

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1091 of 2008

Kaushalyabai w/o Baburao Bhavar
Deceased through her legal heirs:

- 1) Baburao Ramgopal Bhavar
Age: 56 years, Occu: Nil,
- 2) Sunil Baburao Bhavar,
Age: 19 years, Occu: Education,
Both r/o: R/o: Shirpur, Plot No.11,
Dadusing Colony, Taluka Shirpur,
Dist. Dhule.

... APPELLANTS
(Orig. Claimants)

VERSUS

- 1) Chandravir Virnarayan Chaudhari
Age: 40 years, Occupation : Driver,
R/o. Morena, Keshav Colony
Matwadi Galli, Taluka
District Morena
(Madhya Pradesh)
- 2) Sk. Mukhtyarali Sk. Nisarali,
Age: Major, Occupation : Truck Owner,
Resident of : Ganeshpura
Morena (Madhya Pradesh).
- 3) The National Insurance Company Ltd.,
(Summons to be served on Branch
Office, Dhule).

... RESPONDENTS

...
Mr. S. P. Brahme, Advocate for Appellants.
Mr. S. V. Kulkarni, Advocate for Respondent No.3.
Appeal is dismissed against Respondent No.1.

...

CORAM : SHRIKANT D. KULKARNI, J.
RESERVED ON : 03rd January, 2022.
PRONOUNCED ON : 20th April, 2022.

J U D G M E N T :

. This appeal takes an exception to the impugned judgment and award passed in MACP No.532 of 2002 by the Chairman, Motor Accident Claims Tribunal at Dhule.

2 The relevant facts giving rise to this appeal are as under:

- i) Kaushalyabai wife of Baburao Bhavar (since deceased) was serving as a nurse in Primary Health Centre at Thalner and drawing salary of Rs.10,000/- per month. On 25th January, 2002, she alongwith her husband were proceeding from Indore to Shirpur on motorcycle. On the way, the motorcycle developed mechanical defect. As a result of it, the motorcycle was stopped and it was parked by the side of the road. It was about 07:30 pm when Truck bearing No.MP-06/E-2592 gave dash to Kaushalyabai and

caused serious injuries to her right hand and other parts of the body. She was taken to Cottage Hospital, Shirpur and then shifted to Civil Hospital at Dhule. She was also taken to M. Y. Hospital at Indore for further line of treatment. She was discharged on 28th March, 2002. However, she was taking further treatment in Varma Hospital, Dhule. She had obtained disability certificate from Civil Hospital, Dhule.

- ii) Kaushalyabai had filed injury claim in the MACT at Dhule under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the “Act”) and sought compensation at Rs.5,00,000/-.
- iii) During the pendency of the said claim, original claimant Kaushalyabai died and her legal heirs were brought on record. They prosecuted the claim. According to the appellants/claimants, health of Kaushalyabai was deteriorated due to injuries caused to her in the motor vehicle accident. She succumbed to injuries on 10th April, 2003.

- iv) The Tribunal after considering the rival pleadings of the parties, evidence on record and argument advanced by both the sides, was pleased to allow the claim partly assessing compensation at Rs.46,715/- (inclusive of NFL amount) with interest at the rate of 7.5% per annum from the date of claim petition till realization of the amount.
- v) Feeling aggrieved by the impugned judgment and award passed by the Chairman, MACT, Dhule, the claimants have preferred this appeal on various grounds by taking aid of Section 173 of the Act.

3 Heard Mr. Brahme, learned counsel for the appellants and Mr. S. V. Kulkarni, learned counsel for respondent No.3/insurance company. The appeal came to be dismissed against respondent No.1/driver of the offending vehicle. None present for respondent No.2/owner of the vehicle.

4 Mr. Brahme, learned counsel for the appellants invited my attention to the impugned judgment and the findings recorded by the Tribunal. He submitted that the Tribunal has held that death of

Kaushalyabai had taken place due to rash and negligent driving of the truck driver bearing No.MP-06/E-2592. The claimants have produced sufficient evidence regarding injuries and permanent disability caused to original claimant/Kaushalyabai. Even after discharge, the original claimant was taking medical treatment and evidence is produced to that effect. He submitted that the observations made by the Tribunal regarding full recovery of the original claimant after medical treatment, are erroneous.

