

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

FIRST APPEAL NO. 944 OF 2017

APPLICANTS/
APPELLANTS:

(Original Petitioner Nos.1 to 3)

- 1] Smt. Rekha Wd/o Anantram Zade,
Aged about 31 years, Occ.: Housewife,
- 2] Ku. Prajakta D/o Anantrao Zade,
Aged about 13 years, Occ.: Student,
- 3] Master Pratik s/o Anatrao Zade,
Aged about 10 years, Occ.: Student,
Petitioners Nos.2 & 3 are minor through
natural guardian mother Petitioner No.1
All R/o: At Mukkam Borujwada,
Post- Malegaon, Tahsil- Saoner,
District-Nagpur.

... Versus ...

RESPONDENTS:
(Original Res.No.2)

1. National Insurance Company Ltd.,
Through its Branch Manager,
Address : 1st Floor, Satji Complex,
Station Road, Chhindwara (M.P.)-480001.
Through its Divisional Officer,
Address : Office No.1, Fhirdos Chamber,
Near Panchsheel Theatre, Panchsheel Sq., Nagpur.

(Original Res. No.-1)

2. Aamir Parvez S/o Abdul Hannam Sidique
Aged about Major, Occ.: Not known,
R/o : Parasiya, Near Puja Lodge,
District Chhindwara (M.P.)-480001.

(Original Res. No.-3)

3. Smt. Sakubai Wd/o Pundlik Zade,
Aged 77 years, Occ.: Nil,
R/o: Mukkam Borujwada,
Post-Malegaon, Tahsil-Saoner,
District-Nagpur.

.....On R.A.

Shri A.J. Pophaly, Advocate for the Appellant.
Shri D.N. Kukday, Advocate for Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 29th JANUARY, 2021

ORAL JUDGMENT:-

This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 (in short "M.V. Act") challenging the judgment and award dated 18/10/2013 passed by Claims Tribunal, Nagpur in M.A.C.P No.686/2008.

02] The Appellants, who shall be hereinafter referred to as the Claimants, had filed an application under Section 166 of the M.V. Act in view of death of Anantrao Jade in a motor vehicular accident on 29/06/2018. The case of the Claimants was that while deceased - Anantrao Jade was proceeding to Borujwada from Saoner by his motor cycle bearing Registration No.MH-40-H-6797, a trax bearing Registration No.MP-28-A-1971 dashed his motor cycle, as a result, he sustained fatal injuries. The Claimants alleged that the accident was caused due to the rash and negligent driving by the driver of the said offending vehicle.

03] It was stated that the deceased was 35 years of age and was working in Western Coalfields and earning monthly salary of Rs.12,432. The Claimants being the widow and the minor children of the deceased claimed

total compensation of Rs.17,50,000/- from the Respondent Nos.1 and 2 being the insurer and insured of the offending vehicle.

04] The Respondent No.1 – Insurance Company contested the petition mainly on the ground of contributory negligence. The Respondent No.1 – Insurance Company also claimed that the driver of the offending vehicle did not possess valid and effective driving licence and, therefore, denied its liability of indemnifying the insured on the ground of breach of terms and conditions of the policy.

05] The Claims Tribunal upon considering oral and documentary evidence on record, awarded total compensation of Rs.17,79,000/- inclusive of compensation paid under no fault liability with interest at the rate of 7.5% per annum from the date of the order till the date of payment.

06] The judgment is assailed mainly on the ground that the Tribunal has not considered future prospects. Learned Counsel for the Claimants also submits that the Tribunal was not justified in awarding interest from the date of the order.

07] Shri Kukday, learned counsel for the Respondent No.1 – Insurance Company claims that the compensation has been awarded as per the dictum of the Hon'ble Apex Court in *Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Another* reported in *(2009) 6 SCC 121*, which was holding

field as on the date of Award. He has relied upon the decisions of learned Single Judge of this Court in First Appeal No.1279/2018 and in First Appeal No.124/2019, to contend that the Claimants are not entitled for future prospects as per the dictum of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Others*** reported in ***(2017) 16 SCC 680***. He has also relied upon the decision of the Division Bench of this Court in the case of ***Gaurish Transport & Another Vs. Pedro Salvador & Others*** reported in ***I (1988) ACC 180***, to contend that the claimants are not entitled for interest on loss of earning and loss of future earning from the date of the application.

