

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.117 OF 2006 WITH
CIVIL APPLICATION NO.364 OF 2006

United India Insurance Co. Ltd.,
through its Divisional Manager and
Authorised Representative and
Signatory, Jalgaon Divisional Office,
Mansing Market, Opposite Atul Dairy,
Jalgaon

... APPELLANT

VERSUS

1. Chandar Senya Tak,
Died through L.R.

1-A. Shri Anil Chandar Tak
Age 43 years, Occu. Labourer,
R/o Room No.72, Walmikinagar,
At Bhusawal, Tal. Bhusawal,
District Jalgaon

2. Jabbar Haji Gulab Bagwan,
Age major, R/o Mullawada,
Lane No.2, Dhule, Dist. Dhule

... RESPONDENTS

.....
Shri A.B. Gatne, Advocate for appellant
Shri M.R. Malpani, Advocate holding for
Shri A.B. Kale, Advocate for respondent No.1-A
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 5th October, 2021

Date of pronouncing judgment : 12th October, 2021

JUDGMENT :

This is Insurance Company's appeal, challenging the judgment and award dated 11/10/2005, passed by Member, Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No.495/2001. Under the impugned judgment and award, a sum of Rs.4,12,500/- along with interest @ 9% p.a. has been awarded as compensation on account of death in a vehicular accident.

2. Facts leading to filing of the present appeal are as follows :-

Late Dilip @ Ravi was the son of claimant. He was 27 years of age. The deceased was working as Hamal. It so happened that, on 25/11/2019, the deceased Dilip along with his cousin namely Shrawan was on his way on motorbike bearing No.MH-19/F-1363. While they were proceeding along Mumbai-Agra Road within the limits of Malegaon, a truck bearing No.MH-18/E-7618 (No.MH-18/A-7618) knocked them

down. As a result, Dilip suffered multiple injuries and succumbed thereto. His father, therefore, filed the claim petition for compensation.

3. The Tribunal assumed the income of the deceased notionally at Rs.3000/- per month and granted compensation as stated above.

4. Heard. Learned counsel for the appellant Insurance Company would submit that, the truck involved in the accident was bearing Registration No.MH-18/A-7618. The very number had been figured in the F.I.R. and scene of accident panchanama. All of a sudden, the said number came to be changed to No.MH-18/E-7618. The number might have been replaced only with a view to earn compensation from the appellant Insurance Company since the truck bearing No.MH-18/E-7618 had an insurance cover granted by the appellant Insurance Company. Learned counsel would further submit that, the investigating officer has not been examined to shed light on this aspect of the matter. In support of his contention, he placed reliance on the judgment of the Apex Court in case of **Nepal Singh Vs. Upender Singh [(2008) 7 SCC 334]**.

5. On the question of quantum of compensation, learned counsel would submit that, the accident dates back to the year 1999. The deceased was a Hamal. There was no concrete evidence as regards to income of the deceased. The Tribunal, therefore, ought to have considered it at Rs.50/- per day. According to learned counsel, the amount of compensation awarded is very much on higher side. He, therefore, urged for allowing the appeal.

6. Learned counsel for the respondent No.1 – claimant would, on the other hand, submit that, it was a mistake in recording the truck number in police papers. The investigating officer has duly rectified it. No other person had come forward to claim ownership of the said vehicle. The petition was accordingly amended. The amendment relates back to the date of filing of the petition. The appellant Insurance Company, therefore, could not have a quarrel over number of the vehicle since one and the same was involved in the accident.

7. On the question of quantum of compensation, the learned counsel would submit that, the deceased was the sole

bread winner of the family. The Tribunal has rightly quantified the amount of compensation. He, therefore, urged for dismissal of the appeal.

8. It is true that, deceased Dilip died in an accident involving motorbike bearing No.MH-19/F-1363 and the truck on 25/11/1999. The question is whether it was a truck bearing No.MH-18/A-7618. Admittedly, the truck No.MH-18/E-7618 had an insurance cover granted by the appellant Insurance Company. If it is held that the said truck was not involved in the accident, but it was MH-18/A-7618, then the appellant Insurance Company would not have a liability to pay compensation.

9. The record indicates that, the investigating officer made corrections in the police papers changing the number of the truck from No.MH-18/A-7618 to No.MH-18/E-7618. Without going into the factual matrix in the record, suffice it to say that, in the said accident, two persons lost their lives. One is Dilip and second one is Dilip's cousin Shrawan. The record indicates that, parents and siblings of Shrawan had also preferred a petition for compensation. The said petition has been allowed directing the appellant Insurance Company

and the owner of the truck to pay jointly and severally the amount of compensation. It appears that, the appellant Insurance Company has not challenged the said award. As such, the Insurance Company is estopped from contending that the truck involved in the accident was not MH-18/E-7618 but, was MH-18/A-7618.

QUANTUM OF COMPENSATION:

10. The petition was filed by the father of deceased alone. It has been specifically averred in the claim petition that the deceased was 27 years of age, earning Rs.2000/- per month. The claimant, therefore, cannot travel beyond the pleadings to contend that the deceased would earn Rs.3000/- per month. The Tribunal too ought not to have considered the notional income of the deceased at Rs.3000/- per month. Since the claim petition was filed by the father alone and there being no other dependents on the deceased, the Tribunal ought to have deducted 50% of the income of the deceased towards his personal and living expenses. The Constitution Bench judgment of the Apex Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others [(2017) 16 SCC 680]** came into field post the impugned award was passed. Since the appeal is

continuation of the original proceedings, the grant of compensation, therefore, needs to be governed in the light of directions in Pranay Sethi's case (supra). This Court, therefore, proposes to work out the compensation as under :

11. The monthly income of the deceased is taken into consideration as Rs.2000/-. As such, the annual income of the deceased comes to Rs.24,000/-. Adding 40% of the income towards future prospects, the annual income of the deceased comes to Rs.9600/-. As such, the total annual income of the deceased comes to Rs.33,600/-. 50% thereof is deducted towards personal and living expenses of the deceased. As such, the total yearly dependency comes to Rs.16,800/-. Considering the age of the deceased at 27 years, the multiplier of 17 is applied considering the ratio laid down by the Apex Court in case of Sarla Verma. The amount of compensation on account of loss of dependency comes to Rs.2,85,600/-. Amount of Rs.70,000/- is granted towards loss of love and affection, loss of estate and funeral expenses. This way, the total amount of compensation comes to Rs.3,55,600/-. This Court, does not propose to scale down the rate of interest of 9% p.a. awarded by the Tribunal although it appears to be on higher side. In the

result, the appeal partly succeeds. Hence the order :-

ORDER

(i) The appeal is partly allowed. The award dated 11/10/2005, passed by Member, Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No.495/2001 is modified, reducing the amount of compensation from Rs.4,12,500/- to Rs.3,55,600/-. Rest of the terms of the impugned award to stand unaltered.

(ii) The amount in deposit with this Court/ Tribunal be paid to the claimant along with interest accrued thereon immediately in terms of the modified award. The balance amount be paid back to the appellant Insurance Company along with interest accrued thereon.

(iii) In view of disposal of the First Appeal, Civil Application stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-