranay Sethi and ors.*** (supra) 30% amount is liable to be granted towards future prospects. The same would be Rs.11,170/-. 1/4th amount is liable to be deducted towards personal expenses in the light of the fact that there were five dependents in the family. The monthly figure therefore would be Rs.8,378/- while the annual income would be Rs.1,00,536/-. By applying multiplier of 14 in view of the law laid down in ***Sarla Verma*** (supra) figure of Rs.14,07,504/- is arrived at. An amount of Rs.70,000/-

under conventional heads is payable. As Rs. 9500/- was granted by the Claims Tribunal on that count, the balance amount on that count would be Rs.60,500/-. The same would give a total of round figure of Rs.14,68,000/-. Amount of Rs.40,000/- is granted for the medical bills is maintained. After deducting the amount of compensation awarded which is Rs.6,72,000/-, the compensation to be enhanced would be Rs.7,96,000/-. This would be the amount of just compensation determined after applying the ratio of the decisions referred to herein above. The point as framed is answered accordingly.

7. In the light of aforesaid discussion, the following order is passed :
- (i) The judgment of the Claims Tribunal dated 18/10/2006 in M.A.C.P. No.192/2000 is partly modified.
 - (ii) It is held that the claimants are entitled for total compensation of Rs.14,68,000/-. After deducting the amount of compensation already awarded, the balance compensation of Rs.7,96,000/- shall be paid with interest at the rate of Rs.7.5% per annum from the date of filing of the petition till its realisation.
 - (iii) The First Appeal is allowed in aforesaid terms with no order as to costs.

JUDGE