IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 717 OF 2020

1. Gaffar s/o Abdul Razzak Shaikh
Age: 36 yrs Occ. Labour

2. Khurshidbee w/o Abdul Razzak Shaikh
Age. 60 yrs Occ. H.H.
Both R/o Shirur Tajband Ta. Ahmedpur,
Dist. Latur ...Appellants
(Orig. Claimants)

Versus

1. Vishal s/o Vithalrao Pawar
Age: Major Occ. Driver

2. Bibhishan s/o Narayanrao Jagtap
Age : Major Occ. Business and Agri.
Both R/o. Ambegaon Ta. Ahmedpur
Dist. Latur.

3. The Reliance General Insurance
Company Ltd. Branch Office, Latur,
Ta. Latur, Dist. Latur ….Respondents

Mr N.D. Kendre, Advocate for Appellants
Mr S.A. Mulla, Advocate holding for Mr Kuldeep S. Patil,
Advocate for Respondent No. 2
Mr A. S. Usmanpurkar, Advocate for Respondent No. 3

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 3rd DECEMBER, 2021

ORAL JUDGMENT :

1. This appeal is directed against the impugned judgment and award passed in MACP No. 01/2014 by the Member, Motor Accident Claims Tribunal, Ahmedpur, Dist. Latur by taking aid of section 173 of the Motor Vehicles Act, 1988.

2. Heard Mr N.D. Kendre, learned counsel for the appellants/original claimants, Mr S.A. Mulla, learned counsel holding for Mr Kuldeep Patil, learned counsel for respondent No. 2 and Mr A.S. Usmanpurkar, learned counsel for respondent No. 3. Respondent No. 1, who is stated to be driver of the offending vehicle remained absent in spite of proper service.

3. The impugned judgment is challenged by the original claimants mainly on two grounds, (1), inadequate compensation by accepting notional income of the deceased at Rs.3,000/- per month and (2), no compensation awarded under various heads as per the recent citation of the Hon'ble Supreme Court in case of ***National Insurance company limited Vs. Pranay Sethi and others*** *reported in* ***2017 (16) SCC 680*** *and in case of* ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Ors.*** reported in ***2019 (3) SCC (Cri) 153.***

4. Mr Kendre, learned counsel for the appellants invited my attention to the impugned judgment para Nos. 12 and 13. He submitted that the claimants have produced their oral evidence in order to prove the income of the deceased. The deceased Mukhtar was running a shop under name and style 'Mukhtar Electronics' at Shirur Tajband and thereby earning Rs. 30,000/- per month. The respondents have not produced any contrary evidence. The Tribunal has disbelieved the oral evidence by making observations that the claimants have not produced documentary evidence about the income of the deceased. It is observed by the learned

Tribunal that there was no income proof of deceased and the Tribunal has assessed the compensation by accepting the notional income of the deceased at Rs.3,000/- per month from running Electronics Shop. He submitted that the approach of the Tribunal is improper and incorrect. The accident took place on 2nd November, 2013. The deceased was running Electronics Shop at Shirur Tajband. He was repairing T.V. sets as well as rendering services to the customers, and so also, selling TV sets and earning good income. That piece of evidence produced by the claimants side has completely discarded by the Tribunal and that error needs to be corrected at the hands of the Appellate Court.

5. Per contra, Mr Usmanpurkar, learned counsel for the Insurance Company/respondent No. 3 supported to the impugned judgment and award passed by the Tribunal. He submitted that the claimants have failed to prove the income of the deceased. As such, there was no option before the Tribunal to go by the notional income prevailing at that time at Rs. 3,000/- per month. He submitted that the findings recorded by the Tribunal are proper and correct and supported by evidence. The findings are well-reasoned. There is no need to interfere in the amount of compensation determined by the Tribunal.

