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

FIRST APPEAL NO. 1264 OF 2019

1. Shrikant s/o Bapuji Durugkar,
   aged about 54 years, Occ. Cultivator.

2. Sunita w/o Shrikant Durugkar,
   aged about 47 years, Occ. Household.

   Both are R/o Post Dhamna, Dist. Nagpur.

...**APPELLANTS**

Versus

1. Devanand s/o Nilkanth Bagde,
   aged 45 years, Occ. Present Owner,
   R/o Nagsen Nagar, Ward No. 6,
   In front of Badkchhp Building,
   Kamptee, Th – Kamptee, Dist – Nagpur.

2. Diwakar s/o Nilkanthrao Mahale,
   aged Major, Occ. Not known,
   R/o Ukhali, Post – Jawali, Th – Bhiwapur,
   Dist – Nagpur.

3. Barkat Ali Abdul Gaffar Shaikh,
   aged Major, Occ. Not known,
   R/o At Post – Mansar, Th – Ramtek,
   Dist – Nagpur.

4. The Branch Manager,
   The Bajaj Allianz General Ins. Co. Ltd.
   Shriram Towers, Near NIT Office,
   Kingsway, Sadar, Nagpur.

...**RESPONDENTS**.

Shri B.S. Mandhre, Advocate h/f Shri P. S. Mirache, Advocate for the appellants.
Smt. Mrunal Naik, Advocate for respondent No.4.
None for respondent Nos. 1 to 3.

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CORAM : PUSHPA V. GANEDIWALA, J.
ARGUMENTS WERE HEARD ON : 23/07/2021.
JUDGMENT IS PRONOUNCED ON : 30/07/2021.

JUDGMENT :

Heard. **Admit**. Matter is taken up for final hearing at the stage of admission itself with consent of learned counsel for both the parties.

2. This is claimants' appeal under Section 173 of the Motor Vehicles Act, 1988 ("**MV Act**") assailing the award dated 17/11/2016 passed by the Member, Motor Accident Claims Tribunal – 1, Nagpur in Claim Petition No. 485/2011. In the said award, the Tribunal in a death case, fastened the liability of payment of compensation upon respondent No. 2, the registered owner of the offending vehicle, and directed him to pay Rs.4,57,000/- to the appellants, including Rs.50,000/- towards no fault liability along with interest @ 7.5% per annum from 06/06/2011 till payment of the entire amount. The challenge in the appeal is only with regard to enhancement of the compensation and seeking direction for

'pay and recover' to the Insurance Company.

The facts in brief, necessary to decide the present appeal may be stated as under :

3. The appellants/ original claimants are the parents of the deceased Shruti, aged around 20 years, who met with an unfortunate accident on 30/04/2011, while she was travelling in a vehicle – Mahindra Max Jeep bearing No. MH-40-9219 from Kondhali towards Nagpur. The cause of the accident is stated to be the rash and negligent driving of the driver of the Jeep, as a result of which he lost control over the same and gave dash to the divider on the road, due to which the Jeep turned turtle and collided with another Truck which was coming from the opposite direction. It is stated that the deceased Shruti, who was the occupant in the said Jeep, sustained injuries and died on the spot.

4. The parents of the deceased filed Claim Petition under Section 166 of the MV Act attributing negligence to the driver of the Jeep. They state that their daughter, the deceased

Shruti was a clever student and was pursuing her studies in B.E. (Electronics). They claimed total compensation of Rs.32,30,000/- with interest by considering notional income of an engineer at Rs. 25,000/- p.m. on the premise that the deceased would have earned this much of the amount per month after completing her studies.

5. Respondent No. 1 was impleaded as the owner of the offending vehicle which was insured with respondent No. 4; the respondent No. 2 was impleaded as the registered owner and the respondent No. 3 was impleaded as he was shown as the owner in Insurance Policy, and therefore, all were impleaded in the Claim petition.

6. Respondent No. 4 – Insurance Company resisted the claim vide its written statement at Exh.26. The Insurance Company denied the involvement of the vehicle in the alleged accident and also disputed the permit and fitness of the vehicle. It also disputed the contract of insurance and the claim in toto.

