

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.754 OF 2012

Anita w/o Arun Memane,
Age : 24 years, Occu.: Household,
R/o.: Raytale, Tal. Parner,
District Ahmednagar.

... **APPELLANT**
(Org.claimant)

VERSUS

1] The Maharashtra State Road Transport Corporation,
through its Divisional Controller,
Office of MSRTC, Sarjepura,
Ahmednagar.

(Ori.Opponent no.1/
Owner of the vehicle)

2] Ramdas s/o Eknath Memane,
Age : 68 years, Occu.: Agri.,

3] Sau. Sitabai w/o Ramdas Memane,
Age : 63 years, Occu.: Household,

Both R/o. Raytale, Taq. Parner,
District Ahmednagar.

... **RESPONDENTS**
(Ori. Opponents)

.....
Shri Umakant Wagh, Advocate for Appellant.
Shri M.K. Goyanka, Advocate for Respondent No.1.
Shri H.U. Dhage, Advocate for Respondent Nos.2 and 3.
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CORAM: V.L. ACHLIYA, J.

JUDGMENT RESERVED ON : 21.01.2020
JUDGMENT PRONOUNCED ON : 24.07.2020

JUDGMENT :

1] Being aggrieved by the judgment and award dated 9.12.2011 passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No.376/2007, the appellant - claimant has preferred this appeal seeking enhancement of compensation.

2] Heard learned counsel appearing for the appellant and respondents. Perused the record and proceedings.

3] Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of claim petition. For the sake of brevity and convenience, the parties are referred as they are described in the impugned judgment.

4] The appellant – claimant had filed petition u/s 166 of the Motor Vehicles Act seeking compensation on account of accidental death of her husband Arun Ramdas Memane who died in motor vehicle accident which had taken place on 2.6.2007 at about 4-00 p.m. on Nagar-Pune road opposite Kamargaon Bus Stand. The claimant has approached with a case that at the time of accident, the appellant – claimant and the deceased were proceeding from Pune towards Nagar on their motorcycle bearing registration No.MH-16-P-3680. The deceased was driving the motorcycle and the appellant – claimant was a pillion rider. While they were near Kamargaon Shivar, the offending vehicle i.e. the S.T. Bus bearing registration No.MH-20-D-7720 owned by the respondent no.1 which was coming from Pune and proceeding towards Nagar gave dash to motorcycle. Due to dash given, the deceased sustained multiple injuries including injury to head. The appellant – claimant also sustained injury in said accident. It is contended that the accident

occurred due to sole negligence and rash & negligent driving on the part of driver of the S.T. Bus. The deceased was shifted to Civil Hospital, Ahmednagar, He succumbed to injuries sustained in the accident. The appellant was admitted to Kamalnayan Hospital at Tarakpur, Ahmednagar.

5] The appellant has claimed that at the time of accident, the deceased was 24 years of age and serving in Military (Infantry) and posted at Gwalior as a Sipoy. He was receiving Rs.10,000/- per month as salary. The appellant - claimant has claimed that the deceased was getting free meal and residential facilities at the place of his posting. On account of accidental death, the claimant has worked out the claim as Rs.15,30,000/-. However, restricted the claim for the purpose of petition and Court fees to Rs.10,00,000/-.

6] The respondent no.1 - MSRTC contested the claim with contention that the accident solely occurred due to fault on the part of the deceased who was driving the motorcycle in an excessive and unmanageable speed. While overtaking the Truck ahead of him, the deceased could not control his motorcycle and gave dash to the driver side bumper of the Bus and sustained injuries. The respondent no.1 denied the case as pleaded about age, occupation and income of the deceased to claim compensation of

Rs.10,00,000/-.

7] The respondent nos.2 & 3 - the father and mother of the deceased, appeared in the matter and filed their written statement. They have claimed that the appellant has filed the petition in gross suppression of true facts and tried to mislead the Court. The appellant - claimant has shown her residential address as her matrimonial house at village Raytale Tq.Parner Dist.Ahmednagar though she is residing at her parental place at Sonewadi Tq. & Dist.Ahmednagar. In order to grab the entire amount of compensation, the appellant has deliberately shown her address as that of her matrimonial place of residence. In brief, the respondent nos.2 & 3 have approached with a case that the deceased was their only son. The deceased married with the appellant about one month prior to the accident. After the accident, the entire expenditure of her treatment was borne by them. Instead of taking care of respondent nos.2 & 3, the appellant - claimant left the matrimonial house and residing with her parents. Her parents are trying to perform her marriage. According to respondent nos.2 & 3, the appellant - claimant is not entitled to receive compensation. In short, the respondent nos.3 & 4 have claimed that they alone are entitled to receive the compensation.

