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

FIRST APPEAL NO.1379 OF 2018

Appellant (Ori. Res. No.2) **:**The Bajaj Allianz General Insurance Company Ltd., Regional Office, Through Branch Manager, 7th Floor, Shriram-Shyam Tower, Block No.603, B Wing, Next to N.I.T. Building, Kingsway, Nagpur. .... On R.A.

-- Versus --

Respondents **:** 1] Smt. Pushpa Narayan Khurde (Ori.Claim.No.1)
Aged 32 Yrs., Occu. Household.

2] Prashik Narayan Khurde (Ori.Claim No.2)
Aged 10 Yrs., Occu. Education.

3] Ku. Prajakta Narayan Khurde (Ori.Claim No.3)
Aged 6 Yrs., Occu. Education.

(Res. Nos.2 & 3 Minor through Mother Guardian)

4] Rupchand Bhuraji Khurde (Died/Deleted) (Ori.Res.No.3).

5] Smt. Sonabai Rupchand Khurde (Ori.Res.No.4)
Aged 75 Yrs., Occu. Household.

All r/o Vavre layout, Krida Sankul Road,
Buldhana, Tah. & Dist. Buldhana. .... On R.A.

6] Mr. Munu Samy K s/o Kaveri (Ori.Res.No.1)
Aged Major, Occu. Business,
R/o Door No.2/82, V. Kongarapatty, Veppillai,
Post – Omalur, Tq. & Dist. Salem – 636351,
(Tamilnadu) .... On R.A.

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CORAM : S.M. MODAK, J.
RESERVED ON : 27th OCTOBER, 2020.
PRONOUNCED ON : 18th DECEMBER, 2020.

J U D G M E N T :-

01] The issue involved in this appeal is about entitlement of widow to the compensation who got remarried during the pendency of the petition before the Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal" for the sake of brevity). What is the effect of a marriage of widow on her right to claim compensation on account of death of her husband in a vehicular accident ? Whether due to marriage, her right vanishes ? Further, issue is whether an earning wife can be said to be dependent of her husband ?

02] The Tribunal at Buldhana has not rejected her claim on account of remarriage, but while apportioning the amount, has allotted less share to her. The Insurance Company is aggrieved by the said decision dated 17/06/2017 and they had come in appeal. Their main two contentions are :

(i) the widow was working since beginning and she was earning separately and as such she is not depending on the income of her deceased husband and

(ii) she lost her right to compensation on account of remarriage during pendency of the petition.

The Tribunal rejected both the contentions. Her contention was she is one of the legal representative of the deceased and as such she is entitled (irrespective of the fact of her separate earning). Right to claim compensation has accrued to her on the date of accident and she cannot be divested of such right on account of remarriage. On her own, she had not given evidence of her separate earning. Insurance company brought it on record by examining necessary witness.

03] I have heard learned Advocate Smt. Mrunal Naik for the Insurance Company/appellant and learned Advocate Shri Dharmadhikari for the widow, minor son and a daughter/respondent Nos. 1 to 3. Though respondent No.5 mother-in-law of deceased appeared, she has not remained present through their Advocate at the time of hearing. Respondent No.4 father-in-law expired and Respondent No.6 is the owner of offending vehicle. He had chosen to remain absent.

04] This appeal was taken up for final hearing by consent. There were two applications bearing Civil Application [CAF] No.1185/2020 and Civil Application [CAF] No.1186/2020 for

withdrawal of the amount of compensation. Initially, it was agreed to hear the appeal finally. Hearing was also started. It took some time. Hence by consent, I have decided both the applications on 06/10/2020. And then remaining final arguments were heard.

05] The facts about accident, negligence were disputed before the Tribunal. The tribunal gave findings against the Insurance Company. They are not disputed in this appeal. So entire focus is on following issues -

a] Whether separate earnings of widow has got any bearing on her right to claim compensation ?

b] Whether remarriage of widow dis-entitles her from claiming compensation ?

