

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

FIRST APPEAL NO. 2002 OF 2015

01 Mudrikabai Pralhad Ghadge,
age: 57 years, Occ: H. H.;

02 Pralhad Laxman Ghadge,
age: 62 years, Occ: Nil,

Both R/o Bodka, Post: Rameshwar,
Tq. & District Latur.

Appellants

Versus

01 Sharad s/o Bharat Kashid,
age: major, Occ: Business,
R/o Umate, Anjangaon,
Tq. Madha, District Solapur.
(Driver of Tractor)

02 Sukhdev s/o Shankar Umate,
age: major, Occ: Agri.,
R/o Anjangaon, Tq. Madha,
District Solapur.
(Owner of tractor & trolley)

Respondents

Mr. Vikrant Valse and Mr. Avinash Reddy, advocates holding for
Mr. F. K. Patel, advocate for the Appellants.
Respondents No. 1 & 2 served.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 10th October, 2022.

ORAL JUDGMENT :

1 The appellants, who are the original claimants, have
filed this appeal against the judgment and award dated 10th April,

2015, passed by the learned Principal District Judge & *Ex Officio* Member of the Motor Accident Claims Tribunal, Latur (herein after referred to as “learned Tribunal”), whereby compensation of Rs.83,250/- along with interest @ 6% p.a. from the date of Claim Petition till the date of realization, is awarded.

2 The learned Counsel for the appellants strongly submitted that the learned Tribunal has erred in granting less amount of compensation by applying the wrong multiplier, which is applicable to the average age of the parents of the deceased. Further, according to him, the learned Tribunal has also wrongly deducted 50% of the compensation towards negligence of deceased himself. The learned Tribunal has also made deduction to the extent of half of the amount on account of loss of dependency instead of one third. He pointed out that though the Claim Petition was under Section 163-A of the Motor Vehicles Act, 1988, but the learned Tribunal decided the Claim Petition as if he was deciding the Petition under Section 166 of the Motor Vehicles Act, by wrongly applying the ratio of the judgment of the Hon’ble Apex Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009 ACJ 1298 (SC). The learned Counsel for the appellants relied on the judgment of Hon’ble Apex

Court in the case of **National Insurance Company Ltd. Vs. Sinitha & others**, Manu/SC/1374/2011.

3 On the contrary, the Respondents, who are driver and owner of the Tractor and Trolley involved in the accident, despite service, remained absent. The impugned judgment indicates that in the lower Court also, they had remained absent and, therefore, the Claim Petition proceeded *ex parte* against them.

4 On going through the impugned judgment, it is evident that the learned Tribunal has assessed the compensation amount by applying multiplier of 9 by considering the average age of the parents, who are the present appellants. However, it is now settled by the Hon'ble Supreme Court that such application of multiplier, in view of the average age of the parents, is not proper and multiplier, considering the age of the deceased is, in fact, applicable. As such, there is apparent error on the part of the learned Tribunal in applying the multiplier of 9. It is important to note that the multiplier, as mentioned in **Sarla Verma's** case (*supra*) is also not applicable since the Claim Petition is under Section 163-A of the Motor Vehicles Act, 1988. As such, multiplier "17", to the age group of deceased in between 20 years to 25 years,

as per the table below Second schedule under Section 163-A, would be applicable.

5 Further, the learned Tribunal has assessed the amount of compensation as per the guidelines in **Sarla Verma's** case (*supra*), but that is also not proper since the aforesaid table under Section 163-A, is required to be followed. Therefore, half deduction from the income of the deceased towards his personal expenses is not proper and instead of that the deduction should have been to the tune of one third.

6 It is to be noted here that the learned Tribunal, after assessing the amount of compensation, only granted half portion of it and the remaining half portion was attributed to the negligence of the deceased himself. Admittedly, the offence in respect of the accident was registered against the deceased only. However, while deciding the Claim Petition under Section 163-A, though the aspect of negligence of victim is not required to be proved by the claimants, but the opposite party namely the owner or insurer can prove the same. In the instant case, the Respondents had not appeared before the learned Tribunal and, therefore, no evidence was led by them so as to prove the

negligence of the deceased. Despite this, the learned Tribunal, by relying on the FIR itself, held that the deceased was negligent to the extent of 50%.