8] In order to prove the claim, the appellant - claimant has

examined herself. The respondent no.1 examined the driver of the Bus in support of their defence. On due appreciation of rival pleadings and oral and documentary evidence adduced in the case, the Tribunal has reached to the conclusion that the accident and consequential death of deceased had occurred due to sole negligence on the part of the driver of S.T. Bus. The Tribunal has assessed the compensation to be payable as Rs.9,00,000/- (inclusive of No Fault Liability) with future interest at the rate of 7.5% p.a. from the date of petition till its realization. Out of the compensation awarded, the amount to the extent of Rs.1,50,000/- each was directed to be paid to respondent nos.2 and 3. The balance of Rs.5,50,000/- was directed to be paid to the appellant - claimant. Being dissatisfied with the award passed by the Tribunal, the appellant - claimant has preferred this appeal seeking enhancement of compensation.

9] In brief, it is the contention of learned counsel for the appellant that the Tribunal has erred in deducting Rs.4750/- from monthly salary of deceased in assessment of compensation. It is submitted that except the statutory deductions, no other deduction is permissible under law from the salary of the salaried person while assessing compensation to be payable under the provisions of Motor Vehicles Act. So also the view taken by the Tribunal that as

appellant – claimant is receiving pensionary benefit, she is not entitled to receive more than Rs.6,000/- per month towards loss of income, is against the settled position in law.

10] It is further submitted that while assessing the compensation, the Tribunal has not considered the future prospects of the deceased who was in permanent employment with Government of India. He had good prospects. The salary was subject to upward revision in near future. On account of future prospects, the income to the extent of 50% should have been added to the existing income of the deceased while assessing compensation by the Tribunal. Similarly, the multiplier of 18 ought to have been applied in assessment of compensation by taking into consideration the age of deceased. In support of the submissions that for the purpose of assessment of compensation, no deduction other than statutory deductions are permissible in law, the learned counsel has referred and relied upon decisions of the Apex Court in the cases of *Manasvi Jain v. Delhi Transport Corporation Limited & others* reported at **(2014) 13 SCC 22** and *Sebastiani Lakra & others v. National Insurance Company Ltd. & another* reported at **2018 ALL SCR 2175**. By referring the decision in the case of *National Insurance Company Limited V/s Pranay Sethi and others* reported at **(2017) 16 SCC 680**, the learned counsel submits that

compensation of Rs.23,92,000/- deserves to be awarded to the appellant and urged to re-assess the compensation after adjusting the compensation already awarded and paid to the claimants.

11] On the other hand, learned counsel for the respondent no.1 supported the judgment and award passed by the Tribunal. It is submitted that the accident and consequential death of deceased occurred due to sole negligence and fault on the part of deceased. It is submitted that the compensation as claimed is excessive. The Tribunal has duly considered the evidence and awarded the compensation.

12] I have carefully considered the submissions advanced in the light of rival pleadings, oral and documentary evidence adduced in the case and the reasons and findings recorded by the Tribunal in assessing the compensation. If we consider the reasons and findings recorded by the Tribunal in assessing the compensation, then the Tribunal has accepted the case of the appellant that the deceased was 24 years of age and earning Rs.10,750/- per month as a person permanently employed in military service as Sipoy. While assessing the compensation, the Tribunal has considered the monthly contribution of the deceased to his family as Rs.6,000/- per month. The Tribunal has observed that after the death of the deceased, the appellant - claimant is receiving pension to the

extent of half of the salary of deceased. After deducting the pension to be payable to the appellant – claimant from the monthly salary of the deceased, the Tribunal has assessed the monetary loss as Rs.6,000/- per month on account of accidental death of deceased. Accordingly, the Tribunal has assessed the monetary loss as Rs.72,000/- per year. After making deduction to the extent of 1/3rd towards personal expenses of the deceased, the Tribunal worked out the yearly loss of income as Rs.48,000/- (Rs.72000 – Rs.24000 = Rs.48000). Accordingly, the Tribunal assessed the monetary loss as Rs.8,64,000/- and further awarded Rs.26,000/- in lump-sum towards loss of consortium, loss of estate, funeral expenses, mental and physical agony and awarded total compensation of Rs.9,00,000/-.

13] In my view, the assessment of compensation made by the Tribunal is against the settled position in law. It is well settled position in law that except the statutory deduction to be made towards income tax, professional tax, no other deduction is permissible under law. The deduction from salary of the deceased towards insurance, pensionary benefits, gratuity or grant of employment to kin of deceased is not permissible. In this context, the learned counsel for the appellant has placed reliance upon the decision in the case of *Sebastiani Lakra & others v. National*

Insurance Company Ltd. & another reported at **2018 ALL SCR 2175** wherein the Apex Court has observed in paragraph nos.12 to 16 as under:-

“12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to akin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to ‘just compensation’ under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The

deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in *Perry v. Cleaver* [(1969) 1 ALL ER 555] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has

accrued to the claimants only on account of death of the deceased in a motor vehicle accident.”

14] Similar view has been taken by the Apex Court in the case of *Manasvi Jain v. Delhi Transport Corporation Limited & others* reported at **(2014) 13 SCC 22**. The Apex Court has observed in paragraph no.8 as under:-

“8. This Court in *Shyamwati Sharma & Ors. Vs. Karam Singh & Ors.* **(2010) 12 SCC 378**, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that -

“while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax / surcharge alone should be considered to arrive at the net income of the deceased.”

