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

FIRST APPEAL NO.105 OF 2013

APPELLANT: The New India Assurance Company Ltd: through Manager at 4th Floor, MECL Premises, Dr. Ambedkar, Bhawan, Seminary Hills, Nagpur.

... Versus ...

RESPONDENTS:

1. Smt. Sonali wd/o Vikram Sasode
aged about 32 years, Occ: Household Work.

2. Ku. Tusita d/o Vikram Sasode,
aged about: 7 years, Occ: Nil,

Both r/o c/o M.G. Shinde, A-5,
Awantika, Gufa Mandir Road,
Lal Ghati, Bhopal, (M.P.)
R. No.2 thr: Mother R.No.1 being minor.

(Deleted of R.No.3 as per R(J) Order dt.4/8/15)

3. Santajirao Ramchandrarao Sasode,
age about 67 years, Occ: Retired Govt. Servant

4. Sau. Sumati Santajirao Sasode
aged about 62 years, Occu: Nil,
No.3 & 4 r/o B-3, Flat No.1, Kailas
Housing Society, Shastri Nagar,
Kothrud, Pune, (M.S.).

5. Dnyaneshwar Balasaheb Poman,
aged about 41 years, Occ: Driver,
R/o P.B. No.39, Balaji Nagar, Swami Samarth
Apartment, Station Road, Pune,

6. Satyajeet Wasudeo Kavathekar,
aged about : Major, R/o C/o Anil Gayacharan
Trivedi, In front of Akashwani Centre,
Near Distt. Stadium, Distt-Chandrapur.

Smt. Anita Mategaonkar, Advocate for the Appellant.
Shri P.R. Agrawal, Advocate for Respondent Nos.1, 2 and 4.

CORAM : S.M. MODAK, J.
RESERVED ON : 19th JUNE, 2021
PRONOUNCED ON : 06th JULY, 2021

JUDGMENT:-

Heard learned Advocate Smt. Anita Mategaonkar for the Appellant-Insurance Company and learned Advocate Shri P.R. Agrawal for respondent Nos.1, 2 and 4. Though respondent No.5-driver and respondent No.6-owner of the bus are served by paper publication, they have not appeared.

02] After hearing them what I gather is there is no dispute about involvement of the bus and there is some dispute about negligence of the bus driver. In fact, major area of the dispute is about application of principle of future prospect and multiplier to be applied.

03] Motor Accident Claims Tribunal, Amravati (hereinafter referred to as the "Tribunal") held bus driver respondent No.2 negligent and responsible for the death of Vikram Sasode. He was the passenger in the bus travelling from Pune to Amravati. His monthly income after deduction from salary was considered at Rs.38,640/- and by applying the principles, compensation at the rate of Rs.72,85,000/- along with 6% interest was quantified. The driver, owner and the Insurance Company were directed to pay the compensation. This is the appeal by the Insurance Company.

04] The Tribunal believed the testimony of Sonali Sasode wife of the deceased and Ranjit Solanke-Senior Executive Officer Reliance

Communication Limited. So also, the documentary evidence were considered by the Tribunal. The owner of the bus gave evidence through one Shankar Vishnu Ohal. The main focus of the argument on behalf of the Insurance Company is as follows:-

a) There is inconsistency in between the owner and driver of the bus about the circumstances under which the driver hits the road divider.

b) The father of the deceased having independent income cannot be said to be dependent.

c) The Tribunal has wrongly given the benefit of future prospect at the rate of 50%, particularly when the deceased was in private employment.

d) The application of multiplier of 16 is on higher side.