5 Mr. Brahme strenuously submitted that the observations made by the Tribunal that claimants being legal heirs of original claimant, cannot claim compensation on account of her death, which had resulted due to injuries caused in the motor vehicle accident. He also invited my attention to the impugned judgment paragraphs 14 and 15 and pointed out that reliance placed by the Tribunal on the provisions of Section 306 of the Indian Succession Act and the citation in the case of ***Ratanchand Vs. Municipal Committee***, reported in, ***AIR 1931, Nagpur 9***, are erroneous. He submitted that the Tribunal has taken a narrow view while appreciating the evidence by completely overlooking the object of the Motor Vehicles Act, 1988. Mr. Brahme has placed his reliance in case of ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased)***

through his Legal Representative Narinder Kahlon Gosakan and another, (Civil Appeal No.4800 of 2021, arising out of SLP (C) No.2873 of 2021) decided by the Honourable Supreme Court. By placing reliance on the above said citation, Mr. Brahme submitted that it is a fit case to allow the appeal. It is necessary to re-assess the compensation determined by the Tribunal. The claimants/appellants are entitled to get adequate and reasonable compensation having regard to the decision of the Honourable Supreme Court in case of *Raj Kumar Vs. Ajay Kumar and another*, reported in, **2011 (1) SCC 343**.

6 Mr. Brahme, learned counsel for the appellants has also heavily placed his reliance on the citation in case of *National Insurance Company Limited Vs. Pranay Sethi and others*, reported in, **2018 (3) Mh.L.J. 70**.

7 Mr. Brahme has produced two calculation-sheets of compensation on account of death of original claimant and assessed the compensation at Rs.9,66,360/- and Rs.9,51,785/- at the time of argument.

8 Per contra, Mr. S. V. Kulkarni, learned counsel for respondent No.3/insurance company submitted that the claimants/appellants have miserably failed to prove that original claimant Kaushalyabai died as a result of injuries caused to her in motor vehicle accident dated 25th January, 2002. He submitted that there is no medical evidence to support the case of appellants that original claimant died due to injuries caused to her in a motor vehicle accident. No postmortem report is produced by the claimants. He submitted that the original claimant was fully recovered after the medical treatment. The Tribunal has rightly considered this aspect on the basis of evidence and turned down the case of the appellants/claimants. He supported the findings recorded by the Tribunal. He submitted that the compensation awarded by the Tribunal is reasonable and fair having regard to the facts and evidence on record. There is no need to interfere in the impugned judgment and award passed by the Tribunal. There is no merit in the appeal and it may be dismissed.

9 Mr. S. V. Kulkarni, learned counsel for respondent No.3/insurance company has placed his reliance on the following two citations:

- a) ***Anil and others Vs. New India Assurance Company Ltd.***, reported in, ***2018 (5) Mh.L.J. 32***; and
- b) ***Laxman Tikamdas Sippy Vs. Omprakash Tulsidas Wadhwa***, reported in, ***LEX(BOM) 2008 1 166***.

10 Perused the impugned judgment and award passed by the Tribunal, record and proceedings of the Tribunal and evidence in the light of the argument advanced on behalf of both the sides.

11 The core points involved in this appeal are whether original claimant Kaushalyabai died as a result of injuries caused to her in motor vehicle accident dated 25th January, 2002 and secondly, whether claim petition and even appeal for enhancement would be confined to the claim for the loss of estate and right to sue survives to her heirs and legal representatives.

12 The Tribunal while recording finding against issue No.1 has held that death of Kaushalyabai had occurred in a motor vehicle accident dated 25th January, 2002 due to rash and negligent driving of truck driver. That finding is not challenged either by the insurance company or owner and driver of the vehicle. No cross-appeals or cross-objections are filed by the respondents including respondent

No.3/National Insurance Company Limited. In this background, let me examine whether the observations made by the Tribunal are within four corners of law. The Tribunal has held that the claimants, who have prosecuted the claim after death of Kaushalyabai though as legal heirs, cannot claim compensation on account of her death since the death had not resulted because of injuries caused to her in the motor vehicle accident. The observations made by the Tribunal in the impugned judgment paragraph 14 by referring to Section 306 of the Indian Succession Act and relying upon two citations viz ***Ratanchand Vs. Municipal Committee*** (supra) and ***Ratanlal Bhanmalal Mahajan vs. Baboolal Haajarilal Jain***, reported in, ***AIR 1960, Madhya Pradesh, 200***, appear to be contrary to the Apex Court judgment in case of ***Maimuna Begum and others Vs. Taju and others***, reported in, ***1989 MhLJ 352*** and in case of ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon*** (supra). In case of ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon*** (supra), the Honourable Supreme Court has considered decisions of Karnataka High Court, Gujarat High Court and its earlier decisions and held in paragraph 9 as under:

“9. The Act is a beneficial and welfare legislation. Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who

has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.”

