IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3700 OF 2019
WITH
CIVIL APPLICATION NO. 2997 OF 2021

Maharashtra State Road Transport
Corporation Through its
Divisional Controller, Division Office,
Beed, Tq. & Dist. Beed. ...Appellant

Versus

1. Mangal w/o Anil Sapkal,
Age – 33 years, Occ. Household,

2. Sushen s/o Anil Sapkal,
Age – 13 years, Occ. Education,

3. Sumit s/o Anil Sapkal,
Age – 11 years, Occ. Education,

4. Suraj s/o Anil Sapkal,
Age – 7 years, Occ. Education,

Respondent No. 2 to 4 are minors
u/g real mother respondent no.1

5. Trivenibai w/o Navnath Sapkal,
Age – 63 years, Occ. Household,

6. Navnath s/o Bhaguji Sapkal,
Age – 70 years, Occ. Nil,

All R/o Ratnagiri, Tq. & Dist. Beed ...Respondents

Mr A.D. Wange, Advocate for Appellant
Mr S.R. Shirsat, Advocate for Respondent Nos. 1 to 6

CORAM : SHRIKANT D. KULKARNI, J.

DATE OF RESERVATION : 29.06.2021

DATE OF PRONOUNCEMENT : 13.07.2021

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. The appeal is heard finally at admission stage with the consent of both the sides.

2. Feeling aggrieved by the impugned judgment and award passed in M.A.C.P. No. 237/2016 dated 02.07.2019 by the Chairman, Motor Accident Claims Tribunal, Beed, the appellant/MSRTC has preferred this appeal to the extent of quantum of compensation.

3. Heard Mr A.D. Wange, learned counsel for the appellant and Mr S.R. Shirsat, learned counsel for respondents/original claimants. Perused the impugned judgment and award passed by the Tribunal.

4. Mr Wange, learned counsel for the appellant strenuously argued that the amount of compensation awarded by the Tribunal is very much on higher side. The Tribunal has not properly appreciated the evidence and arrived at erroneous findings. He submitted that the Tribunal has awarded future prospects by adding 50 % in the income which is against the decision of the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 SCC 680.***

5. Mr Shirsat, learned counsel for the original claimants/respondents supported to the impugned judgment and award passed by the Tribunal. He submitted that the Tribunal has considered the evidence in a proper way and arrived at correct conclusion. The Tribunal has rightly awarded future prospects at 50% and there is no error on the

part of the Tribunal while awarding the quantum of compensation. It cannot be said to be on higher side.

6. Mr Anil Sapkal, since deceased met with road traffic accident on 27.05.2016 and succumbed to injuries. The deceased was proceeding on motorcycle when met with an accident on Ambajogai to Manjarsumba road. Widow, three children and parents have filed claim petition under section 166 of Motor Vehicles Act, 1988 before the Tribunal.

7. The Tribunal has held that accident was caused due to rash and negligent driving of the bus driver of the MSRTC and MSRTC was held responsible for payment of compensation. The Tribunal after taking into consideration that deceased was agriculturist and doing milk business and his age at the time of accident quantified his income at Rs. 8,000/- per month. The Tribunal has applied multiplier of 16 by taking into consideration the age of deceased, and accordingly, awarded the compensation. The Tribunal has also awarded the compensation of 50% towards future prospects and accordingly determined the compensation at Rs. 16,06,000/-.

8. Main challenge in this appeal is confined to the amount of future prospects granted by the Tribunal at 50%. On perusing the impugned judgment and award passed by the Tribunal, it is evident that Tribunal has added future prospects at 50% by taking into consideration income of the deceased.

