

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

FIRST APPEAL NO. 83/2021
WITH
FIRST APPEAL 145/2020

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FIRST APPEAL NO. 83/2021

Shriram General Insurance Co. Ltd.
through its Branch Manager,
T-5, Sharda House, 3rd Floor, 345,
Kingsway, Nagpur

...APPELLANT
(On R.A.)
(Original Resp. No.2)
(Insurer of Tata 407)

// VERSUS //

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|---|---|
| 1. Manoharrao Devidaspant Bharti,
Age 57 years, Occ. Service, | (On R.A.) |
| 2. Harsha Manoharrao Bharti,
Age 27 years, Occ. Household, | (Original Claimants) |
| 3. Suvarna Manoharrao Bharti,
Aged about 27 years, Occ. Household,
All R/o. Talegaon (Thakur)
Tq. Tiwsa, Dist. Amravati. | |
| 4. Anil Laxmanrao Bante,
Aged 34 years, Occ. Driver & Owner,
R/o. Talegaon (Thakur)
Tq. Tiosa, Dist. Amravati | (On R.A.)
(Original Resp. No.1)
(Owner of Tata 407) |

.... RESPONDENTS

Shri A. V. Joshi, Advocate for appellant
Ms. Astha Sharma, Advocate h/f Shri P. R. Agrawal, Advocate for respondent
Nos. 1 to 3.

WITH

FIRST APPEAL 145/2020

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through its Branch Manager,
T-5, Sharda House, 3rd Floor, 345,
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(Original Resp. No.2)
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Nos. 1 to 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17.02.2021

JUDGMENT

These appeals are filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') challenging the judgment and awards both dated 01.08.2018 in MACP Nos. 250/2012 and 249/2012.

2. The respondents are the original claimants in the application under Section 166 of the M. V. Act, and shall be hereinafter referred to as the claimants.

3. The claimant No.1 is the husband of Mangala and father of Nilesh whereas the Claimant Nos. 2 and 3 are the daughter of Mangala and sisters of Nilesh. It was the case of the claimants that a Tata vehicle bearing registration No. MH-27/C-230 collided against an autorikshaw, bearing registration No. MH-27/C-6242 wherein the deceased Mangala and her son Nilesh were traveling. Said Mangala and Nilesh died as a result of the injuries sustained in the accident.

The claimants stated that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The claimants further stated that Mangala was earning Rs. 36,000/- per annum, whereas Nilesh was working as Clerk at D.Ed. College and earning Rs. 20,000/- per month. Claimants filed an applications under Section 166 of the M. V. Act and claimed compensation of Rs. 7,85,000/- each in view of the death of the Mangala and Nilesh in the motor vehicular accident.

4. The appellant – Insurance Company claimed that the claim is exorbitant and denied its liability to pay the compensation. The appellant also raised a plea of non-joinder of necessary party – viz, driver, owner and insurer of the autorickshaw involved in the accident.

5. The Tribunal after considering the evidence on record, recorded a finding that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. The Tribunal considered the age of the deceased Mangala as 52 years and computed compensation on the basis of notional income at Rs. 4500/- per month. The Tribunal deducted 1/3rd amount towards her personal expenses and added 10% towards future prospects and applying multiplier 11, assessed loss of dependancy at Rs. 4,35,600/-. The Tribunal awarded

compensation of Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses and thus awarded total compensation of Rs. 4,95,000/- in view of the death of Mangala.

6. The Tribunal held that deceased Nilesh was 28 years of age and upon considering the salary certificate at Exh. 43, considered his income at Rs. 6620/- per month. The deceased Nilesh was a bachelor, hence the Tribunal deducted 50% towards his personal expenses, Upon adding 50% towards future prospectus, and applying multiplier of 17, the Tribunal assessed total loss of dependency at Rs. 13,50,480/-. The Tribunal awarded compensation Rs. 15,000/- towards love and affection and Rs. 15,000/- towards funeral expenses and thus, awarded total compensation of Rs. 13,95,000/- in view of the death of the Nilesh. Being aggrieved by the Judgment and Awards, the appellant – Insurance Company has filed these appeals under Section 173 of the M. V. Act.

7. Shri A. V. Joshi, learned counsel for the appellant submits that the claimants could not have been dependent on the income of Mangala as well as Nilesh. He submits that at the most the claimants would be entitled for compensation towards loss of dependency only in one claim petition.

