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

FIRST APPEAL NO.201 OF 1998

APPELLANTS : (On R.A.)	1.	Jaysingh s/o Kartar Singh Kalsi, Aged about : 56 years,
	2.	Smt. Joginder Kaur w/o Jaysingh Kalsi, Aged about : 51 years.
		Both R/o 52 Saw Mill Area, Opp. Bezonbagh, Nagpur.

V E R S U S

RESPONDENTS : (On R.A.)	1.	Smt. Sunderi Devi w/o Jaykaran Yadav, No. 11, Rambagh, Pratapgarh, Allahabad (Uttar Pradesh).
	2.	Oriental Insurance Company Ltd. Shastri Marg, Allahabad, through Oriental Insurance Company Ltd., Palm Road, Sadar, Nagpur.

Shri C. V. Kale, Advocate for appellants.
Shri C. A. Anthony, Advocate for respondent No.2.

CORAM:- S. M. MODAK, J.

DATE OF RESERVING JUDGMENT : 01/12/2020.
DATE OF PRONOUNCING JUDGMENT : 18/12/2020.

1. Heard Shri C. V. Kale, learned advocate for appellants and Shri C. A. Anthony, learned advocate for respondent No.2.

2. The only issue arisen in this appeal is about the sufficiency of the compensation granted by the Motor Accident Claims Tribunal, Nagpur. The deceased Upendra Singh Kalsi was carrying on two businesses, one as a partner in M/s. Ganga Borewells. The business from the said partnership firm was not at all considered which is challenged by the original claimants and second business is M/s. Kalsi Roadlines on Proprietary basis. The deceased was getting Rs.4,000/- per month.

3. There is also objection to the manner of calculation. The deceased was a bachelor having age of 24 years. He was contributing towards the family from his personal earnings. The logic applied by the Claims Tribunal that "the deceased will continue to contribute only for three years (that is up to the stage of possible marriage)" is challenged. So also, the observation of the Claims Tribunal that "there will be reduction in the share towards contribution in the contingency of children begotten to the deceased" is challenged. There is also challenge that the Claims Tribunal applied the multiplier of 13 but failed to give effect.

4. The appellants relied upon the observations given by the Hon'ble Supreme Court in case of **Smt. Sarla Verma & others Vrs. Delhi Transport Corporation & another**, reported in **2009(6) Scale 129** and in the case of **National Insurance Company Limited Vrs. Pranay Sethi and others,** reported in **2017 (13) Scale 12** and requested this Court to recalculate the compensation. There is opposition on behalf of Insurance Company - respondent No.2. It is for the reason that there is no error committed by the Claims Tribunal while appreciating the evidence. Hence, the question of applying guidelines laid down by Hon'ble Supreme Court does not arise.

5. I have heard Shri C.V. Kale, learned advocate for original claimants/appellants and Shri C.A. Anthony, learned advocate for Insurance Company. Respondent No.1 served, has not appeared.

The following points arise for my consideration.

I. Whether the income of the deceased considered by the Claims Tribunal is correct ?

II. Whether amount of compensation needs to be enhanced ?

III. What order ?

6. The deceased was driving a Scooter owned by his father appellant - Jaysingh Kalsi and his friend - Manjit Singh was a pillion rider. The truck driver owned by respondent No.1 dashed Scooter from the rear side on 27/11/1990. The deceased died on the spot and the pillion rider Manjit Singh was injured. He was examined. So also, one passer-by Prashant Golcha was examined. The police have registered an offence against truck driver under Sections 304-A, 279 and 338 of the Indian Penal Code. The Investigating Officer Shri Ingole was examined by the Insurance Company.

7. After considering the oral evidence and documentary evidence, Claims Tribunal concluded that truck driver was rash and negligent and death of Bhupendra Singh Kalsi was caused due to the injuries.

Evidence on the point of income

8. Shri Kale, learned advocate tried to convince me that income from business M/s. Ganga Borewells has to be considered. According to him, in fact, two partners from the firm retired in the year 1998 and the business was continued by the deceased and his father - Jaysingh. According to him, the deceased

was getting Rs.2,000/- per month from the said business. He brought to my notice reference in the evidence of appellant - Jaysingh to income assessment order at Exh.30. It is true that this document is not made available and it is not there on the file of Claims Tribunal. Whereas Shri Anthony, learned advocate brought to my notice the admission given during the cross-examination by this witness. The witness has answered that M/s. Ganga Borewells was dissolved in the year 1988. When the evidence of this witness is perused, we do not find anywhere reference that after dissolution, remaining two partners continued with the business.

9. The Claims Tribunal has disallowed the claim in para 12 of the petition. The contention of learned advocate Shri Kale could have been accepted, if he could have shown continuance of the business after dissolution. It is not there in the evidence. I agree with the findings given by the Claims Tribunal.

10. The deceased was a Proprietor of Transport business M/s. Kalsi Roadlines. The bank statement from State Bank of India in the name of proprietary firm is referred by the witness appellant No.1 at Exh.31. The Claims Tribunal has

considered monthly income of the deceased from M/s.Kalsi Roadlines at Rs.4,000/- p.m. The appellants have claimed monthly income of the deceased from both the businesses as Rs.6,000/- to Rs.7,000/- p.m. From the available evidence, I do not find any reason to disagree with the conclusion drawn by the Claims Tribunal about the monthly income of the deceased Rs.4,000/- per month.