ABOUT THE ACCIDENT

06] For better understanding I will narrate few facts about the accident. Deceased Narayan was driving motorcycle along with his wife Pushpa/respondent No.1 as pillion rider. The accident took place on a road proceeding towards Buldhana. The offending vehicle truck owned by present respondent No.6 dashed the motorcycle from backside. There was a dispute raised before the Tribunal by the Insurance Company about manner of accident (owner has not

contested). Insurance Company contended that in fact the motor cycle hits the truck from rear side. The company has not given any oral evidence. But they relied upon the contents of spot Panchanama. They tried to plead that if the truck would dash the motor cycle from backside, what would be the damage. They tried to plead that nature of damage caused to the truck and motor cycle corroborates the story of accident put up by the Insurance Company.

07] Before the Tribunal, on the point of manner of accident, two types of evidence were available. One is oral testimony of eye-witness Pushpa and another is, contents of spot panchanama as tried to be explained on behalf of the Insurance Company. The Tribunal by giving cogent reasons have given more weightage to the oral testimony of Pushpa. It was concluded that the truck driver was rash. There is no challenge to this finding.

ISSUE OF DEPENDENCY & REMARRIAGE

08] The Tribunal has outrightly rejected the ground of remarriage. However, while apportioning the amount of compensation, the Tribunal has given less amount to the widow as compared to the amount given to 2 children and mother. According to learned Advocate Shri Dharmadhikari for respondent Nos.1 to 3,

this is the best course available in a given situation. Whereas, according to learned Advocate Smt. Naik for the appellant, separate earning and remarriage disqualifies the widow totally and that part of Judgment needs to be set aside.

09] It will be relevant to consider the Judgments relied upon by both the sides. Learned Advocate Smt. Naik for the appellant relied upon the following Judgments :-

i. *Anju Mukhi & another vs. Satish K. Bhatia & others – Reported in (2010) 15 SCC 630.*

ii. *Farzana d/o Abbas Bhai & another vs. Maharashtra State Road Transport Corporation, Nagpur – Reported in 2016 (4) Mh.L.J. 602*

Whereas, learned Advocate Shri Dharmadhikari for respondent Nos.1 to 3 relied upon the following Judgments :-

i. *Dincy Devassy vs. United India Insurance Co. & Ors. - Delhi High Court - Reported in livelaw.in*

ii. *Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. & Anr. - Reported in 2007(10) SCC 643.*

iii. *Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai & Anr. - Reported in 1987(3) SCC 234.*

iv. *Glanis w/o Late Anil Abraham & ors. vs. Lazar Manjila s/o Joy Manjila & Ors. - Kerala High Court -*

v. *Kartar Kaur & Anr. vs. Manoj Kumar & Ors. - Punjab & Haryana High Court – Reported in 2015 ACJ 1836.*

vi. *New India Assurance Co. Ltd. vs. Mona & Ors. - Bombay High Court – Reported in 2011 ACJ 662.*

vii. *National Insurance Company Ltd. vs. Nidhi Goel & Ors. - Punjab & Haryana High Court – Reported in 2018 (3) Civil.L.J. 345.*

viii. *The New India Assurance Co. Ltd. vs. Smt. Sushama Mahendra Sonawane & Ors. - Bombay High Court – In First Appeal (Stamp) No.28929/2014.*

PROVISIONS OF MOTOR VEHICLE ACT

10] It will also be material to consider the relevant provisions of the Motor Vehicles Act. Section 166 of the Motor Vehicles Act lays down the category of persons who can apply for the compensation. It categorizes the legal representatives in case of death. It is important to note that section nowhere uses the word ‘dependent’. So also the word ‘dependent’ is not defined under the Act.

11] Meaning thereby when a person falls under the category of ‘legal representative’, he can be the claimant. The word ‘legal representative’ has not been defined under the Motor Vehicles Act. Section 2(11) of the Civil Procedure Code lays down the meaning of the said word. There are number of judgments

opinioning that meaning given to the word ‘legal representative’ under Civil Procedure Code can be borrowed while interpreting the provisions of Motor Vehicles Act. Some of them are *Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. & Anr.*, and - *Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai & Anr.* (supra).

