IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1856 OF 2019

Yashoda w/o Vinod Thombare & ors. … APPELLANTS

VERSUS

Vekaria Logistics & anr. … RESPONDENTS

…….
Mr. S.S. Dargad, Advocate for appellants
Mr. M.M. Ambhore, Advocate for respondent No.2.
…….

CORAM : R. G. AVACHAT, J.

DATE : 27th OCTOBER, 2021

O R D E R:

This is an appeal for enhancement of compensation granted by Motor Accident Claims Tribunal (Tribunal) on account of death in vehicular accident. The Tribunal has awarded a sum of Rs.9,34,000/- as compensation with interest @ 8% p.a.

2. On 20/4/2015, the deceased Vinod was traveling in India Car (MH-14-DF-480) for village Undari. A tanker No.GJ-12-AY-6070 coming from opposite side dashed against the Indica Car. Vinod suffered multiple injuries and ultimately succumbed thereto. His widow, two minor children and

parents, therefore, preferred claim petition for compensation. It is their case that, the deceased was serving at a monthly pay of Rs.8000/-. He was 32 years of age when met with the accident. Evidence was let in, in proof of the deceased having been in employment at a monthly pay of Rs.8000/-. The Tribunal still discarded the same. No compensation has been awarded on account of future prospects. A meagre sum has been granted under conventional heads. It is, therefore, urged for enhancement of compensation.

3. Learned counsel for the respondent No.2 Insurance Company would, on the other hand, submit that, there is no evidence in proof of the employment of the deceased and his salary. The Tribunal has, therefore, rightly considered the monthly income of the deceased at Rs.6000/- notionally. According to learned counsel, the amount of compensation awarded by the Tribunal is just and reasonable. No interference therewith is, therefore, called for.

4. Admittedly, Vinod met with a vehicular accident on 20/4/2015. He died as a result of the injury suffered therein. The deceased was said to have been serving with M/s Yash Construction Company, Ambajogai, District Beed. The Accounts Clerk working with the said Construction Company

was examined in proof of salary details of the deceased. A bare certificate indicating the deceased was paid Rs.8000/- as a monthly pay was tendered in evidence. The Tribunal discarded the same for want of letter of appointment and other details.

5. It cannot be disputed that the deceased was serving with M/s Yash Construction Company, Ambajogai. The claimants would have very well produced evidence in the nature of Account statement or details of the Bank Account of the deceased to indicate that he was serving at monthly pay of Rs.8000/-. The split-up of the salary has not been given. Needless to mention, the quantum of salary at which the deceased was said to have been serving must be inclusive of number of components, such as D.A., T.A., C.A. etc. It needs no mention that, payment on account of some other heads such as Travelling Allowance, Washing Allowance etc. are not to be considered as part of salary for calculating the amount of compensation. The claimants could have produced such details even before this Court. They did not avail such opportunity. In the fitness of things, no interference is called for with the Tribunal considering the income of the deceased at Rs.6000/- per month notionally. The same is just and adequate one. The Tribunal has, however, erred in not

granting compensation on account of future prospects, in spite of it to have referred to the judgment of the Apex Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others [(2017) 16 SCC 680].** In the said judgment, the Apex Court has observed that :-

> "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."

6. The deceased was in private employment. He was below 40 years of age. 40% of his established income, therefore, ought to have been considered for grant of future prospects. As such, the Tribunal ought to have considered the monthly income of the deceased at Rs.8400/- (inclusive of 40% towards future prospects). Considering the said quantum, the annual income of the deceased would come to Rs.1,00,800/-. One fourth thereof needs to be deducted towards personal and living expenses of the deceased since the dependents are five in number. As such, after deducting

one fourth therefore, which comes to Rs.25,200/-, the total dependency comes to Rs.75,600/- p.a. Considering the age of the deceased, being 32, the multiplier of 16 is applied as per the ratio laid down by the Apex Court in case of **Sarla Verma (Smt.) & ors. Vs. Delhi Transport Corporation & anr. [(2009) 6 SCC 121]**. As such, the amount of compensation on account of loss of dependency comes to Rs.75,600/- X 16 = Rs.12,09,600/-. The Tribunal has rightly granted Rs.30,000/- towards funeral expenses and loss of estate. It has, however, granted only Rs.40,000/- towards loss of love and affection. In case of **MAGMA General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & ors. [(2018) 18 SCC 130]**, the Apex Court has observed that :

> "24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of filial consortium."

7. In view of the same, each of the claimants would be entitled for Rs.40,000/-. This way, the total amount of compensation comes to Rs.12,09,600/- + Rs.30,000/- + Rs.2,00,000/- = Rs.15,39,600/-. The appellants – claimants would, however, not be entitled for interest pendente lite on

Rs.2,00,000/-. They would, however, be entitled to future interest @ 6% p.a. from the date of this order to the date of payment.

8. In view of the above, the appeal partly succeeds in terms of the following order :

<u>O R D E R</u>

(i) The appeal is partly allowed.

(ii) The amount of compensation is enhanced from Rs.9,34,000/- to Rs.15,39,600/-. The amount of Rs.13,39,000/- shall carry interest @ 8% p.a. from the date of claim petition to the date of actual payment while the amount of Rs.2,00,000/- shall carry interest @ 6% p.a. from the date of this order till the date of payment.

(iii) The amount of compensation be apportioned among the claimants equally.

(iv) The amount already paid or deposited be given due set off.

(R. G. AVACHAT)
JUDGE

fmp/-