9. The learned counsel for both the sides placed their reliance in case of ***National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 SCC 680.***

10. I have considered the submissions advanced by the learned counsel for both the sides and carefully gone through the citation in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***. The Hon'ble Supreme Court has clarified the following aspects :-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased as basis for applying multiplier;

(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

11. The learned Tribunal on the basis of age mentioned in the post mortem report vide Exh. 32 accepted the age of the deceased as 35 years. The Tribunal has determined the monthly income of the deceased at Rs. 8,000/- in the background that he was an agriculturist and in addition, doing milk business. The Tribunal has added 50% in the monthly income of the deceased by way of future prospects. Adding 50% in the income of the deceased towards future prospects at the hands of the Tribunal appears to be erroneous exercise. In case of ***National***

Insurance Company Limited Vs. Pranay Sethi and others (supra), the Hon'ble Supreme Court has laid down parameters in para No. 59 of the judgment on the point of future prospects and relevant extract is reproduced as under :-

> *"...Taking into consideration cumulative factors, namely, passage of time, changing society, escalation of price, change in price index, human attitude to follow particular pattern of life, etc. addition of 40% of established income of deceased towards future prospects where deceased was below 40 years addition of 25% where deceased was between age of 40 to 50 years would be reasonable. While determining income, an addition of 50% of actual salary to income of the deceased towards future prospects, where deceased had a permanent job and was below the age of 40 years, should be made. Addition should be 30%, if age of deceased was between 40 to 50 years. In case deceased was between age of 50 to 60 years, addition should be 15%. Actual salary should be read as actual salary less tax..."*

12. Having regard to the parameters laid down by the Hon'ble Supreme Court, the Tribunal should not have granted future prospects more than 40% when age of the deceased was below 40 years. The Tribunal seems to have committed an error in interpreting the parameters laid down by the Hon'ble Supreme Court and thereby awarded compensation on higher side. Apart from that, no error is noticed by me regarding calculation of compensation. The assessment of amounts payable under other heads by the Tribunal do not call interference. Certainly, that error regarding future prospects needs to be rectified in the appeal. To that extent, the impugned judgment and award needs to be

modified. The tribunal has quite wide discretion in awarding compensation to victims of motor vehicular accidents. Yet tribunal is under obligation to award "just compensation". The determination of compensation must be on the foundation of evidence brought on record, income of the deceased, his age and thereafter apposite multiplier to be applied.

13. The calculation regarding loss of dependency with addition of 40% towards future prospects needs to be calculated as per the decision of the Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)*** :

Monthly income of the deceased is assessed at Rs. 8,000/- p.m. 40% needs to be added therein i.e. Rs. 3,200/-. The monthly income of the deceased now comes to (Rs.8,000/- + Rs.3,200/-) Rs. 11,200/-. The yearly income of the deceased comes to (Rs. 11,200 X 12) Rs. 1,34,400/-. 1/3 amount needs to be deducted towards personal expenses (Rs. 1,34,400 – Rs. 44,800).

14. The yearly net income of the deceased comes to Rs. 89,600/-. Considering the age of the deceased as 35 years, multiplier of 16 needs to be applied (Rs. 89,600 X 16). Thus, loss of dependency comes to Rs. 14,33,600/-. There is no need of modification in the remaining amounts granted by the Tribunal under various heads viz Rs. 40,000/- under consortium, under loss of estate Rs. 15,000/- and Rs. 15,000/- towards funeral expenses.

Compensation calculation

(i) Loss of dependency by adding 40% towards future prospects	- Rs. 14,33,600/-
(ii) Consortium	- Rs. 40,000/-
(iii) Loss of estate	- Rs. 15,000/-
(iv) Funeral expenses	- Rs. 15,000/-
Total Compensation	**Rs. 15,03,600/-**

15. Having regard to the above reasons and discussion, I proceed to pass the following order :-

ORDER

(I) The Appeal is partly allowed.

(II) The impugned Judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Beed dated 02.07.2019 stands modified in the above terms.

(III) The apportionment and investment as reflected in clause No. (3) of the operative part of the order of the Tribunal is confirmed.

(IV) The Civil Application for withdrawal of amount moved by the original claimants/respondents stands allowed by making apportionment and investment as per clause (3) of the operative part of the order of the Tribunal.

(V) Parties to bear their own costs.

(VI) Record and proceedings be sent back to the Motor Accident claims Tribunal, Beed.

[SHRIKANT D. KULKARNI, J.]

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