12] Widow is certainly one of the heir on which property of a Hindu devolves as per intestate succession. Now, it is interesting to see how the word ‘dependent’ has evolved. It has been judicially recognized that -

a] age of the deceased,
b] income of the deceased and
c] number of dependents -

are 3 factors to be considered while fixing the quantum of compensation. From his earning the deceased will spend on himself and on his near relatives/dependents. So when a person dies in a vehicular accident, dependents/near relatives losses the amount contributed by the deceased towards them. Hon’ble Supreme Court in order to have uniformity has laid down some guidelines how to calculate contribution to personal expenses and contribution towards dependents. It depends upon status of the deceased (married/

unmarried) and on number of dependents. More the number of dependents, lesser will be the contribution towards personal expenses. These guidelines are not mandatory. In a given case, party may adduce evidence showing variation in these measures or challenging the application of these guidelines. In nutshell, the eligibility of dependency does not come first. It comes later while arriving at the quantum of compensation. It is only the issue of 'legal representative' which come first while entertaining the claim petition. That is why Hon'ble Supreme Court in case of *Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. & Anr.,* held that even married daughter residing with husband (though not dependent on the income of the father) being legal representative is entitled to claim compensation under section 140 (no faulty liability) of the Motor Vehicle Act. In the case of *Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai & Anr.,* the Hon'ble Supreme Court recognized the right of a brother to claim compensation if he is legal representative of the deceased Hon'ble Supreme Court compared the provisions of the Fatal Accidents Act 1855 and of the Motor Vehicle Act, 1939.

13] In the case of *Farzana d/o Abbas Bhai & another vs. Maharashtra State Road Transport Corporation,* reported in *2016 (4) Mh.L.J. 602,* this Court observed -

> *"The locus to maintain an application for compensation under Section 166 of the said Act and grant of compensation based on dependency of the claimants are two distinct aspects. While it would be open for a legal representative to maintain proceedings for grant of compensation, the entitlement to the same would depend on the material placed on record with regard to dependency of the claimants vis-a-vis the deceased. The right to seek compensation cannot straight way lead to the conclusion that such claimant was dependent on the deceased. It would be a matter of evidence to be led in the proceedings while determining the amount of compensation".*

In that case, claim about dependency was rejected by this Court for the reason of not giving evidence about dependency. They were impleaded on their application. But, they have not given any evidence. Those were the factual observations.

14] There are lot many judgment dealing with the issue of entitlement to compensation by widow who is remarried. It will be material to consider the reasoning given in those judgments. The Courts have considered the object behind enacting the Motor Vehicles Act. The courts have also considered which is the material date for determining entitlement. That is why it has been observed in case of *New India Assurance Co. Ltd. vs. Mona & Ors.* -

> *"that action is based on tort. Therefore, if a person is entitled to compensation the date when tort is committed any subsequent act cannot deprive her. The court preferred to take the view which advances the objective of the Section. The Court also considered absence of prohibition to remarry on second occasion".*

That is why Punjab and Haryana High Court was pleased to observe in case of *Kartar Kaur & Anr. vs. Manoj Kumar & Ors.* that

> *"Dis-entitling a woman on account of remarriage would go against the proposal of remarriage of widow after the death of the husband. Taking such drastic view would discourage the remarriage after the death of the husband."*

15] Similarly in case of *National Insurance Company Ltd. vs. Nidhi Goel & Ors.,* it is observed that -

> *"accepting the proposition of Insurance CompaNational Insurance Company Ltd. vs. Nidhi Goel & Ors.ny would militate against the right of widow to remarry and it would not be in public interest or in the interest of the Society at large."*

This Court in case of *The New India Assurance Co. Ltd. vs. Smt. Sushama Mahendra Sonawane & Ors*. (Principal Seat) was pleased to observe -