8. It is to be noted that the factum of accident and that the death of Mangala and Nilesh was caused due to rash and negligent driving of the driver of the offending vehicle is not in dispute. The appellant – Insurance Company has assailed the judgment on the sole ground that the claimants cannot claim loss of dependency in more than one claim petition. In this regard, it is relevant to refer to the decision of the Apex Court in ***National Insurance Company Limited Vs. Birender and others, 2020 AIR (SC) 434***, wherein it has been held that the major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression “legal representative” of the deceased and it would be bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. This being the settled position the claimants who are undisputedly the legal representatives of the deceased Mangala and Nilesh have right to apply for compensation.

9. Learned counsel for the respondents submits that the Claims Tribunal has not awarded compensation for loss of consortium

as per the direction of the Apex Court in ***Magma General Insurance Company Limited Vs. Nanu Ram, 2018 SCC 1546*** and ***National Insurance Company Ltd. Vs. Pranay Sethi 2017 (ACJ) 2700***. Learned counsel for the claimants submits that the claimants are entitled to claim enhanced compensation even in absence of cross-objections. In support of this, she has placed reliance on the decision of the Apex Court in ***Surekha and others Vs. Santosh and others, 2020 ACJ 2156***. In the said case, the Apex Court had declined to grant enhancement merely on the ground that the appellant had failed to file cross-appeal. While enhancing the claim, the Apex Court has held that by now it is settled that in the matter of insurance claim compensation in reference to the motor accidents, the Court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants. Similar view is taken by the Division Bench of this Court in ***National Insurance Co. Ltd. Vs. Vaishali Harish Devare, 2013 (1) Mh.L.J. 411***.

10 It is thus, well settled that the endeavour of the Tribunal/Court is to award just compensation which cannot be declined for want of cross-objection. Hence, the question for consideration is whether the compensation awarded by the Tribunal is

‘just compensation’.

11. The claimants have not raised any dispute in respect of the assessment of compensation towards loss of dependency. The grievance is restricted to non-payment of compensation towards loss of consortium. In case of the *National Insurance Company Limited Vs. Pranya Sethi and others, 2017 (16) SCC 680*, the Apex Court has held that the claimants are entitled to total compensation of Rs. 70,000/- on the three conventional heads viz. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss of estate and funeral expenses. In *Magma General insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram, (2018) 18 SCC 130*, the Apex Court interpreted “consortium” to be a compendious term, which encompasses spousal consortium, parental consortium, as well as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. The Apex Court has held that parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accidental death of child. An accident leading to the death of a child

causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit. The Apex Court has laid down that the amount to be awarded for loss consortium will be as per the amount fixed in *Pranay Sethi (supra)*.

12. In the instant case, the claimant No. 1 being the husband of the deceased Mangala and father of the deceased Nilesh is entitled for compensation of Rs. 80,000/- towards loss of spousal consortium and filial consortium. The claimants Nos. 2 and 3 being children of the deceased Mangala and siblings of deceased Nilesh, would also be entitled for total compensation of Rs. 80,000/- each towards parental and filial consortium. The Tribunal has awarded compendious of Rs. 60,000/- towards loss of love and affection. In the New ***India Assurance Co. Ltd. Vs. Smt. Somwati and others, 2020 ACJ 2321***, the Hon'ble has reiterated that loss of 'love and affection' is comprehended in 'loss of consortium', hence, there is no justification to award compensation towards 'loss of love and affection' as separate head. Hence, the amount of Rs. 60,000/- awarded by the Tribunal towards loss of love and affection needs to be adjusted. After adjusting

towards loss of consortium, the claimants in each appeal would be entitled for additional compensation of Rs. 90,000/-.

13. Under the circumstances and in view of the above discussion supra the appeals are dismissed. The appellant – Insurance Company is directed to pay to the Claimants additional amount of Rs. 90,000/- in MACP No. 250/2012 and Rs. 90,000/- in MACP No. 249/2012 with interest @ 8% per annum from the date of petition till its realization.

14. The appellant Insurance Company to deposit the additional compensation within eight weeks to the Claims Tribunal, Amravati. The claimants shall pay deficit court fees. The Claims Tribunal shall pay the compensation to the claimants in equal proportion.

(SMT. ANUJA PRABHUDESSAI, J.)