13 In case of *Maimuna Begum and others Vs. Taju and others* (supra), the defence under Section 306 of the Indian Succession Act, 1925 on the old English Common Law maxim “*actio personalis moritur cum persona*” has been turned down by the Apex Court by opining that it would be unjust to non-suit the heirs on that ground.

14 This Court in case of *Laxman Tikamdas Sippy Vs. Omprakash Tulsidas Wadhwa* (supra) also held in paragraph 20 as under:

“20. Thus, if the injured person dies during the pendency of a claim petition on account of the injuries suffered by him due to the accident, his heirs can either file a fresh claim petition for compensation after the death of the injured person or can apply to substitute themselves in place of the original claimant (injured) and can claim compensation on account of his death. If the injured himself had filed a claim petition and even if it was not established that his death was due to injuries sustained in the accident, his legal representatives can prosecute the original claim petition for claiming compensation to the extent of the loss to the estate of the deceased.”

15 Having regard to the decisions of the Honourable Supreme Court and this Court referred above, the observations made by the Tribunal that appellants, who are legal heirs, cannot claim compensation on account of death of Kaushalyabai, in paragraphs 13 and 14 of the impugned judgment, are absurd. The appellants/claimants have right to prosecute the claim petition as well as appeal for enhancement of compensation. The view taken by the Tribunal seems to be on a narrow interpretation of the Motor Vehicles Act, which cannot be accepted.

16 It appears from the evidence produced on behalf of the claimants' side that original claimant Kaushalyabai met with motor vehicle accident on 25th January, 2002. The FIR seems to have been registered with Shirpur Police Station, District Dhule vide Exhibit-34 on 26th January, 2002, which is immediately after the accident. The spot *Panchanama* came to be drawn on the very next day i.e. on 26th January, 2002. The original claimant has sustained serious injuries in the motor vehicle accident and initially she was taken to Cottage Hospital at Shirpur. After providing primary medical treatment, the original claimant was shifted to Civil Hospital at Dhule for further line of treatment. She was further shifted to Maharaja Yeshwantrao Hospital, Indore (Madhya Pradesh). The claimants have also examined two doctors PW-3 Dr. Sunil Rajan and PW-4 Dr. Amit Sharma. It is evident from the testimony of PW-3 Dr. Sunil Rajan that original claimant Kaushalyabai had sustained fracture sub-trochanter left hip with fracture left tibia with fracture dislocation compound of right elbow with diglwing injury on dorsum of right foot with bilateral fracture of inferior pubic ramie. She was admitted in M. Y. Hospital, Indore on 28th January, 2002 and she was discharged on 28th March, 2002. While facing the cross-examination, PW-3 Dr. Sunil Rajan has clarified that patient Kaushalyabai had sustained five fracture injuries

and those injuries were grievous in nature. Patient Kaushalyabai was admitted in M. Y. Hospital, Indore for two months. Further, it is evident from the testimony of PW-4 Dr. Amit Sharma that Kaushalyabai had also taken treatment in Varma Hospital at Indore. She was admitted there from 26th May, 2002 to 21st June, 2002 and again admitted from 3rd July, 2002 to 13th July, 2002 and again from 28th January, 2003 to 12th February, 2003.

17 Even though it is brought on record by way of cross-examination of PW-3 Dr. Sunil Rajan that injuries of tibia fracture and elbow fracture were healed up at the time of discharge not any way damaging to the case of claimants. No contra evidence is produced by the owner of the vehicle and the insurer as well. It is nowhere brought on record by way of evidence of above referred important witnesses as well as PW-1 that the original claimant died because of other injuries. Much emphasis was given by Mr. S. V. Kulkarni, learned counsel for the insurance company that no medical certificate is placed on record in order to show the cause of death of Kaushalyabai. The postmortem report is also not placed on record to support the case of claimants. Mr. S. V. Kulkarni has placed his reliance on the decision in case of ***Anil and others Vs. New India Assurance Company Ltd.*** (supra). I have gone through the citation

very carefully. In the cited case, FIR came to be registered after one month of the accident in question. Though injured was taken to the hospital, there was no evidence that deceased died at the hospital at Gurgaon or he had died at GH, Kotoputli itself. In this background, the Honourable Supreme Court felt the need to have postmortem report in order to prove the nexus between the death and injuries caused to the patient in the motor vehicle accident. Having regard to the facts of the case in hand, the abovesaid citation is not anyway helpful to the insurance company.