> *"Such widow continues to represent the estate of the deceased and thus was entitled to make claim for compensation irrespective of change of her marital status. The status of the claimant as dependent has to be considered on the date of death of the deceased and not on the date of making an application for seeking compensation (Para 26)"*

16] High Court of Kerala in the case of *Glanis w/o Late Anil Abraham & ors. vs. Lazar Manjila s/o Joy Manjila & Ors.* was pleased to observe -

> *"the word dependency and legal representative should receive a pragmatic interpretation. Death has indeed resulted into loss of dependency. After the death, a widow may go for employment and become self dependent or may opt for remarriage. Either way loss of dependency consequent to death of husband does not cease merely on account of remarriage"*

The High Court also considered the fact that remarriage was not on account of divorce.

17] If we analyze the judgments referred above we can find that there is consistent view that remarriage does not disqualify the widow from claiming compensation. Only in case of *Anju Mukhi & another vs. Satish K. Bhatia & others,* the Hon'ble Supreme Court has affirmed the view taken by High Court of Madhya Pradesh. High Court of Madhya Pradesh has considered the provisions of Section

21(iii) of the Hindu Adoptions and Maintenance Act and Section 25(3) of the Hindu Marriage Act. It says about right of a wife to claim maintenance till she remarries. The High Court of Panjab and Haryana in *Nidhi Goel's* case observed "the judgment of Hon'ble Supreme Court in case of *Anju Mukhi* is distinguishable because the provisions of the law mentioned hereinabove having been noticed in it" (para 12).

18] It is very well true that as per the personal laws of the parties, a lady is entitled to maintenance (from the past husband) till the time she does not remarry. Remarriage of divorced woman is one of the contingency which helps the husband to pray for stopping of maintenance. The logic behind this principle is sound. The responsibilities to maintain wife passes on to the second husband. Now the issue is to what extent this principle can be extended to proceedings claiming compensation for vehicular accident.

PERSONAL LAWS VIS-A-VIS MOTOR VEHICLES ACT

19] For that purpose, the object of the Act need to be considered. We can find it by going through certain provisions of the Motor Vehicle Act. There are provisions which are based on "no fault liability". They are under Section 140 and under Section 163-A of the

Motor Vehicle Act. Section 147 of the Motor Vehicle Act mandates the owner from obtaining insurance policy [to cover the risk caused to 3rd party] prior to putting the vehicle on road for use. The object behind these provisions is to protect the victim of the vehicular accident. So rights and liabilities arising out of vehicular accident are not the out come of personal laws but they are the outcome of statutory provisions.

20] For this purpose the Tribunal has to consider the situation prevailing when the cause of action arises. It arises when accident took place. So at that time, when the widow is the legal representative of the deceased, certainly she is entitled to claim compensation. Right already vested in her cannot be divested. What we do is to determine the amount of compensation and its apportionment amongst the eligible persons. So when a widow approaches the Tribunal, she wants to exercise her right which has become part of her estate. So I am inclined to go by the view consistently taken.

EVIDENCE ON THE POINT OF SECOND MARRIAGE

21] Insurance Company examined Dinkar Ramchandra Shinde representative from marriage Registration Office Shegaon. He

brought copy of register Respondent No.1 Pushpa married with one Vinod Sadanand Upadhye on 28.11.2012. The date of accident is 12.08.2009. In the record name of the bride is mentioned as “Pushpa Lalchand Gulve” that is maiden name prior to marriage with deceased Narayan Khurde (it is not Pushpa Narayan Khurde). The mother in law Sonabai present respondent No.5 has given maiden name of respondent No.1 as Pushpa Lalchand Gulve. It implies that at the time of remarriage Pushpa has given her maiden name (and not described as wife of Narayan Khurde). It is but natural second marriage is proved.