Age of the deceased and dependency

11. I do not find much dispute about the age of the deceased as 24 years at the time of accident. The Claims Tribunal has considered contribution towards parents to Rs.3,000/- per month. Shri Kale, learned advocate is right. The contribution towards family cannot be Rs.3,000/- per month. The reason is that the father was also earning. He cannot be said to be dependent on income of the son. So, only mother remains. In that eventuality, it is to be presumed that the deceased must be contributing 50% i.e. Rs.2,000/- per month. So, loss of dependency will be Rs.24,000/- per annum.

12. I do not agree with the logic applied by the Claims Tribunal in para 15. The contribution of Rs.3,000/- was

considered only for three years. It is under the assumption that the deceased could have married within three years. This assumption is not correct. So, the calculation of loss of dependency to Rs.1,08,000/- (Rs.36,000/- X 3 years) is not correct.

13. The deceased could have continued to contribute Rs.1,000/- per month towards family for 10 years. This was under the assumption that the deceased ought to have incurred expenses on wife and children. That is how Claims Tribunal has ascertained Rs.1,20,000/-. (Rs.1,000/- per month x 12 months x 10 years). This logic is not also correct.

14. In fact, the method of determining loss of dependency was also prevalent when the Claims Tribunal decided the petition. There was a practice followed at that time about arriving at multiplicand and then to multiply it by multiplier. Instead of that, the Claims Tribunal has adopted a different method. From the Judgment, it is very well clear that the Claims Tribunal was aware about the existence of practice of using multiplier. The Claims Tribunal has applied multiplier of 13. However, the Tribunal stopped there and has not multiplied it

with the multiplicand. So, we have to follow the practice of arriving at the multiplicand and multiply it by multiplier.

15. It is true that the Claims Tribunal has not considered loss of future prospect. At that time, it was not permissible. However, in **Smt.Sarla Verma's case**, in case of permanent employees, 50% of the salary was to be added, if the deceased is below 40 years of age. The benefit is also extended to persons when income is established in case of **Pranay Sethi** (supra). So, the person below the age of 40 years is entitled to get 40% of the income towards future prospect (in para 57). It comes to Rs.1,600/- per month (Rs.4,000 X 40%).

16. It is also true that Hon'ble Supreme Court in case of Pranay Sethi (supra) has granted Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. The Claims Tribunal has granted Rs.20,000/- towards love and affection and mental agony and these conventional heads were not considered. Now, the appellant will be entitled to Rs.50,000/- (Rs.70,000 - Rs.20,000).

17. The Claims Tribunal has granted 12% interest. Certainly, it is excessive. In **Sarla Verma's case**, Hon'ble Supreme

Court has granted 6% interest. Now, the dispute is to exact period interest has to be paid. According to the appellants, they are entitled for interest from the date of petition till realization. Whereas according to the Insurance Company, the period during which the appeal was not on the file, needs to be excluded. Whereas learned Advocate Shri Kale submitted that when this Court restored the appeal vide order dated 28/06/2017 was not pleased to put a condition about waiver of interest.

18. It is true that the appeal was directed to be dismissed by the end of 20/08/2009 for want of filing of private paper book. There is a reference in the farad sheet. It is also true that the appeal was restored as per the order dated 28/06/2017 passed in Civil Application No.1206/2015. It is also true that there is no mention about the waiver of interest for the period in that order. According to me, it need not be. The appeal was dismissed due to fault of the appellants for not filing of private paper book. They cannot take benefits of their own wrong. Hence, from 20/08/2009 up to 28/06/2017, the appellants cannot be paid interest. The Tribunal has applied multiplier of 13 whereas, as per Sarla Verma's case, the deceased in between the age group of 26

to 30 years, multiplier of 17 is applicable. Hence, the appellants are entitled to get compensation as follows.

Established income	Rs.4,000/- per month
Contribution towards mother	50% - Rs.2,000/-
Future prospect.	40% of Rs.4,000 - Rs.1,600/-.
Total	Rs.3,600/- p.m. x 12 months = Rs.43,200/- per annum.
Compensation.	Rs.43,200/- x 17 = Rs.7,34,400/-
Remaining amount towards loss of consortium, estate and funeral expenses.	Rs.50,000/-
Total	Rs.7,84,400/-

19. The appellants are entitled to interest @ 6% on this amount from the date of petition till realization (excluding the period from 20/08/2009 till 28/06/2017. Hence, the directions.

ORDER

I] The appeal is partly allowed.

II] The Judgment dated 06/11/1996 passed by the Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No.242/1991 is modified as follows.

a] The respondent Nos.1 and 2 are directed to pay compensation of Rs.7,84,400/- along with interest @ 6% p.a. from the date of petition till realization excluding the period from 20/08/2009 till 28/06/2017.

b] The entire amount be paid to appellant No.2 - Smt. Joginder Kaur w/o Jaysingh Kalsi (because appellant No.1 has expired during pendency of appeal).

c] The appellants are entitled to recover cost from the respondents.

III] The amount is inclusive of amount towards no fault liability.

IV] Deficit Court Fee, if any, be paid by the appellants.

V] Appeal is disposed of.

[JUDGE]

Choulwar