

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.257 OF 2003

1. Neelawati w/o Kamlakarrao Pawar,
Age : 49 years, Occu.: Household,
R/o.: Karanjkala, Tq. Kalam,
District : Osmanabad
2. Santosh Kamlakarrao Pawar,
Age : 26 years, Occu.: Education,
R/o.: As above.
3. Deepak s/o Kamlakarrao Pawar,
Age : 24 years, Occu.: Education,
R/o.: As above.
4. Chitra d/o Kamlakarrao Pawar,
Age : 27 years, occu.: Education,
R/o.: As above.

.... APPELLANTS
(Original Claimants)

VERSUS

1. Gowardhan s/o Govindrao Tambare,
Age : 51 years, Occu.: Medical practitioner,
R/o.: Andora, Tq. Kalam,
District : Osmanabad
2. Branch Manager,
United India Insurance Company Ltd.,
Through : Branch Manager,
Panchwati Hotel, Latur

... RESPONDENTS
(Original Defendants)

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Advocate for Appellants : Mr. A. N. Irpatgire
Advocate for Respondent No.1 : Mr. P. H. Dighe h/f
Mr. V. R. Dhorde
Advocate for Respondent No.2 : Mr. A. B. Gatne

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 25/08/2022

PRONOUNCED ON : 30/09/2022

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JUDGMENT :

1. The appellants, who are the original claimants, have challenged the judgment and award dated 30/03/2002 passed by the learned Ex-Officio Member of M.A.C.T., Latur (hereinafter referred to as 'the learned Tribunal') in M.A.C.P. NO. 351 of 1998 on the ground that the learned Tribunal has not properly assessed the amount of compensation, it needs to be enhanced.

2. The background facts are as under :

Respondent No.1 is the owner of car No.MH-09-S-5050 and on 20/05/1998 he was proceeding to Latur in the said car alongwith one Kamlakar Pawar i.e. the deceased in the instant matter and Vasant Gunderao Deshpande, who got injured in the accident. At the time of accident, the aforesaid car fell in to the ditch by the left side of the road and Kamlakar Pawar sustained severe injuries and ultimately died. It is not in disputed that the aforesaid car was insured with present respondent No.2- insurance company. The present appellants, who are the legal representatives of the deceased Kamlakar Pawar, filed the motor accident claim petition for seeking compensation of Rs.9,00,000/-, but the learned Tribunal only granted an amount of Rs.4,00,000/- exclusive of award of Rs.50,000/- under the principle of "no fault liability" as per Section 140 of the M. V. Act. Hence, this appeal.

3. It is not in dispute that the offence in respect of the accident was registered against respondent No.1-owner-cum-driver of the offending car and at the time of accident the said car was insured with respondent No.2 - insurance company.

4. The learned counsel for the appellants- claimants submits that the learned Tribunal did not consider revised pay of Rs.11,988/- per month of the deceased. Moreover, agricultural income of the deceased was also not properly considered and further the learned Tribunal did not mention anything as to why there was deduction of Rs.3,500/- from the income of deceased. He also submits that apportionment in respect of contributory negligence between the drivers of car and truck, was not properly made and respondent No.1 should have been held 100% negligent for the occurrence of the accident. As such, he prayed for enhancement of the compensation.

5. On the contrary, the learned counsel for the insurance company resisted the submissions mentioning that there was no negligence on the part of respondent No.1 being the car driver and therefore, the compensation is required to be reduced further instead of any enhancement. Moreover, no future prospects can be awarded retrospectively as the accident had taken place in year 1998 and the concept of future prospect has come much later. Thus, he requested that there is no need to change the compensation which has already been awarded.

6. The learned counsel for respondent No.1 - owner of the offending car adopted the arguments advanced on behalf of respondent No.2 - insurance company.

7. I have gone through the entire record and proceeding of the original claim petition along with impugned judgment with the assistance of the learned counsel of the rival contesting parties.

8. It is significant to note that the appellants-claimants had claimed for compensation to the tune of Rs.9,00,000/-, but it was restricted for Rs.3,00,000/- for the purpose of court fees. The appeal is filed mainly on two grounds, that the learned Tribunal instead of holding respondent No.1 negligent to the extent of 100%, held him responsible for contributory negligence to the extent of 80%. Secondly, it is the contention of the appellants-claimants that the learned Tribunal did not consider the income of the deceased on account of salary as well as agricultural income properly and also failed to consider any future prospects. The learned counsel for respondent No.2 - insurance company ultimately argued that there cannot be any fresh calculation for enhancement of compensation retrospectively by considering the current judgments of the Hon'ble Apex Court. However, this court in the judgment reported in **2021(6) ALL MR 171 in case of Reliance General Insurance Co. Vs. Manju wd/o Vikram Choudhary and others** has specifically observed in para 10 as follows :

*"10. Learned counsel for the appellant has strenuously argued that the award passed by the Tribunal has to be tested on the basis of the decision in **Sarla Verma [2009(4) All MR 429 (S.C.)]** (supra) which was holding the field. It may be mentioned that in **Maj. Genl. A.S. Gauraya and Anr vs S. N. Thakur AIR 1986 SC 1440 : [1986 All MR ONLINE 227 (S.C.)]** 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 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. Ins. Company (2018 ALL SCR 2001]** (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 [2018 ALL SCR 953]** (supra) as well as **Magma General Insurance (2018 ALL SCR 2001]** (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."*

9. From the aforesaid observations, it is clearly evident that law laid down by the Apex Court applies not only to the prospective cases, but also to all pending proceedings and even in the pending appeals. The appeal is continuation of original proceeding and therefore, in view of the aforesaid observation of the Hon'ble Apex Court as mentioned in the judgment supra by this court, there is no bar for enhancing the compensation awarded by considering the subsequent judgments of the Hon'ble Apex Court.