08] It is not dispute that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and further that the death of Anantrao Jade was caused due to the injuries sustained in the accident. It is also not in dispute that the deceased was 32 years of age and was working as a Belt Operator in Western Coalfields, Saoner. The Claimants had produced the salary certificate at Exh.45 to prove that he was earning salary of Rs.12,432/- per month.

09] A perusal of the impugned judgment indicates that apart from deducting an amount of Rs.175/- paid towards income tax, the Tribunal has also deducted an amount of Rs.250/- towards provident fund, while computing the loss of dependency. It is to be noted that under the Provision

of the Provident Funds Act, 1925 an employee, either in the private sector or public sector is required to compulsorily contribute certain amount towards provident fund. The amount along with interest accrued thereon is paid to the employee on his retirement or to the legal representatives, in the event of his death. As it has been held by the Apex Court in ***Helen C. Rebello & Others Vs. Maharashtra State Road Transport Corporation & Another*** reported in ***(1999) 1 SCC 90***, the receipt of the provident fund is the deferred payment out of the contribution made by the employee during the tenure of his service. Such employee or his heirs are entitled to receive the amount irrespective of the accidental death. It has no correlation with the amount receivable under the Statute. It is thus evident that provident fund contribution forms part of the salary. This amount which is deducted as compulsory saving under the Statute, to be repaid to the employee or his heirs as the case may be, cannot be deducted from the gross salary while computing compensation. Hence, the loss of future income ought to have been computed on the basis of monthly income of Rs.12,257/-.

10] It is also pertinent to note that the deceased was in government service and considering his age, as per the judgment of the Hon'ble Apex Court in the case of ***Pranay Sethi*** (supra), 50% of actual income ought to have been added to the income of the deceased towards future prospects.

11] I am not inclined to accept the contention of learned Counsel Shri

Kukday that the judgment in the case of ***Pranay Sethi*** (supra) has only prospective operation as held by this Court in First Appeal No.1279/2018 and First Appeal No.124/2019. In both these decisions, learned Single Judge of this Court had declined to reduce the compensation granted on certain heads holding that the compensation was based on legal position as was existing on the date of allowing the claim petition. This Court has not laid down the ratio as propounded by learned Counsel for the Respondent No.1.

12] In the case of ***Maj. Genl. A.S. Gauraya & Anr vs S.N. Thakur AIR 1986 SC 1440*** the Hon'ble Supreme Court has held that "*there is nothing like any prospective operation alone of the law laid down by the Supreme Court. The law laid down by the Supreme Court applies to all pending proceedings*". It is also a settled proposition that the discretion to restrict the operation of a decision prospectively, vests only with the Supreme Court. In *Pranay Sethi* as well as *Magma Gen. Ms. Company (supra)* the Apex Court has nowhere indicated that the judgment would apply prospectively and not retrospectively. This being the case, dictum of the Apex Court in *Pranay Sethi (supra)* as well as *Magma General Insurance (supra)* would apply to all pending proceedings. The appeals being continuation of original proceedings filed before the Tribunal under Section 166 of the M.V. Act, the compensation has to be computed on the basis of the law expounded by the Apex Court in the aforesaid cases.

13] Reverting to the determination of compensation, the deceased was drawing net salary of Rs.12,257/- per month i.e. Rs.1,47,084/- per annum. He was 35 years of age and was in government service. Hence, upon adding 50% of the actual income towards future prospect, the income works out to Rs.2,20,626/-. Considering the number of dependents and upon deducting 1/4th towards personal expenses and further applying multiplier of 16, loss of dependency is assessed at Rs.26,47,520/-.

