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

First Appeal No.275 of 2020

1. Sarika Wd/o Vaibhav Wagh,
Aged about 32 years,
Occupation – Household.

2. Shivam S/o Vaibhav Wagh,
Aged about 3 years,
Occupation – Nil.

Applicant No.2 being minor,
through his natural guardian,
i.e. mother.

3. Sunanda W/o Sharadrao Wagh,
Aged about 57 years,
Occupation – Household.

4. Sharadrao S/o Dadarao Wagh,
Aged about 61 years,
Occupation – Nil.

Applicants No.1 to 4,
All R/o Gimona Ganori,
Ta. Babhulgaon,
District Yavatmal. … Appellants

Versus

1. Ramkrushna S/o Mahadeorao Mandale,
Aged about 54 years,
Occupation – S.T. Driver,
R/o Panchgavhan,
Post Karalgaon,
Tq. Babhulgaon,
District Yavatmal.

2. Maharashtra State Road Transport
Corporation, Mumbai,
through its Divisional Controller,
M.S.R.T.C., Division Office,
Arni Road, Yavatmal. … Respondents

Shri Vivek Awchat, Advocate for Appellants.
Shri Rohan Chhabra, Advocate for Respondent No.2.

CORAM : V.M. DESHPANDE, J.
DATE : 30th NOVEMBER and 1st DECEMBER, 2021

Oral Judgment :

1. On 21-2-2020, this Court (Coram : M.G. Giratkar, J.) had issued notice for final disposal of this appeal at the stage of admission itself. Accordingly, the appeal is taken up for final hearing at the stage of admission.

2. Admit.

3. Shri Rohan Chhabra, learned counsel, waives service of notice for respondent No.2.

4. The record and proceedings are before this Court, since those were called as per the order dated 21-2-2020.

5. One Vaibhav Wagh lost his precious life in a vehicular accident that took place on 11-5-2017 at Gimona Phata, Babhulgaon, on Babhulgaon-Yavatmal Road due to dash given to his motorcycle, having registration No.MH-29/AS-8613 by the Maharashtra State Road Transport (MSRTC) bus, having registration No.MH-40/N-8928. His widow; son, who is aged about 3 years, and his parents filed a

claim petition before the Motor Accident Claims Tribunal, Yavatmal, which was registered as M.A.C.P. No.79 of 2017, praying for compensation of Rs.54,00,000/-, but they restricted their claim to Rs.21,00,000/-.

6. One Ramkrushna S/o Mahadeorao Mandale was the bus driver. Though he was served, he failed to appear before the Tribunal and, therefore, the claim petition was proceeded *ex parte* against him. The MSRTC filed the written statement at Exhibit 14. As per the written statement, deceased Vaibhav was also contributed the accident. In view of the rival pleadings, the Tribunal framed various issues. The claimants examined in all four witnesses. Nobody entered into the witness-box on behalf of the MSRTC. The Tribunal has partly allowed the claim petition and directed the driver and the MSRTC to pay the amount of Rs.11,25,200/-, exclusive of the payment under Section 140 of the Motor Vehicles Act, 1988, along with interest at the rate of 9% per annum from the date of the petition till its realization. The Tribunal has also directed that out of the said amount, an amount of Rs.5,00,000/- be given to the claimant No.2, an amount of Rs.3,25,200/- to the applicant No.1, and an amount of Rs.1,50,000/- each to the claimant Nos.3 and 4. The Tribunal has also directed that the amount payable to the claimant No.2 be kept in fixed deposit receipts in any nationalized bank in his name, showing the claimant No.1 as his natural guardian till he attains majority. The claimant No.1

was found to be entitled to withdraw the periodical interest accrued on the said amount for maintenance of the claimant No.2.

7. Being dissatisfied with the quantum of compensation that was determined and awarded by the Tribunal, the appellant-claimants have approached this Court by way of this appeal.

8. Heard Shri Vivek Awchat, learned counsel for the appellant-claimants; and Shri Rohan Chhabra, learned counsel for respondent No.2- MSRTC. Respondent No.1- Driver of the bus, has chosen not to file the vakalatnama of any Advocate and as such he remains unrepresented even before this Court.

9. The learned counsel for the appellant-claimants pointed out that the Tribunal has applied the multiplier of 16. His submission is that by applying the said multiplier, the Tribunal has committed an error. According to him, instead of multiplier of 16, the same should have been 17.

10. Another limb of argument of the learned counsel for the appellant-claimants is that the monthly income of the deceased was assessed by the Tribunal at lower side. He also submitted that the less amount is paid towards consortium. It is also his submission that for determining the monthly income at lower side, the Tribunal has given

a reasoning that even after the death of Vaibhav, his agricultural land and milk business are there. He, therefore, submitted that the present appeal be allowed.