05] Learned Advocate Smt. Anita Mategaonkar for the appellant-Insurance Company relied upon the following judgments:

1. *United India Insurance Co. Ltd. & Others Vs. Patricia Jean Mahajan & Others*[1]
2. *United India Insurance Co. Ltd. Vs. Satinder Kaur & Others*[2]

06] Whereas learned Advocate Shri P.R. Agrawal supported the judgment and also the percentage of future prospect, multiplier and deduction for personal expenses granted by the Tribunal. In addition to that he prayed for grant of compensation due to loss of spousal and parental consortium. In support of that, he relied upon the following judgments:

1 (2002) 6 SCC 281
2 2020 ACJ 2131

1. *M/s. Shriram General Insurance Company Limited Vs. Surekha w/o Rajendra Nakhate & Others*[3]

2. *Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram*[4]

3. *The New Indian Assurance Company Limited Vs. Smt. Somwati & Others*[5]

ACCIDENT AND NEGLIGENCE

07] Witness Sonali was not accompanied with her husband Vikram on the date of accident. Deceased on 4th November, 2007 was coming from Pune to Amravati by bus bearing Registration No.MH-34/ M-2101. When the bus came near Yashoda Nagar Square, Amravati, the bus driver gave a dash to the road divider, as a result of which, the door of the bus got opened and bus tilted towards conductor's side. As a result of, the deceased came under the bus and died at the spot due to the injuries sustained in the said accident. Whereas, according to Shankar Vishnu Ohal, witness for the owner, the bus was driven in a normal speed and the deceased was standing near the door of the bus. Due to darkness, the driver of the bus dashed the bus to the road divider in order to save one dog. Further story is not disputed.

08] Admittedly, both these witnesses are not the eye-witnesses. ASI Wankhede on 4th November, 2007 lodged the FIR against the bus driver for the offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code and under Section 134 of the Motor Vehicles Act, 1988 (in short "M.V. Act"). It is at Exh.35. Whereas, crime detail form (panchanama) is at Exh.36. Post mortem report is at Exh.37. The form AA is at Exh.38.

3 2019(2) AIR Bom.R 590
4 (2018) 18 SCC 130
5 2020 ACJ 2321

09] The Tribunal after considering the above evidence concluded about death of the deceased due to the injuries sustained in a vehicular accident. This finding is correct. The driver in his written statement gave explanation about dash to road divider and it was due to saving a man who came on the road suddenly. Whereas, Shankar Vishnu Ohal representative of the owner gave explanation about sudden arrival of a dog. The explanation given by the owner remained to be proved and it has remained in the pleadings only. Hence, it cannot be considered.

10] The Tribunal was right in holding the bus driver responsible for the accident. Giving dash to road divider is not disputed. If the bus could have been in a normal speed, there may not be an occasion for the bus to tent on one side. Considering the summary trial, we can read the contents of FIR and spot panchanama. FIR is lodged against the bus driver because the first informant found him rash and negligent in driving the bus. It is not only Vikram expired in the accident but crime form refers to injury caused to six passengers. The situation at the spot is better explained by the map from the crime form. The damage caused to the bus is also described in the crime form. So there is a reason to believe that it is the bus driver only who was rash and negligent. There is no reason to differ with the findings recorded by the Tribunal on this aspect.

AMOUNT OF COMPENSATION

11] The amount of compensation is to be calculated by considering the income of the deceased, his age and number of dependents. Through Ranjit Solanke representative from Reliance Communication the letter of appointment of the deceased at Exhs.49, 50 and salary certificates at Exhs.51, 52 are duly proved. There is no dispute about the same. The witness could not answer for how many years the employee may work in the company. There was a suggestion given about the documents at Exhs.49, 51 and 52 to be fabricated. It was denied. The deceased was promoted to the post of Senior Manager in August, 2007. Merely giving suggestion does not work. The defence about fabrication needs to be substantiated. It has not happened. The finding of the Tribunal about monthly salary is as follows:

i.	Gross salary	Rs.55,106/-
ii.	Net salary	Rs.38,640/-
iii.	Yearly salary	Rs.4,63,680/-
iv.	Deductions towards tax	Rs.59,521/-
Total annual income after deductions		Rs.4,04,159/-

Up till this stage, there is no major dispute.