EVIDENCE ON THE POINT OF SEPARATE EARNING

22] It is the insurance company who adduced evidence on the point of separate earnings of respondent No.1 Pushpa Shri Chandrakant Jagnath Varade is representative from Primary Division of Zilla Parishad Buldhana. His evidence is not challenged by widow Pushpa. From his evidence it is clear that she was working as a teacher from 04.07.1998 In January 2014, her gross salary was Rs.40,044/-. This fact is proved

23] It is the right of rival party to adduce evidence which falsifies the claim of petitioner. The original claimant cannot be non-suited for withholding those facts.

MONTHLY SALARY OF DECEASED

24] Before the Tribunal there was evidence of Ganesh Kaluji Manvatkar representative from aided High School and Higher Secondary School, Buldhana. He has proved the salary certificate for the salary paid to the deceased for the month of July, 2009. His gross salary was Rs.25931/- and net salary was Rs.17,427/-. For the purpose of computation, Tribunal has considered his income as Rs.23,431/-. While doing that exercise, the Tribunal has deducted only Rs.2,500/- per month towards income tax (statutory deduction). The amount is considered hypothetically (though salary certificate does not say so). Widow Pushpa has not challenged this calculation. So, we have to presume salary of deceased was Rs.23,431/-.

APPLICATION OF MEASURES

25] If the deceased is having 2-3 dependents, it is presumed that he spends 1/3rd on his personal expenses. If the deceased is having 4-6 dependents, it is presumed that he spends ¼th of his income on his personal expenses. These guidelines were laid down by the Hon'ble Supreme Court in order to have uniformity while arriving at the income. It is also true that they are flexible. In a given case, the Tribunal may arrive at different percentage.

26] Crucial issue in this case is, when she is having separate income, whether the widow can be said to be depending on the income of the deceased? There are two aspects. One is deciding the percentage for personal expenses and towards contribution of dependents. Second is apportionment of compensation which comes later. The Tribunal has applied the guidelines fixed by the Hon'ble Supreme Court while deciding the percentage. While doing that exercise, the Tribunal has considered the widow as one of the dependents (widow, two children and parents – 5 were considered) and accordingly considered ¼th of the income towards personal expenses of the deceased. Later on, while apportioning the compensation, the Tribunal has apportioned 30% each to son, daughter and mother respectively and apportioned only 10% to the widow.

27] As per the guidelines of the Hon'ble Supreme Court given in various judgments, if wife is considered as one of the dependents, then there is a tendency to spend more on an individual and percentage of spending on dependents will be less. If number of dependents is more, there is tendency to spend less on an individual and spend more on dependents.

28] Now coming to the evidence, son and daughter no doubt are depending on father. This is true for mother also. She has

given evidence. Though she has deposed that deceased was only looking after her, during cross-examination, she has admitted that, she is having two more sons and both are having jobs. So there is reason to believe that she was not 100% dependent on the deceased.

29] So we have got a case wherein both the spouses are earning. As said above, monthly salary available of the deceased is Rs.23,431/-. Where salary of widow Pushpa (for the month of January 2014) had come to Rs.40,044/-. So there is every reason to believe that both the spouses must be contributing towards the expenses of family (consisting of two children and both husband and wife). There is no responsibility on daughter-in-law to maintain mother-in-law.

30] So if we totally exclude the widow from list of dependents, the dependents will be two children and mother. So in that case as per guidelines given by the Hon'ble Supreme Court, percentage towards personal expenses will be more and percentage towards contribution for dependents will be less. Even if this formula is applied, still there is an issue of spending by widow on her two children from her separate earning.

31] This Court do not feel that any purpose will be served by doing this exercise. The reason is when we talk about 'dependency',

it does not mean 100% dependency. It may be totally or partially. The relationship between 'father having separate earning as dependent on son' is different from widow (having separate income) depending on husband. This Court does not feel that deviation be made from standardized guidelines laid down by Hon'ble Supreme Court. If both the spouses are earning, there will be more amount available in common pool. Even standard of living improves. Separate earning of widow does not relieve the deceased husband from contributing towards the expenses. If evidence on the point of spending by every individual spouse could have been available, this Court might have deleted the widow from the list of dependents. Hence, this Court affirms the percentage of distribution (25% towards personal expenses of deceased and 75% towards contribution to four dependents two children, widow and mother) arrived at by the Tribunal.