11. *Per contra*, the learned counsel for respondent No.2- MSRTC has supported the reasoning given by the Tribunal and prays for dismissal of the appeal.

12. In view of the rival submissions made before this Court, the only point that arises for consideration of this Court is as under :

> Whether the learned Member of the Tribunal has granted correct and adequate compensation to the appellant-claimants?

13. Undisputedly, on the fateful day and date when Vaibhav was driving his motorcycle, it was hit by the bus owned by the MSRTC and in absence of any challenge to the finding recorded by the Tribunal that the bus driver of the MSRTC was rash and negligent, the said finding shall always be there and the MSRTC will have to bear the burden of the same.

14. According to the claimants, Vaibhav was an Agriculturist and in addition to that, he had milk business. The claimants have examined the witnesses, viz. widow of Vaibhav as PW 1, Vishvambhu S/o Dnyaneshwar Raut, Police Patil, as PW 2, Sudhakar S/o Mahadevrao

Thakare as PW 3, Vaishali S/o Urkuda Ladhe, Talathi, as PW 4, and Vilas S/o Harihar Gaikwad, Joint Secretary in Agriculture Produce Market Committee, Babhulgaon, as PW 5.

15. As per the claimants, the monthly income of the deceased from his agricultural produce was Rs.15,000/-, and Rs.10,000/- from his milk business. Thus, his monthly income is Rs.25,000/-.

16. The Tribunal has determined Rs.6,000/- as the monthly income of deceased Vaibhav. One reason for determining monthly income as Rs.6,000/- and not accepting the claim in that behalf by the claimants that the deceased used to have his monthly income in between Rs.10,000/- and Rs.15,000/-, the Tribunal in Paragraph No.11 of the impugned judgment has given the following reason :

> *"11. … However, even though Vaibhav was in agricultural and milk business but the said agricultural land as well as cattle are still available to the applicants for getting income. As such, it cannot be said that the applicant suffered entire loss of monthly income of the deceased as claimed. ..."*

I am afraid to concur with this particular reasoning given by the Tribunal. As per the evidence of claimant No.1- widow of the deceased, who entered into the witness-box, the agricultural operations and milk business were solely done by Vaibhav himself and he used to do the same personally without there being any assistance from any of the claimants. At the time of filing of the claim petition, the age of the parents of the deceased was 59 years and 55 years. The evidence of the widow of the deceased that the agricultural operation and milk business were solely done and managed by the deceased alone and the said version is not at all shattered during her cross-examination. If that be so, though the agricultural property and cattle will be there, widow, son, aged about 3 years, and aged parents will not be able to put that hard work which the deceased used to put to fetch maximum output. Thus, in spite of availability of cattle and agricultural field, in my view, there will be a definite monthly loss to the claimants. In that view of the matter, I am of the view that the finding recorded by the Tribunal to that extent is liable to be set aside and accordingly the said finding is set aside.

17. PW 3 Sudhakar S/o Mahadevrao Thakare is involved in milk business. He runs a diary known as “S. Kumar Dairy”. His evidence would show that deceased Vaibhav used to supply milk of Rs.10,000/- to Rs.15,000/- on monthly basis. He proved Exhibits 45 and 46, those are given by the said witness himself. His cross-examination does not show that the deceased was not supplying milk of Rs.10,000/- to Rs.15,000/- per month.

18. Another witness examined by the claimants is PW 5 Vilas S/o Harihar Gaikwad, who is the Joint Secretary in Agriculture Produce Market Committee (APMC), Babhulgaon. He proved Exhibits 55 and 56, the extracts of the agricultural produce sold by the deceased to the APMC.

19. Another witness is PW 4 Vaishali D/o Urkuda Ladhe, Talathi of Village Gimona. In the said village, deceased Vaibhav used to reside with his family. The said witness has proved Exhibits 49 and 50, which relate to the agricultural field admeasuring 1 Hectare and 60 Are, from which the deceased used to earn Rs.1,50,000/- per annum.

20. PW 2 is Vishvambhu S/o Dnyneshwar Raut, Police Patil of Village Gimona. From his evidence, it is clear that deceased Vaibhav was having 14 to 15 cattle.

21. From the evidence of these witnesses, it is clear that Vaibhav was having agricultural property from which he used to take various crops and used to sell the same at APMC and he was also having 14 to 15 cattle and he used to sell milk to the dairy. It is true that there is no documentary proof about the exact monthly income of the deceased. However, looking to the nature of the evidence, as brought on record, in my view, there is no difficulty in setting aside the finding recorded by the Tribunal that the monthly income of the deceased was

Rs.6,000/-. In my view, the monthly income of the deceased would safely be arrived at Rs.10,000/-.