7 As aforementioned, the learned Counsel for the appellants heavily relied on the judgment of the Hon'ble Apex Court in the case of **National Insurance Co.Ltd. Vs. Sinitha & others** (*supra*), wherein following observation is made:

Held, the Tribunal in holding, that the rider was responsible for the accident, had placed reliance on copies of the first information report, post mortem certificate, report of inspection of vehicle, inquest report and final report. Neither of these, in our considered view, could constitute proof of "negligence" at the hands of rider. In a claim raised under Section 163A of the Act, the claimants have neither to plead nor to establish negligence. We have also held, that negligence (as also, "wrongful act" and "default" can be established by the owner or the insurance company (as the case may be) to defeat a claim under Section 163A of the Act. It was, therefore, imperative for the Petitioner-Insurance Company to have pleaded negligence, and to have established the same through cogent evidence. This procedure would have afforded an opportunity to the Claimants to repudiate the same. In the present case, only one witness was produced

before the Tribunal. The witness asserted, that while giving way to a bus coming from opposite side, the motorcycle, hit a large late rite stone lying on the tar road, whereupon, the motorcycle overturned, and the rider and the pillion-rider suffered injuries. The petitioner insurance company herein did not produce any witness before the Tribunal. In the absence of evidence to contradict the aforesaid factual position, it was not possible to conclude, that rider was “negligent” at the time when the accident occurred. Since, no pleading or evidence was brought (at the hands of the learned Counsel for the petitioner), it was not possible to conclude, that the inverse onus, which has been placed on the shoulders of the petitioner under Section 163A of the Act to establish negligence, was discharged by it. Petition dismissed.”

8 On going through the aforesaid observations, it is made clear that even though the FIR is against the deceased, no negligence can be proved on the basis of FIR itself and the owner or insurer has to establish the same through cogent evidence. As such, I find it improper on the part of the learned Tribunal to deduct the compensation amount to the extent of 50% on account of negligence of the deceased.

9 Further, the learned Tribunal has calculated the compensation based on the guidelines prescribed in **Sarla Verma’s**

case (*supra*), which, according to me, is not proper and the learned Tribunal should have followed the table under Section 163-A of the Motor Vehicles Act. Accordingly, I now calculate the compensation amount as per the said table below Second Schedule under Section 163-A of the Motor Vehicles Act, 1988.. The learned Counsel for the appellants fairly submits that the notional income of the deceased can be taken as Rs.36,000/- per anum, as observed by the learned Tribunal. Thus, by applying the multiplier of 17 to the said income, the amount of compensation, as per the aforesaid schedule, comes to Rs.6,48,000/-. From the said amount, one has to deduct one third amount, being the personal expenses of the deceased. On such deduction, the amount of compensation comes to Rs.4,32,000/-. Moreover, as per the Schedule, amount of Rs.4500/-, on account of funeral expenses and loss of estate, needs to be added. As such, the final amount of compensation comes to Rs.4,36,500/-, which is the just and proper compensation as per the second schedule of Section 163-A of the Motor Vehicles Act, 1988. So far as rate of interest is concerned, the learned Tribunal has granted interest on the compensation amount @ 6% p.a. and considering the prevailing rate of interest, it appears just and proper. The learned Counsel for the appellants pointed out that despite passing of award, the

respondents have not deposited any amount and, therefore, following order is passed:

- (i) The appeal is hereby allowed.
- (ii) The appellants-claimants are now entitled to get compensation of Rs.4,36,500/- along with interest @ 6% p.a. from the date of Claim Petition till its realization from the respondents jointly and severally.
- (iii) The respondents shall pay the amount of compensation within three months from the date of this order and on such deposition, the compensation amount be distributed in equal proportion between the appellants.
- (iv) The appellants shall pay the deficit court fees within two weeks after it is computed by the office.

(SANDIPKUMAR C. MORE)
JUDGE

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