10. It is significant to note that the learned Tribunal by considering the facts reflected from spot panchanama and the evidence led on behalf of the appellants - claimants has concluded that respondent No.1 in an attempt to avoid the head on collision with the truck coming from other side, took the car to the extreme

left and due to difference of level, the car fell in to ditch. It has been further held that the car was being driven in high speed as stated by the witness of appellants and therefore, the accident took place. It is, thus, evident that had the car being driven in slow speed, the respondent No.1 would have an opportunity to avoid the accident. Moreover, the learned Tribunal also held that the truck coming from opposite direction, did not blow horn and therefore, somehow contributed in the accident. However, there was no dash of car and truck at the time of incident and therefore, the observation of the learned Tribunal holding respondent No.1 responsible for the accident to the extent of 80% cannot be faulted.

11. Now coming to the calculation part, the learned counsel for the appellants - claimants has contended that though there was salary certificate of Rs.11,988/- per month on record, which is dated January 2000, but the learned Tribunal did not consider the same and relied on earlier salary slip of Rs.8,505/- per month. On perusal of record it appears that earlier salary slip is dated 07/06/1998 i.e. pertaining to the month in which the accident took place and therefore, it appears that the learned Tribunal rightly considered the income of the deceased towards salary to the tune of Rs.9,000/- per month, since the subsequent salary was to be implemented from January, 2000. Thus, further the learned Tribunal has considered the agricultural income of the deceased to the extent of Rs.10,000/- per month. However, at the same time an inference has been drawn by the learned Tribunal that even by adopting miser approach one can take into account Rs.90,000/- to Rs.1,00,000/- as loss of income for want of supervision of the land by the deceased. If this observation is to

be taken into consideration, then the agricultural income per month comes in the range of Rs.7,000/- to Rs.8,000/- per month. However, I am of the opinion that in the year 1998 such supervisory income from the agricultural land was to be determined at the rate of Rs.1,500/- per month. Thus, the total income of the deceased should have been determined by the learned Tribunal to the tune of Rs.10,500/- (9000 + 1500) per month. Further the learned Tribunal has deducted Rs.3,500/- from the monthly income of deceased being his personal expenses. However, as per the direction of the Hon'ble Apex Court in the case of *Smt. Sarla Verma Vs. Delhi Transport Corporation, reported in 2009(4) ALL MR 429 (S.C.)* the learned Tribunal should have deducted 1/3rd amount of Rs.10,500/-. Further, appropriate future prospect and other heads can be awarded as observed in the case of *National Insurance Company Ltd. vs. Pranay Sethi and others, 2018 ALL SCR 953* and *Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram, 2018 ALL SCR 2001*.

12. Thus, I have to assess the compensation afresh. As such, the annual income of the deceased as Rs.84,000/- is determined after deduction of 1/3rd amount of personal expenses. Further, considering the age and profession of the deceased, an amount of Rs.12,600/- being 15% of the established income of the deceased is required to be added towards future prospects, which comes to Rs.96,600/-. As per the age certificate Exhibit-30, the birth date of the deceased is 14/03/1944 and therefore, it appears that at the time of accident the deceased was 54 years old and therefore, multiplier of "11" will be applicable in this case. As such, the loss of dependency is worked out to Rs.10,62,600/-. Out of the said

amount, the appellants - claimants are entitled for 80% amount as the learned Tribunal has rightly held that respondent No.1 was contributed in the accident to the extent of 80%. As such, the loss of dependency now comes to Rs.8,50,080/- in addition to the aforesaid amount.

13. In addition to the aforesaid amount of Rs.8,50,080/-, the appellants are also entitled for compensation of Rs.40,000/- each towards spousal consortium and filial consortium, since they are spouse and children of the deceased. Further, they are also entitled for compensation of Rs.30,000/- towards funeral expenses and loss of estate.

14. Further, since I am deciding the compensation afresh, interest prevailing today is to be applied for the aforesaid compensation. As such, the appellants - claimants are now entitled for total compensation of Rs.10,40,080/- (8,50,080 + 1,90,000) which is a just compensation. Accordingly, following order is passed.

ORDER

- A) The appeal is allowed.
- B) The appellants - claimants are entitled for total compensation of Rs.10,40,080/- (Rs. Ten lacs forty thousand eighty) inclusive of award of Rs.50,000/- (Rs. Fifty thousand) under Section 140 of M. V. Act under the principle of no fault liability alongwith interest @6% p.a. from the date of application till its realization.

- C) Respondent No.2 - Insurance Company is directed to deposit the balance amount alongwith proportionate interest within a period of three months directly with concerned MACT, Latur.
- D) The appellants - claimants shall pay the deficit court fees, if any in respect of additional amount of compensation allowed under this judgment within two weeks from the date of computation of such additional court fees.
- E) The appellants - claimants are entitled to withdraw the aforesaid enhanced compensation amount along with accrued interest in equal proportion.
- F) The appeal is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)