MULTIPLEIR

12] As held in case of *Sarla Verma & Others Vs. Delhi Transport Corporation & Another,*[6] the multiplier will be 16 for the age group in between 31 to 35 years. Though Insurance Company pleaded that the deceased was 40 years, his age was shown on a lower side. However, this defence is not substantiated. The post mortem report mentions his age as 35 years. In case of *Patricia* as referred above, the Hon'ble Supreme Court has considered the multiplier of 10. In that case, the deceased was a person belonging to Indian origin and he got American citizenship. He was a doctor by profession. His dependents include parents staying in India and children staying in U.S. The multiplicand arrived at was Rs.68,00,000/- per annum. The multiplier on lower side was considered in order to arrive at "just compensation". It was observed thus:

6 (2009) 6 SCC 121

> *"**21.** The purpose to compensate the dependents of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be a just and fair compensation. But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases, the amount of multiplicand becomes relevant. The intention is not to overcompensate."*

So, in that case the Hon'ble Supreme Court opined that the compensation could be higher than the amount required for providing the amenities, comforts and facilities. That is why, lesser multiplier was applied. This judgment was pronounced earlier to the judgment in case of *Sarla Verma*. So also, the observations are on the basis of facts of that case. In order to have uniformity in the decisions of the Tribunals, certain formulas have been laid down by way of guidelines. I do not find any reason to deviate from those guidelines. Hence, the multiplier of 16 applied by the Tribunal is correct. In case of *Patricia* Hon'ble Supreme Court after considering facts have applied the multiplier prescribed under second schedule even though claim was under Section 166 of the M.V. Act. However this issue was resolved by Larger Bench of Hon'ble Supreme Court. It is in case of *Reshma Kumari & Others Vs. Madan Mohan & Another*.[7] If the deceased is above 15 years of age, the multiplier prescribed as per *Sarla Verma* is to be followed. So the controversy is at rest. The arguments on behalf of insurance company are not accepted. So that multiplier will be applicable (depending upon age of the deceased) irrespective of amount of multiplicand.

7 (2013) 9 SCC 65

FUTURE PROSPECT

13] The Tribunal has added 50% towards the head future prospect. The deceased was working in the private company and it is undisputed fact. There is emphasis by learned Advocate Smt. Anita Mategaonkar that such employees are not having guarantee of their job hence cannot claim any percentage towards future prospect. It will be material to consider the observations of the Hon’ble Supreme Court in this regard. In case of *Sarla Verma (supra)* the Hon’ble Supreme Court was pleased to issue guideline so as to consider the annual income at the time of death of an employee, who is either self-employed or on fixed salary (without provision for increment) (para 24).

14] Whereas in case of *Santosh Devi Vs. National Insurance Company Limited & Others,*[8] Hon’ble Supreme Court [while dealing with a claim arising out of death of a person running a milk dairy and agriculture], was pleased to grant 30% increase in his total income (para 18). Similarly in case of *Rajesh & Others Vs. Rajbir Singh & Others,*[9] Hon’ble Supreme Court extended the benefit of future prospect (laid down in *Sarla Verma’s case*) to self employed person and person with fixed wages also certain guidelines are given about percentage of increase towards future prospect depending upon age (para 8). Finally the law on this issue is settled by Hon’ble Supreme Court in case of *National Insurance Company Limited Vs. Pranay Sethi & Others*.[10] The Constitution Bench of Hon’ble Supreme Court has extended the benefit of future prospect to this category of self employed and fixed salary employees (without increment) also. Giving benefit to employees having permanent job on one hand and denying benefit to self-employed with fixed salary (without increment) was held to be

8 (2012) 6 SCC 421
9 (2013) 9 SCC 54
10 (2017) 16 SCC 680

inappropriate.