15] In the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the Constitution Bench of the Hon’ble Apex Court has laid down following broad guidelines for the purpose of determination of compensation u/s 166 of the Motor Vehicles Act :-

“**59.1.** The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated

in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

59.2. As *Rajesh* has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in *Rajesh* is not a binding precedent.

59.3. 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.

59.4. 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.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

16] Thus, considering the overall facts of the case in the light of broad principles of law as discussed above, the appeal deserves to be allowed and the compensation awarded by the Tribunal is required to be re-assessed. Undisputedly, the deceased was 24 years of age. Considering the multiplier applicable to victim in the age group of 21 to 25 years, as provided in the case of *Sarla Varma (Smt.) and others Vs. Delhi Transport Corporation and another* reported at **(2009) 6 SCC 121**, the multiplier of 18 is required to be applied in assessment of compensation. Since the deceased was having permanent job and earning Rs.10,750/- per month and a married person with dependency of three persons, the deduction to the extent of 1/3rd is to be made from the monthly salary of the deceased towards personal expenses of the deceased. In that view, amount of Rs.3583/- per month is to be deducted

towards personal expenses of the deceased from the monthly salary of Rs.10,750/- which the deceased was drawing at the time of his death. Thus, the monthly contribution of the deceased to the claimants is worked out as Rs.7167/-. The amount to the extent of 50% of monthly salary is to be added towards future prospects in terms of guidelines laid down by the Apex Court in the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra) as the deceased was having permanent job and a salaried person. On account of addition of income towards future prospects, the amount of Rs.3583/- deserves to be added to the monthly contribution of the deceased to his family. In that view, the net monthly income of the deceased to be considered for the purpose of assessment of compensation is worked out as Rs.10,750/-. Besides this, a reasonable amount deserves to be awarded under the conventional head. In the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the Apex Court has provided to award fixed amount of Rs.70,000/- under the said head and further recommended revision of the same after every three years with addition of amount to the extent of 10%. Since the accident in question occurred about 10 years prior to the decision in the said case, in my view, award of amount of Rs.30,000/- in lump-sum towards conventional head would meet the ends of justice.

Accordingly, the compensation has been re-assessed and re-worked out as under:-

Sr. No.	Heads	Compensation awarded
1.	Monthly Income of deceased	Rs.10,750/-
2.	Deduction to the extent of 1/3rd towards personal expenses	Rs.3583/-
3.	Monthly Income of deceased (10750-3583)	Rs.7167/-
4.	Addition towards future prospects (i.e. 50% of 7167)	Rs.3583/-
5.	Net monthly income of the deceased	Rs.10,750/-
6.	Yearly loss of income to be considered for assessment (10750 x 12)	Rs.1,29,000/-
7.	Multiplier of 18 to be applied considering age of deceased as 24 years (1,29,000 X 18)	Rs.23,22,000/-
8.	Compensation under conventional heads such as loss of love and affection, consortium, funeral expenses and loss of estate etc.	Rs.30,000/-
9.	Total compensation to be awarded	Rs.23,52,000/-

17] Considering the overall facts of the case that the marriage of the deceased had taken place about few months prior to the accident and the appellant - claimant lost her husband at young age, I am of the view that the amount of compensation be apportioned in the ratio of 50% to the appellant - claimant and balance 50% to the respondent nos.2 & 3 i.e. father and mother being dependent upon the deceased.

18] In view of above, the appeal deserves to be allowed and the award passed by the Tribunal needs to be modified.

Accordingly, following order is passed.

ORDER

- A] Appeal is allowed with proportionate costs.
- B] The compensation of Rs.9,00,000/- awarded by the Tribunal is enhanced to Rs.23,52,000/-.
- C] The amount of compensation of Rs.9,00,000/- awarded by the Tribunal and if paid by the respondent no.1 and withdrawn by the claimants be adjusted towards enhanced compensation awarded in the case.
- D] The enhanced amount of compensation i.e. Rs.14,52,000/- shall be paid by the respondent no.1 to the appellant – claimant and respondent nos.2 & 3 with future interest at the rate of 6% p.a. from the date of petition till its realization within a period of twelve weeks.
- E] The amount of enhanced compensation be apportioned between the appellant – claimant and respondent nos.2 & 3 in the ratio of 50 : 50. Out of enhanced amount of compensation, 50% amount together with proportionate interest be paid to the appellant – claimant and balance 50% amount together with proportionate interest be apportioned in equal proportion amongst the respondent nos.2 & 3.

F] The appellant - claimants shall pay the additional Court fees to be payable in terms of compensation enhanced and awarded within eight weeks from the date of receipt of modified award.

G] The modified award be drawn accordingly.

H] The appeal is disposed of in above terms.

(V.L. ACHLIYA, J.)