32] Hence, case for deleting the widow from list of dependents is not made out by the Insurance Company. So also this Court do not feel that remarriage will divest the widow from her right to claim compensation. In depth, hearing will be required if at all consistent view is to be deviated.

33] However, this Court feels that there is scope for altering the percentage of apportionment made amongst the dependents made by the Tribunal.

34] I do not differ with the total amount of compensation of Rs.40,63,000/- arrived at by the Tribunal. Annual Salary considered is Rs.2,81,172/- (Rs.23,431 x 12 months). The multiplier of 14 was rightly applied. I agree to 25% (¼th) of total salary would be personal expenses of deceased and 75% will be towards contribution of dependents. The deceased being of 41 years is entitled to 30% rise towards future prospects. The amount of compensation arrived at is Rs.38,37,997/- (Rs.2,18,172/- – Rs.70,293/- [i.e.¼th] = Rs.2,10,879 x 14). The Tribunal has added Rs.50,000/- each towards loss of love and affection to two children and mother. In fact, the widow ought to have been awarded Rs.50,000/- on that head. Because separate earning does not mean that there is no loss of love and affection. The Tribunal has granted Rs.25,000/- towards funeral expenses and granted 9% interest.

APPORTIONMENT

35] It had come in evidence that mother of deceased is also having two earning sons. It is also their responsibility, so why she shall be given 30% ? In fact, there is need to pay more attention to

two children considering their age and their future. Furthermore, this Court feels that the widow does not deserve to get Rs.4,00,000/-. She is already earning and prospects of marriage are there. So also she has received service benefits of deceased and amount of L.I.C. partially. The Tribunal has excluded Rs.50,000/- towards no fault liability from Rs.40,63,000/-. So, I propose to do following apportionment :-

Widow	**Rs. 2,00,000/-**	
Son	**Rs. 16,56,500/-**	**50% of remaining amount of Rs.40,13,000/- after deducting Rs.7,00,000/-**
Daughter	**Rs. 16,56,500/-**	
Mother	**Rs. 5,00,000/-**	

36] As per the order dated 06/10/2020 passed in Civil Application [CAF] Nos.1185 & 1186 of 2020, respondent No.2 - Son was permitted to withdraw 50% of the decretal amount for himself and respondent No.1 – widow was permitted to withdraw 50% of the decretal amount on behalf of respondent No.3 - minor daughter on usual undertaking. In view of the alteration in distribution of the amount, respondent Nos.1 to 3 and 5 have to be paid with that amount.

37] For the above discussion, I intend to pass the following order :-

O R D E R

i. The appeal is dismissed.

ii. Parties to bear their own costs.

iii. The appellant/Insurance Company and respondent No.6 to pay Rs.40,13,000 to respondent Nos. 1 to 4 jointly and severally with 9% interest from date of petition till realization.

iv. The amount of Rs.40,13,000/- be distributed as follows :-

(a) Respondent No.1-Pushpa is entitled to receive Rs.2,00,000/- along with 9% interest.

(b) Respondent No.4-Sonabai is entitled to get Rs.5,00,000/- along with 9% interest.

(c) Respondent No.2-Prashik is entitled to get Rs.16,56,500/- along with 9% interest.

(d) Respondent No.3-Prajakta is entitled to get Rs.16,56,500/- along with 9% interest.

v. The Office is directed to invest the amount coming to the share of respondent No.3 after considering the recalculations done

by this Court and after deducting 50% as permitted by this Court till the time she attains majority, along with the interest.

vi. Respondent Nos.1, 2, 3, & 4 be paid the amount as per recalculations done by this Court.

(S.M. MODAK, J.)

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