15] So now only issue remains and it is whether the deceased is an employee with permanent job or with fixed salary without an increment. In this case, the deceased is not self-employed. The employer Reliance Communication has offered performance linked incentive to the deceased at the rate of 15% (as per Exh.49). Even future increase in compensation and future prospect was interlinked with efficiency and hard work. In other words, it was not assured but depending upon the performance of the employee. Every employer is using his own terminology e.g. salary, compensation increment, performance linked incentive etc. So, this may not be the case of assured annual increment in strict sense. We can consider it as a case of fixed salary (without increment). Still they are entitled to get the benefit of future prospect as held in case of *Pranay Sethi* (supra).

16] The Constitution Bench of the Hon'ble Supreme Court has also laid down the age group and percentage of future prospect for such category of employees. Deceased below 40 years of age gets 40% towards future prospect. In *Sarla Verma*, 50% increase is granted to employees with permanent job (below 40 years). Whereas in case of *Pranay Sethi* it is 40% increase for employees with fixed salary. There is a reason why same percentage is not considered for same age group. There is no assured annual increment. I think the Tribunal has not considered this aspect and blindly granted 50% increase. What has happened in this case is the deceased was to retire at the age of 58 years mentioned in the appointment letter at Exh.49 but he was to get increment depending upon the efficiency. He may get increment or he may not get increment, it is uncertain. That is why, this Court feels that the case of the deceased has to be treated as an employee with fixed salary with no assurance of annual increment. Hence, instead of 50% rise towards future prospect, this Court feels 40% rise towards future prospect will be proper. The appellant went to the extent of labelling the deceased as not entitled for future prospect (being in private employment). But same argument cannot be accepted. Still there is scope for modification as mentioned above.

DEPENDENTS

17] The deceased is survived by widow, a daughter, father and mother. Father was alive when the claim petition was filed but he expired during pendency of the present appeal. Tribunal has considered him as one of the dependents and totalled the number of dependents to 4. Hence, deduction towards personal expenses of deceased was considered as $1/4^{th}$. There is a serious opposition to this method on behalf of the Insurance Company.

18] We have got two judgments of the Hon'ble Supreme Court in this behalf. In case of *Satinder Kaur* (supra) three Judges Bench of the Hon'ble Supreme Court was pleased to exclude the father from the list of dependents. It was due to independent income of the father and it was made subject to evidence to the contrary. Whereas Division Bench of the Hon'ble Supreme Court in case of *National Insurance Company Limited Vs. Birender & Others*[11] was pleased to grant compensation to two adults and earning sons of deceased mother. My attention is also brought to occupation of the father of the deceased described in cause title of the claim petition. He was described as retired government servant. It is undisputed position. His income has not come on record.

19] In case of *Birender* (supra) Hon'ble Supreme Court was pleased to consider the provisions of Section 166 and particularly

11 AIR 2020 SC 434

Clause (c) of sub-section 1 of Section 166 of the M.V. Act. The legal representatives of the deceased can ask for the compensation. So, once it is proved that he is a legal representative, he can ask for the compensation and whether he is dependent or not is immaterial.

20] The Hon'ble Supreme Court in paragraph 15 of the said judgment has given the reasons for granting compensation to adult and earning sons. They were working on contract basis as agricultural labourers. They were earning Rs.1,00,000/- and Rs.1,50,000/- per annum. Whereas the income of the deceased mother was from fixed salary and family pension. They were staying with the mother and largely depending upon the income of the mother.

21] So there are two aspects. One is entitlement of legal representative to ask for the compensation. Second is succeeding in getting compensation. There may not be any dispute about the proposition of law on first aspect. But as far as the second aspect is concerned, this Court feels that the father in this case particularly cannot be considered to be dependent because he was a retired government servant. That is why Hon'ble Supreme Court in case of *Satinder Kaur* was pleased to exclude the father because he was having independent income. However this was made subject to evidence to the contrary. The claimants ought to have adduced evidence to show that father of the deceased (in spite of retired government servant) was depending upon the income of the deceased. So I am not inclined to consider father as a dependent of the deceased. I disagree with the findings of the Clams Tribunal.