7. The Tribunal framed necessary issues, and recorded evidence as adduced by the parties, and partly allowed the Claim Petition as above. The learned Member of the Tribunal fixed liability for payment of compensation on the registered owner of the offending vehicle while exonerating the Insurance Company for want of valid permit. The driver of the vehicle was not impleaded in the petition. This judgment is impugned in this appeal by the claimants mainly on two counts i.e. enhancement of compensation and directions for 'pay and recover'. The respondent No. 2, the registered owner of the Jeep preferred not to file an appeal against the award of the Tribunal.

8. I have heard Shri Mandhre, learned counsel for the appellants, and Ms. Naik, learned counsel for respondent No. 4/ Insurance Company.

9. Shri Mandhre, learned counsel for the appellants, with regard to enhancement of compensation submitted that the Tribunal considered a very paltry sum of Rs.4,000/- as the

notional income of the deceased, who was pursuing the Engineering course in Electronics at the time of her death. In support of his submissions, the learned counsel relied on the judgment in the case of **V. Selvaraj & Anr. Vs. Bajaj Allianz Gen. Ins. Co. Ltd. & Anr. (Civil Appeal No(s) 8430/2014** decided on **01/09/2014),** wherein the Hon'ble Apex Court has taken notional income for a third-year engineering student at Rs.10,000/- per month. Reliance is also placed on the judgment of the High Court of Delhi in the case of **Ramesh Chand Joshi & Anr. Vs. New India Assurance Co. Ltd. (MAC. APP. No. 212-13/2006** decided on **20/01/2010**), wherein the Delhi High Court has considered the notional income of the deceased who was pursuing Engineering from one reputed college in Delhi at Rs. 26,833/- per month. The learned counsel, therefore urged to consider the notional income of the deceased at the rate Rs. 25,000/- .

10. The second aspect which the learned counsel has argued, is with regard to the directions to respondent No. 4 – Insurance Company to first pay the compensation amount, and

to recover the same from the owner.

11. Per contra, Smt. Naik, learned counsel for respondent No. 4, raised strong objection for enhancement of the notional income of deceased Shruti. The learned counsel submitted that in the case of **Ramesh Chand Joshi** (*supra)*, the deceased was studying in a reputed Engineering College, whereas in the instant case, there is nothing on record to show the credential and the reputation of the college where the deceased was studying. Furthermore, the pleadings of the claimants with regard to the name of the engineering college so also the other details are also silent. The learned Counsel urged to dismiss the appeal for want of merit.

12. On the aspect of 'pay and recover', learned Counsel submitted that if at all if this Court is directing the insurer to pay the compensation and recover the same from the owner of the vehicle, directions for security of such payment may be issued against the owner.

13. I have considered the submissions put forth on behalf of both the parties. I have also perused the record with the assistance of learned both the counsel. The following points arose for determination of this Court :

i. Whether the parents of the deceased have made out a case for enhancement of compensation?

ii. Whether directions in the nature of 'pay and recover' can be issued ?

14. First and foremost, with regard to the notional income of the deceased Shruti, the claimants through oral and documentary evidence have proved that the deceased Shruti was the student of First Year Engineering in Electronics from Cumins College, Hingana, Dist. Nagpur and in 12th standard examination, the deceased received 55% marks. In this context, the Hon'ble Apex Court in the case of **V. Selvaraj & Anr. Vs. Bajaj Allianz Gen. Ins. Co. Ltd. & Anr. (Civil Appeal No(s) 8430/2014** decided on **01/09/2014),** in somewhat similar facts situations has taken notional income for a third-year engineering student at Rs.10,000/- per month. In the case of

Ramesh Chand Joshi (*supra)*, the High Court of Delhi has taken notional income at Rs.26,833/- per month. In the case of **V. Selvaraj** (*supra)*, the Hon'ble Apex Court has not gone into the question of name and reputation of the engineering college.