6. Having regard to the submissions of the learned counsel for both the sides, I have gone through the impugned judgment as well as evidence of PW-1 Gaffar vide Exh.26. He has stated before the Tribunal that his brother Mukhtar (since deceased) was running a shop under name and style ' Mukhtar Electronics' at Shirur Tajband and thereby

earning Rs. 30,000/- per month. While facing the cross-examination, he made it clear that his brother Mukhtar was having shop of sale and services of televisions. This particular piece of evidence from the side of claimants is not any way shaken by way of cross-examination. No contrary evidence is produced by the respondent side much less by the Insurance Company. It is simply brought on record through the cross-examination of PW-1 that his brother Mukhtar was not a income tax payer. That admission is not any way damaging to the evidence produced by the side of the claimants.

7. The Tribunal seems to have given over emphasis that no documentary proof is produced by claimants regarding income of the deceased. It is material to note that it is a claim petition filed by the claimants under section 166 of the Motor Vehicles Act, 1988 which provides summary inquiry. Strict proof is not at all required in summary inquiry dealing with the claims for compensation. The Motor Vehicles Act, 1988 is a beneficial legislation with a view to extend monetary support to the heirs of the deceased by way of rehabilitation**.** The object for introducing this beneficial legislation needs to be considered. The Tribunal seems to have given unnecessary importance to the fact that the claimants have not produced any documentary evidence regarding income of the deceased. It was improper on the part of the Tribunal to accept the income of the deceased at Rs.3,000/- per month on the basis of notional income and thereby making assessment of compensation.

8. Even for the sake of argument accepted that the quantum of income disclosed by the brother of the deceased/ PW-1 is at higher side. The Tribunal could have reduced the same having regard to the facts of the case and by applying the common prudence. At any cost, the income of the deceased of Rs. 3,000/- per month cannot be accepted as determined by the learned Tribunal.

9. Mr Kendre, learned counsel for the appellants has placed his reliance in case of ***Chandra @ Chanda @ Chandraram and Another Vs. Mukesh Kumar Yadav and Others reported in 2021 SCC Online SC 850*** in support of his submission as to how the Tribunal has committed an error in accepting the income of the deceased at Rs. 3,000/- per month. It is held by the Hon'ble Supreme that there is no reason to discard the oral evidence of the wife of the deceased, who has deposed about income of her late husband. By taking help of above said decision, I have relied upon oral evidence produced by the claimants side.

10. The deceased Mukhtar was running Electronics shop though in a small village, he was rendering twofold services. He was selling the televisions as well as rendering services to the customers as a mechanic. That aspect needs to be considered while determining the income of the deceased. By considering this aspect and by applying common prudence coupled with the attending circumstances and evidence on record, I am of the view to accept the income of the deceased at Rs. 15,000/- per month. Even though, the deceased was not income tax payer not any way damaging to the case of the claimants. Therefore, the error committed by

the Tribunal in accepting the income of the deceased at Rs. 3,000/- per month needs to be corrected. The income of the deceased must be held atleast Rs.15,000/- per month. Accordingly, the compensation needs to be reassessed.

11. So far as the compensation under other heads are concerned, it is pointed out by Mr Kendre, learned counsel for the appellants that the Tribunal has awarded compensation under the head of consortium to claimants at Rs. 50,000/- each but not awarded compensation under conventional heads. The Tribunal has simply awarded Rs. 25,000/- under the head of funeral expenses. Mr Kendre, learned counsel invited my attention to the citations in case of ***National insurance company limited Vs. Pranay Sethi and others*** *and* ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Ors.*** *(supra).* He submitted that the claimants are entitled to get compensation under the head of future prospects, loss of estate and loss of love and affection.