18 It has been proved by the claimants/appellants by producing sufficient evidence that from day one of the accident, Kaushalyabai was taking medical treatment and she was shifted to various hospitals for operations and further line of treatment. She had breathed her last on 10th April, 2003, after approximately one year, two months and some odd days. It is nowhere shown by the contesting respondent that Kaushalyabai had some other serious disease and because of that serious disease she met with death. There is medical evidence on record supporting the case of appellants that Kaushalyabai was on continuous medical treatment. She was initially recovered. Implant was also removed. But, subsequently, her condition was worsen and she left for heavenly abode. Her death was

result of injuries caused to her in the motor vehicle accident dated 25th January, 2002. Not only physical injuries but also mental trauma which she was required to face after the accident also need deep consideration. This has also bearing behind the death of Kaushalyabai. The observations made by the Tribunal about strict proof coupled with necessity of medical certificate and cause of death, are against the object of the Motor Vehicles Act, 1988. The Motor Vehicles Act, 1988 is a beneficial and welfare legislation. Inquiry contemplated under the Act is summery inquiry. Strict proof is not required. The interpretation of the Act should not be narrow. It should be liberal in order to achieve the object of the Act, which is for the benefit of the victims of the motor vehicular accidents.

19 Having regard to the above reasons and discussion and in view of the above referred stock of citations, the findings recorded by the Tribunal about right of claimants to the extent of loss of estate and determination of compensation, need to be set aside. The appellants/ claimants have right to prosecute the claim after death of original claimant Kaushalyabai in the capacity of legal representatives and also have right to file appeal for enhancement of compensation, which they seem to have rightly exercised. At the same time, the appellants/ claimants shall not be entitled to claim compensation under the head

of pain and suffering being personal injuries caused to Kaushalyabai (since deceased).

20 Now coming to last exercise of reassessing the compensation. Kaushalyabai was stated to be 52 years old at the time of death. The same is not disputed by the contesting respondent. So far as income of deceased is concerned, she was serving as an Assistant Nurse in Health Department, Panchayat Samiti, Shirpur and posted at Primary Health Centre, Thalner. The claimants have examined one witness from the office of Health Department, Panchayat Samiti, Shirpur and thereby proved her salary certificate vide Exhibit-32. She was drawing gross salary of Rs.7,831/- at the time of death. After making statutory deduction of professional tax of Rs.175/- per month, the net salary comes to Rs.7,656/- per month. After deducting 1/3rd from it, the monthly dependency comes to Rs.5,130/-. Accordingly, the compensation is reassessed as under:

Head	Compensation awarded
1) Loss of future income:	Rs.7,74,785/-
I] Salary:- Rs.7,656 X 12 =	Rs.91,872/- p.a.
II] After deducting 1/3 rd =	Rs.61,248/-
III] Future Prospectus (15%) =	Rs.70,435/- p.a.
IV] Multiplier = Rs.70,435 X 11 =	Rs.7,74,785/-

Head		Compensation awarded
2]	Medical Expenses =	Rs.46,715/-
3]	Loss of Estate =	Rs.16,500/-
4]	Loss of Consortium =	Rs.44,000/-
5]	Funeral Expenses =	Rs.16,500/-
Total compensation comes to =		Rs.9,48,500/-
(less) Compensation awarded by Tribunal		Rs.46,715/-
Enhanced compensation =		Rs.9,01,785/-

21 The Tribunal seems to have taken hyper technical view and awarded compensation at a very lower side. The appellants/claimants are entitled to get adequate compensation, which has been assessed by me in the above chart by taking aid of citation in case of *National Insurance Company Limited Vs. Pranay Sethi and others* (supra). Both the respondents are liable to pay enhanced compensation with interest at the rate of 7% per annum. To that extent the impugned award passed by the Tribunal needs to be interfered.

22 For the reasons stated above, the appeal needs to be allowed as under :

ORDER

- I. The appeal stands allowed.
- II. Respondents No.2 and 3 shall be liable to pay compensation of Rs.9,48,500/- (Rupees Nine Lakhs Forty-Eight Thousand and Five-Hundred only) (inclusive of N.F.L. amount) to the claimants/appellants.
- III. The payment made by respondent No.3/Insurance Company to the claimants/appellants, if any, with interest shall be deducted. The amount of enhanced compensation of Rs.9,01,785/- (Nine Lakhs One Thousand Seven Hundred and Eighty-Five only) shall be paid to the appellants/claimants with interest at the rate of 7% per annum within a period of three months from today.
- IV. Award be drawn accordingly.
- V. No order as to costs.
- VI. R & P be sent back to the concerned Tribunal.

[SHRIKANT D. KULKARNI, J.]