14] The Claimant No.1 is the widow, the Claimant Nos.2 and 3 are the minor children whereas Respondent No.3 is the mother of the deceased. Hence, in view of the judgment of the Hon'ble Apex Court in ***Pranay Sethi*** (supra) as well as in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram*** reported in ***(2018) 18 SCC 130***, the Claimants are entitled for compensation of Rs.1,60,000/- towards loss of spousal consortium, parental consortium and filial consortium. The Claimants are also entitled for compensation of Rs.30,000/- towards funeral expenses and loss of estate. The Claimants are, therefore, entitled for total compensation of Rs.28,37,520/- as against the compensation of Rs.17,79,000/- awarded by the Claims Tribunal.

15] As regards grant of interest, Section 171 of the M.V. Act confers discretion on the Tribunal to award interest at such rate and from such date as it may specify but not earlier to the date of the application. The rate of

interest and the date from which the interest is to be awarded is within the realm of the discretion of the Tribunal. Suffice it to say, the discretion conferred by the Statute has to be exercised judiciously depending on the facts and circumstances of each case. In the case of ***Rupesh Rashmikan Shah v. Union of India, 2019 (5) ABR 497***, the question before the Division Bench of this Court was whether the Income Tax Department was justified in taking away 30% of the interest on the compensation which was determined by the Claims Tribunal nearly about 36 years after the accident. While considering the nature of interest payable under Section 171 of the M.V. Act, the Division Bench of this Court has referred to the decisions of the Apex court in the case of ***Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9*** and ***Dharampal v. U.P. State Road Transport Corporation (2008) 12 SCC 208*** and held thus:

“47.It can, thus, be seen that in the case of fatal accident cases, the Courts award compensation for loss of dependency benefit, loss of estate, loss of consortium in case of a spouse, loss of love and affection for the family members and funeral charges. In injury cases, generally, the compensation is computed under the heads of actual loss of income, future loss of income, pain, shock and suffering, loss of enjoyment of amenities of life, medical -treatment past and future, miscellaneous heads such as attendant charges, special diet, transportation, etc. The multiplier method is found to be most appropriate for computing loss of dependency benefits in fatal and future loss of income in injury cases.

48. From the above judgments, it can further be seen that be it a fatal case or an injury case, compensation includes future loss. In case of fatal accidents, it is awarded under the head of loss of dependency benefits. In case of injury cases, such future loss may either be in the form of loss of future income or even for future medical treatment and other expenditure. However, the computation of such future loss is on the basis of the income of the deceased or the injured on the death or accident. This is adjusted by a reasonable future rise in income. The concept of taking into account full possible rise in income is not accepted. For example, in case of a salaried person, particularly in government service, by the time a Claim Petition or Appeal is decided, there is hard evidence of the implementation of pay revisions and consequential rise in salary of other employees of the same cadre as that of the deceased. However, the Courts have rejected the request for awarding compensation on the basis of such future predictions. To the multiplicand so determined multiplier is applied to ascertain future loss. The method of multiplier takes into account various factors and imponderables of life and, therefore, the multiplier is not equivalent to the full length of the remainder of the expected life of the deceased. The multiplier theory proceeds on the basis that with interest that may be earned on the compensation and a portion drawn from the capital, should be equivalent to what the deceased would have contributed to his family. At the end of the period, the capital should be completely utilised. It is, therefore, that while awarding compensation, though the Claims Tribunal awards future loss in praesenti, interest is awarded for the period between filing of the Claim Petition till passing of the award and, therefore, as held by the Supreme Court in the case of Abati Bezbaruah (AIR 2003 SC 1817) (supra) and Dharampal (AIR 2008

SC 2312)(supra), such interest is considered to be part of compensation, and accretion to the compensation since the same is awarded for the compensation which is ascertained with reference to an earlier date i.e., the date of accident. At the same time, courts have not approved granting interest on future expenditure.”