22. It is the submission of the learned counsel for the appellant-claimants that the wrong multiplier is applied. The claimants have filed on record the driving licence of the deceased. It is at Exhibit 34. In the said document, the date of birth of the deceased was recorded as 15-6-1986. Even the Tribunal in Paragraph No.11 of its judgment and award has recorded the date of birth of the deceased as 15-6-1986 and, therefore, on the date of accident, i.e. on 11-5-2017, the deceased just completed 30 years of his age. In view of the judgment of the Hon'ble Apex Court in the case of *Smt. Sarla Verma and others* v. *Delhi Transport Corporation and another*, reported in *2009(4) ALL MR 429*, the multiplier will be 17 and not 16. Therefore, the finding recorded by the Tribunal that the multiplier of 16 is applicable, can be set aside and the multiplier of 17 will have to be pressed into service.

23. The Tribunal has deducted 1/3rd amount from the monthly income of the deceased towards personal expenses. In the absence of any appeal or counter-claim, that finding has to be there. The Tribunal has granted only Rs.40,000/- towards loss of consortium for claimant No.1.

24. In one of the recent decisions in the case of United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur and others (Civil Appeal No.2705 of 2020, decided on 30-6-2020), the Hon'ble Apex Court has discussed in detail the law laid down by it on earlier occasion in *National Insurance Company Limited* v. *Pranay Sethi and others*, reported in *AIR 2017 SC 5157*, and in *Magma General Insurance Co. Ltd.* v. *Nanu Ram and others*, reported in *(2018) 18 SCC 130*. It would be useful to reproduce below the relevant portion of the judgment of the Hon'ble Apex Court in *Satinder Kaur's* case, cited supra :

> *"In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., this 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.*
>
> *Patental 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 a 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.*

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.

The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra).

At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate convention head. There is no justification to award compensation towards loss of love and affection as a separate head.”

25. In view of the aforesaid law laid down in *Satinder Kaur’s* case, cited supra, the Hon’ble Apex Court has granted Rs.40,000/- each to the three children towards loss of parental consortium. In the present case, the Tribunal has granted Rs.45,000/- to the claimant Nos.2 to 4, viz. son and the parents of the deceased, towards loss of love and affection. In my view, the same is required to be modified.

26. As observed earlier, the deceased was earning Rs.10,000/- per month and the case attracts multiplier of 17. In my view, the appellant-claimants will be entitled for the following compensation as just and adequate one, which is given in the following table :

(1)	The monthly income of deceased Vaibhav	: Rs.10,000/-
	minus	
(2)	Personal expenses of deceased (1/3rd of monthly income)	: Rs.3,300/-
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		Rs.6,700/-
	plus	
(3)	Future prospect (@ 40%)	: Rs.2,680/-

		Rs.9,380/-

(4)	Rs.9,380/- x 12 months	: Rs.1,12,080/-
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(5)	Rs.1,12,080/- x multiplier of 17	: Rs.19,05,360/-
	plus	
(6)	Loss of spousal consortium	: Rs.40,000/-
(7)	Loss of parental consortium	: Rs.40,000/-
(8)	Loss of filial consortium	: Rs.80,000/-
(9)	Funeral expenses	: Rs.15,000/-

	Total compensation	: Rs.20,80,360/-
	minus	
(10)	The amount already granted and awarded by the Tribunal	: Rs.11,75,200/-
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(11)	The appellant-claimants are entitled to receive the compensation	Rs.9,05,160/-
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27. In view of the discussion made in this judgment in the aforesaid paragraph, I am of the view that the appellant-claimants are entitled to receive the amount of Rs.9,05,160/- in addition to the amount of Rs.11,75,200/-, which is already granted by the Tribunal. Hence, I pass the following order :

(1) The judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Yavatmal, in M.A.C.P. No.79 of 2017 on 13-7-2018, is hereby set aside to the extent it is prejudicial to the interest of the appellant-claimants.

(2) The appellant-claimants are entitled to receive the amount of Rs.9,05,160/- together with interest at the rate of 9% per annum, as granted by the Tribunal, from the date of the petition, i.e. 6-6-2017, till its realization, as an additional compensation.

(3) Needless to mention that the appellant-claimants will not be entitled to claim interest of delayed period of 352 days, as observed by this Court in the order dated 21-2-2020.

(4) The respondent No.2- MSRTC is directed to deposit the additional amount along with interest in this Court within a period of four months from today.

(5) Decree be drawn accordingly.

28. The appeal stands disposed of in above terms. No costs.

JUDGE.

Lanjewar