22] As held in case of *Sarla Verma* (supra) (para 30), if the deceased family consist of 2 to 3 members, the deduction towards personal expenses should be 1/3rd. In this case, the number of dependents will be 3 (wife, daughter and mother) (by excluding the father). So deceased must be incurring 1/3rd of his income for him and must be incurring 2/3rd towards family members. I do not agree deduction of 1/4th towards him as permitted by the Tribunal. It requires modification.

COMPENSATION ON CONVENTIONAL HEADS

23] As held by the Hon'ble Supreme Court in case of *Pranay Sethi* (supra), the amount of compensation towards conventional heads will be as follows:

i.	Loss of estate	Rs.15,000/-
ii.	Loss of consortium	Rs.40,000/-
iii.	Funeral expenses	Rs.15,000/-

The Tribunal has granted Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium, whereas Rs.2,500/- was granted towards loss of estate.

24] In this case, the widow, daughter and mother of the deceased have lost the company of the deceased. The issue whether an amount of Rs.40,000/- is to be granted in lumpsum or per person was clarified by the Hon'ble Supreme Court in case of *Magma Vs. Nanuram* (supra). In the said case, the father and sister of the deceased were granted Rs.40,000/- each. Here three claimants are entitled to get Rs.40,000/- multiply by 3 Rs.1,20,000/-.

25] Learned Advocate Shri P.R. Agrawal was fair enough to point out the judgment in case of *New India Assurance Co. Ltd. Vs. Somwati* (supra) wherein the compensation on account of loss of love and affection was negatived as compensation on account of loss of consortium is granted.

CONCLUSION

26] In view of this, the appellant succeeds in certain aspect. The amount of compensation is recalculated as follows:

i.	Monthly income of deceased at the time of death	Rs.38,640/-
ii.	Yearly income	Rs.4,63,680/- (38,640×12)
iii.	Deduction towards Income Tax	Rs.59,521/-
iv.	Income for the purpose of assessment of compensation	Rs.4,04,159/-
v.	40% addition towards future prospects	Rs.1,61,663.60
vi.	Total yearly salary	Rs.5,65,822.60 (4,04,159+1,61,663.60)
vii.	1/3rd deduction towards personal expenses	Rs.1,88,607.53 (5,65,822.60÷3)
viii.	Salary for multiplier	Rs.3,77,215.07×16
ix.	After “16” multiplier	Rs.60,35,441.12
x.	Loss of consortium	Rs.1,20,000/-
xi	Los of estate	Rs.15,000/-
xii.	Funeral expenses	Rs.15,000/-
Total compensation payable—		Rs.61,85,441/-

27] Hence, the following order is passed:

O R D E R

1) The appeal is partly allowed.

2) The appellant and respondent Nos.5 and 6 are directed to pay jointly and severally Rs.61,85,441/- (Rupees Sixty One Lakh Eighty Five Thousand Four Hundred Forty One Only) along with 6% interest per annum from the date of petition till its realization (including the amount of Rs.50,000/- towards no fault liability).

3) The said amount be distributed amongst respondent No.1-Sonali, respondent No.2-Ku. Tusita and respondent No.4-Sau. Sumati as follows:

a)	1.	Smt. Sonali	to get 40%
	2.	Ku. Tusita	to get 50%
	3.	Sau. Somati	to get 10%

b) An amount of Rs.10,00,000/- be deposited in the name of respondent No.2-Ku. Tusita from her share in the nationalized bank till she attains the majority and quarterly interest be paid to respondent No.1-Smt. Sonali and rest of the amount from her share be paid to her through her mother Smt. Sonali.

4) Parties to bear their own costs.

5) Pending applications, if any, are disposed of.

(S.M. MODAK, J.)

vijay