

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.678 OF 2015

APPELLANT:

(Ori. Applicants)

1. Smt. Shobha wd/o Homesh Walke, Aged – 36 yrs, Occ-Housewife,
2. Ku. Sonam d/o Homesh Walke, Aged-15 yrs, Occ-Education,
3. Ku. Bhagyashree @ Monu d/o Walke, Aged- 13 yrs, Occ- Education,
4. Akshayraj s/o Homesh Walke, Aged-11 yrs, Occ-Education,
5. Smt. Sitabai wd/o Tulshiram Walke, (Died)

Appellant no.1 to 4 all R/o – At Delanwadi ward, Tah-Bramhapuri, Dist- Chandrapur.

Appellants no.2 to 4 are minor represented by Appellant no.1 as Natural Guardian Mother.

... Versus ...

RESPONDENTS:

(Ori. Respondents)

1. The New India Insurance Co. LTD. Mahatma Gandhi Marg, Mumbai.
2. Mr. Arun Natthuji Wadnalwar, Aged-Major, Occ- Private, R/o Pimpalgaon, Tah- Hinganghat, Dist-Wardha.
3. Mr. Mahadeo s/o Narayan Devtale, Aged-29 yrs, Occ-Driver, R/o- Santa Dnyaneshwar Ward, Hinganghat Tah- Hinganghat, Dist-Chandrapur.

Shri S.K. Thengri, Advocate for the Appellants.
Shri A.R. Patil, Advocate for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 22nd JANUARY, 2021

ORAL JUDGMENT:-

Considering the narrow controversy involved in the matter, the parties were put to notice that an endeavor would be made to dispose of the appeal finally at the stage of admission. Hence, with consent heard finally.

02] The Appellants herein, who shall be hereinafter referred to as the Claimants, have challenged the judgment and award dated 19/01/2015 passed by the Claims Tribunal, Chandrapur in M.A.C.P. No.112/2006. By the impugned judgment and award, the Claims Tribunal has partly allowed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short "M.V. Act") and awarded compensation of Rs.6,13,792/- inclusive of compensation under no fault liability, along with interest at the rate of 6% per annum from the date of the petition i.e. 27/07/2006 till its realization.

03] Learned counsel for the Claimants states that the Tribunal

has erred in calculating the compensation on the basis of monthly salary of Rs.4,873/-, when the salary certificate produced by the Claimants, sufficiently proves that the salary of the deceased was Rs.6,495/- per month. He further submits that the Tribunal has also erred in deducting 1/3rd salary towards personal expenses of the deceased when there were four dependents. He has further stated that the Tribunal has not awarded adequate compensation towards future prospects and other conventional heads.

04] I have perused the records and considered the submissions advanced by learned Counsel for the Appellants and learned counsel for Respondent No.2. The evidence on record amply proves that Vomesh Tulshiram Walke had expired as a result of the injuries sustained in an accident involving a Bus bearing No.MH-32 B-2300. The Tribunal has recorded a finding that the said accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondents have not challenged the said finding. The only question which falls for consideration is whether the compensation awarded by the Tribunal is 'just and reasonable'.

05] It is pertinent to note that the deceased was employed as a Peon in the Revenue Department and was drawing a salary of Rs.6,495/- per month. The Tribunal has deducted Rs.1,625/- from the

monthly salary and assumed his annual income as Rs.58,476/-. The Tribunal has not assigned any reasons for such deduction. There has no justification for computing the compensation on the basis of monthly salary of Rs.4,873/-

06] The Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Others*** reported in ***(2017) 16 SCC 680*** has approved the multiplier as well as norms laid down in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another*** reported in ***(2009) 6 SCC 121*** regarding deductions against personal expenses. The Apex Court has also issued guidelines in addition of income towards future prospects and has further quantified amount of Rs.40,000/- towards spousal consortium, Rs.15,000/- each towards funeral expenses and loss of estate. In ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram*** reported in ***(2018) 18 SCC 130***, the Apex Court has held that the 'Consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'. Spousal consortium is granted to the surviving spouse for loss of 'company, society, co-operation, affection and aid of the other in every conjugal relations. Parental consortium is granted to the child upon the pre-mature death as 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 a child. The Apex Court has held that the amount of compensation to be awarded for loss of consortium will be governed by the principles by awarding compensation under loss of consortium as laid down in ***Pranay Sethi*** (supra).

07] In the instant case, the Tribunal has considered the age of the deceased as 45 years and applied the multiplier of 13. Similarly, the Tribunal has deducted 1/3rd salary towards personal expenses despite there being five dependent family members. Whereas, as per the judgment in ***Sarla Verma*** (supra), the multiplier applicable is 14 and deductions in respect of personal expenses ought to have been 1/4th of the salary. It is also to be noted that the Tribunal has randomly awarded Rs.1,00,000/- towards future income, ignoring that the deceased was in permanent service with long service tenure. His income would not have remained static but would have enhanced with annual increments and promotional opportunities. Under the circumstances, the compensation awarded by the Tribunal cannot be considered as 'just compensation'.

08] Hence, following dictum of the Apex Court in ***Sarla Verma*** (supra), ***Pranay Sethi*** (supra) and ***Magma Fincorp*** (supra), the compensation is assessed as under:

I.	Loss of dependency—	
i.	Annual income	Rs.77,940/- (6495×12)
ii.	Addition of 30% towards future prospect	Rs.23,382/-
iii.	Total income	Rs.1,01,322/-
iv.	1/4th deduction towards personal expenses	Rs.25,330/-
v.	Total income after deducting personal expenses	Rs.75,992/-
vi.	Loss of dependency on applying multiplier of 14	Rs.10,63,888/- (75,992×14)
II.	Compensation payable on other conventional heads	
i.	Loss of spousal and parental consortium	Rs.1,60,000/- (40,000×4)
ii.	Funeral expenses and loss of estate	Rs.30,000/-
	Total compensation payable—	Rs.12,53,888/-

09] Thus, the Claimants are entitled to total compensation of Rs.12,53,888/-, which in my view is ‘just compensation’. Hence, the following order:

- i. The appeal is allowed.
- ii. The compensation is enhanced from Rs.6,13,792/- to Rs.12,53,888/-, inclusive of compensation paid under no fault liability, with interest at the rate of 6% from the date of the petition till final realisation.
- iii. The Respondent No.1 shall deposit before the Tribunal

the balance compensation of Rs.6,40,090/- with interest at the rate of 6% per annum from the date of the claim petition till final realisation, within a period of eight weeks.

- iv. The impugned judgment and award stands modified accordingly.
- v. The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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