15. In the opinion of this Court, the facts of the present case are more similar to the facts in the case of **V. Selvaraj** (*supra)*, wherein the Hon'ble Apex Court found Rs.10,000/- per month as an appropriate amount towards the notional income of the deceased. This Court is also of the view that since the deceased Shruti was the first year engineering student, it would be just and fair to consider her notional income as Rs.10,000/- per month. The Tribunal failed to justify in considering meagre amount of Rs. 4,000/- as the notional income of an Engineer in Electronics.

16. Accordingly, this Court quantifies the monthly income of the deceased at Rs.10,000/-, which makes the yearly income at Rs.1,20,000/- of which the claimant is also entitled for 40% towards future prospects (**National Insurance**

Company Limited Vs. Pranay Sethi And Others, **(2017) 16 SCC 680**) which is Rs.48,000/- which if added to the yearly income, the amount would become Rs.1,68,000/- of which if 50% is deducted towards personal expenses, the amount left would be Rs.84,000/- which if multiplied by applying multiplier of 18, taking into consideration the judgment delivered by the Hon'ble Apex Court in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, reported in **2009(6) SCALE,** the amount would come to Rs.15,12,000/-. Further this Court also quantifies the compensation towards filial consortium at Rs.80,000/- (40,000/- X 2) as held in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram And Others**, reported in **(2018) 18 SCC 130**. In addition, the claimants would also be entitled for an amount of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

17. Thus, the total compensation payable to the claimants is arrived at Rs.16,22,000/- instead of Rs.4,57,000/- as awarded by the Tribunal. The said enhanced amount shall

also carry interest at the same rate, i.e., 7.5% per annum as has been awarded by the Tribunal.

18. Now, the question is with regard to the directions in the nature of ‘pay and recover’. In the instant case, it is not proved that the offending vehicle had a valid permit at the relevant time, in the absence of which, the Insurance Company has been fully exonerated from the liability of payment of compensation. The Hon’ble Apex Court in the case of **Amrit Paul Singh And Another Vs. Tata AIG General Insurance Company Limited And Others,** reported in **(2018) 7 SCC 558** in para 24 has held that as nothing has been brought on record by the insured to prove that he had a valid permit of the vehicle, in such a situation, the onus cannot be cast on the insurer. The Hon’ble Apex Court directed the Insurance Company to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The Hon’ble Apex Court stated that the said directions are in consonance with the principles stated in **National Insurance Co. Ltd. Vs. Swaran Singh,**

reported in **(2004) 3 SCC 297** and other cases pertaining to 'pay and recover' principle.

19. In the case in hand, as stated earlier, the Insurance Company has been exonerated for want of permit of the vehicle. However, as held in the case of **Amrit Paul Singh** (*supra)* of the Hon'ble Apex Court, respondent No. 4 is directed to pay the entire amount of compensation to the claimants along with interest, and the Insurance Company is entitled to recover the same from the owner of the vehicle.

20. With regard to directions towards furnishing security by the owner, it is true that in some cases, the Hon'ble Apex Court and this Court issued directions to the owner to furnish security for the payment to the Insurance Company, however, considering the facts in the instant case, in the considered opinion of this Court, such a direction would not serve the purpose as the claimants would not be able to receive the amount of compensation. The claimants, the parents of the deceased daughter are fighting the case since 2011. If such

direction is issued in this case, the claimants would be deprived of the amount of the compensation, even after fighting the case for more than ten years, as the registered owner of the vehicle has not contested the case and also failed to appear before this Court. However, for the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer.

21. Accordingly, the impugned judgment and award dated 17/11/2016 passed by the Member, Motor Accident Claims Tribunal – 1, Nagpur in Claim Petition No. 485/2011 stands modified as under :

i) Respondent No.4 – Insurance Company shall pay enhanced compensation amount, i.e., Rs.16,22,000/- to the claimants along with interest @ 7.5% per annum from 06/06/2011 till payment of the entire amount which is inclusive of Rs.50,000/- towards 'No Fault Liability'.

ii) After payment of enhanced compensation, respondent No.4 – Insurance Company is at liberty to recover the same from the registered owner, i.e., respondent No.2. through execution proceedings.

iii) Realisation of the amount shall be subject to deficit Court fee.

22. With the aforesaid directions, the appeal stands partly allowed and disposed of. No costs.

JUDGE

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Sumit