16] There is thus no embargo on grant of interest from the date of application except on the amount awarded towards future expenses. It will also be advantageous to refer to the decisions of learned Single Judge of this Court in the case of ***Devidas Chindha Bhil Vs. Yusuf Beg Rashid Beg*** decided on **3rd August, 2017** wherein it has been held as under:

“17. In view of the law settled as above by judicial pronouncements, I have no hesitation in holding that, the Tribunal while passing the Judgments and Awards impugned in the present appeals has erred in not awarding the interest from the date of filing of the claim petition. As noted hereinabove, in none of the Judgments, the Tribunal has assigned any reason for not awarding the interest from the date of filing of the claim petition. It is not the case that, the hearing of the claim petitions was prolonged at the instance of the claimants therein. Further, it does not appear that any inordinate delay had occurred in adjudication of the claim petitions. In the circumstances, there was no reason for the Tribunal to deprive the claimants from the legitimate benefit of interest on the amount of compensation as envisaged under Section 171 of the Act”.

17] In the case of ***Shashikant s/o Jaikumar Makhe & Another Vs.***

Shantabai w/o Ramswarup Sarda & Another reported in ***2008 (1) Mh.L.J. 957***, the Supreme Court further observes thus:

“9. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the Will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself Per Lord Halsbury, L.C. in Sharp v. Wakefield (1891) Appeal Cases 173. Also See S.G. Jaisinghani v. Union of India and Ors.).

12. If a certain latitude or liberty accorded by statute or rules to a Judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

It is, therefore, obvious that the discretion has to be used judiciously and when it is so used, reasons ought to be given so

that reader knows what weighed with the learned Judge.

5. It was rightly contended by the Learned Counsel for the appellants that had the respondents settled the claim of the appellants before institution of the proceedings then there would have been no question of awarding interest. When an award is passed, it must necessarily relate back to the date of petition for the Court holds that the petitioner was entitled to that much amount on the date the petition or the suit was filed. If, therefore, the claim would have been settled and amount paid immediately, the petitioner could have earned interest on the said amount by depositing the same in the bank. It is because the claim is not settled immediately that the need to pay the interest arises. It would be a different case where the decision of the petition is delayed due to serious lapse on the part of the petitioner in prosecuting the petition. In such cases, the Court may use discretion not to award interest from date of the application. But where there are no lapses on the part of the petitioner and the proceedings unnecessarily drag on, he must be awarded interest. The Court holds while passing the award that on the date of the filing of the petition the petitioner was entitled to compensation. Therefore, it is from the date of the application that the Tribunal should award interest unless there are circumstances suggesting protraction on part of petitioners”.

18] In the instant case, the Tribunal has not assigned any reason for awarding interest from the date of award. The records do not indicate that the Claimants were responsible for the delay as to deprive them the *pendente lite* interest on the award of compensation which has been

assessed and held due from the date of application.

19] Hence, the Tribunal was not justified in awarding interest from the date of award. Considering the above, in my considered view, the Claimants are entitled for interest at the rate of 7.5% per annum from the date of application till final realisation.

20] Under the circumstances and in view of the discussions (supra), the appeal is allowed.

21] The Claimants are held to be entitled for total compensation of Rs.28,37,520/- (Rupees Twenty Eight Lakhs Thirty Seven Thousand Five Hundred and Twenty Only) with interest at the rate of 7.5% per annum from the date of the application till final realisation. The impugned judgment and award stands modified accordingly.

22] The Respondent No.1 shall deposit the balance amount of Rs.10,58,520/- (Rupees Ten Lakhs Fifty Eight Thousand Five Hundred Twenty Only) along with interest before the Tribunal within three months.

23] The Claimant No.1 and Respondent No.3 shall respectively be entitled to withdraw 30% and 10% of compensation with proportionate interest. The balance compensation and interest be invested in the name of Claimant Nos.2 and 3 in the proportion of 30% each, in any Nationalized

Bank under fix deposit for a period of six years, with further renewal until such time they attain the age of majority.

24] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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