12. On perusing the impugned judgment, it is noticed that claimant No.1 is happened to be brother of the deceased. He is major and T.V. mechanic as appearing from the record. He cannot be said to be a depending member of the family and that too on the income of the deceased. But he is entitled to get compensation under the head of consortium and the Tribunal seems to have awarded Rs. 50,000/- to him under the head of consortium. The claimant No. 2 is mother of the deceased and can be said to be dependent on the income of the

deceased, she is entitled to get compensation in view of the unfortunate death of her son in motor vehicle accident. The Tribunal while assessing the compensation has simply considered the loss of income. The Tribunal has not considered the point of future prospects. Even though, deceased was self-employed. He had also prospectus in his business and that fact needs to be considered while assessing compensation as per the decision in the case of **Pranay Sethi** (supra)

13. Apart from that, the claimants are also entitled to get compensation under the head of loss of estate.

14. Having regard to the above reasons and discussion and in view of the recent citations of the Hon’ble Supreme Court, in case of ***Pranay Sethi and Magma General Insurance Company*** (supra), it is necessary to modify the compensation assessed by the Tribunal by making interference in the appeal. The findings recorded by the Tribunal are found erroneous which has resulted in getting less compensation by the claimants. It was the duty of the Tribunal to award just and fair compensation to the victims in view of the provisions of the Motor Vehicles Act, 1988.

15. Having regard to the legal position made clear by the Hon'ble Supreme Court in case of **Pranay Sethi and Magma General Insurance Company** (supra), the appellants/claimants are entitled to get compensation under various heads. Accordingly, the compensation needs to be reassessed in the background of guidelines laid down by the Hon'ble Supreme Court in above citations.

16. As per the pleadings of the applicants/claimants, deceased was 32 years old, no documentary evidence is placed on record by the claimants. As per postmortem report, the age of the deceased is shown as 30 years. The age shown in the pleadings by the claimants needs to be accepted. Therefore, the age of the deceased is accepted as 32 years at the time of accident. In view of the guidelines in case of **Pranay Sethi** an addition of 40 % of the income of the deceased needs to be added as future prospects since the deceased had his own business and he was below the age of 40 years.

17. The compensation to be awarded to the appellants/claimants by way of modification under various heads worked out as under :

Head	**Compensation awarded**
i) Income	Rs. 15,000/- p.m.
ii) Future prospectus (40 % of income)	Rs. 6,000/- p.m.
Iii) Deduction towards personal expenses being bachelor	Rs. 10,500/- p.m.
iv) Net income	Rs. 10,500/-p.m.
v) Multiplier	16
vi) Loss of income Rs. 10,500 p.m.X12 = Rs. 1,26,000 per year X 16	Rs. 20,16,000/-
vii) Loss of estate	Rs. 15,000/-
Viii) funeral expenses	Rs. 15,000/-
ix) Loss of consortium (claimant Nos. 1 and 2) Rs. 40,000/- each)	Rs. 80,000/-
Total compensation awarded	**Rs. 21,26,000/-**

18. The claimants/appellants are entitled to get above said amount of enhanced compensation with interest @ 6% per annum if not paid within two months from today.

19. Having regard to the facts of the case in hand, claimant No.1-Gaffar was not dependent on the income of the deceased and as such, he is entitled to get compensation of Rs.40,000/- only under the head of loss of consortium.

20. Having regard to the above reasons and discussion, I am of the view that the findings recorded by the MACT, Ahmedpur, Dist. Latur need to be corrected by making interference in this appeal. The impugned judgment and award needs to be modified accordingly.

21. For the reasons stated above, the appeal needs to be allowed as under :-

ORDER

I. Respondent Nos. 1 to 3 jointly and severally shall be liable to pay compensation of Rs. 21,26,000/- (Rupees Twenty One Lakhs and Twenty Six Thousand Only) to the claimants/ appellants inclusive of No Fault Liability amount. The payment made earlier by Respondent Nos. 1 to 3 with interest if any be deducted from the above said amount of compensation. After deducting that amount, enhanced amount of compensation shall be paid to the appellants/claimants within a period of two months.

II. The appellants/claimants are entitled to get interest thereon @ 6% per annum till its realization, if the respondents failed to pay enhanced compensation within a period of two months.

III. The claimants/appellants shall pay necessary court fees on enhanced compensation if necessary.

IV. The award be modified accordingly.

V. In view of the above, the appeal stands disposed of.

VI. The civil application, if any, also stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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