IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2748 OF 2009

1. Shri Kavilethu Neelakantan Rajan,
Age 52 years, Occu. Pensioner,

2. Sow. Amibily w/o Kavilethu Rajan,
Age 43 years, Occu. Housewife

Both R/o H.No.2125, Vidyanagar,
Arangaon Road, Ahmednagar … APPELLANTS

<u>VERSUS</u>

1. Udailal Ramnarayani Ahir,
Age 42 years, Occu. Transport,
R/o Village Jojro-ka-Kheda,
Tehsil Gangras, Dist. Chittorgarh,
Rajasthan, PIN – 312 001

2. The Manager,
I.C.I.C.I. Lombard Motor Insurance,
Zenith house, Keshavrao Khade Marg,
Mahalaxmi, Mumbai – 400 034

(Notice to be served on the
Manager, ICICI Lombard Motor
Insurance, Adventure Towers,
In front of Oberoi Hotel,
Zopadi Canteen, Savedi Road,
Ahmednagar) … RESPONDENTS

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Shri A.C. Darandale, Advocate for appellants
Smt. A.N. Ansari, Advocate for respondent No.1.
Shri R.H. Dahat with
Shri S.S. Patil, Advocates for respondent No.2.

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 29th November, 2021

Date of pronouncing judgment : 28th January, 2022.

J U D G M E N T :

This is an appeal for enhancement of compensation granted by Motor Accident Claims Tribunal (MACT), Ahmednagar on account of death in vehicular accident. The Motor Accident Claim Petition (MACP) was preferred by the appellants – parents of the deceased Rakesh. The Tribunal granted a lumpsum compensation of Rs.6,00,000/- along with interest @ 6% p.a. The appellants – claimants, feeling the compensation to have been grossly inadequate, have preferred the present appeal.

2. Facts giving rise to the present appeal are as follows :-

3. The deceased Rakesh was the only child of the appellants herein. He was Last Year student of M.B.A. He was to appear for the last semester of the M.B.A. He had cleared all the examinations with very good performance. In a Campus interview, the Reliance Securities India Ltd. had offered him a job with annual pay package of Rs.3,00,000/-.

Deceased Rakesh was 22 years of age. He died in an accident involving motorbike and the truck.

4. The learned counsel for the appellants would submit that, the deceased Rakesh had very bright future. He was the only child of the appellants. He had been offered a pay package of Rs.3,00,000/- p.a. by a renowned industry. The Tribunal ought to have granted compensation applying the requisite formula given in various judgments of the Apex Court. According to learned counsel, the Apex Court, in case of Krishna Moorthy (2020) 15 SCC 493, has given certain principles regarding grant of compensation in case of death of a student. The learned counsel has also relied on the following two authorities, to ultimately submit that, the Tribunal ought to have granted just and adequate compensation :

(1) (2020) 15 SCC 493 [M.R. Krishna Murthi Vs. New India Assurance Company Ltd. and others]

(2) (2015) 2 SCC 180 [Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & anr.]

(3) (2020) 9 SCC 644 [New India Assurance Company Limited Vs. Somwati & ors. etc. etc.]

5. Learned counsel for the appellants, therefore, urged for allowing the appeal.

6. Learned counsel for the respondent Insurance Company would, on the other hand, submit that, the deceased was a student. The alleged offer of job was post the deceased breathed his last. The offer was conditional and as such, was contingent upon various factors. The deceased died bachelor. His father, one of the appellants, is an Ex-serviceman. The mother of the deceased could be said to be dependent on her husband alone. According to learned counsel, the Tribunal, in the facts and circumstances of the case, has granted adequate compensation. There is no warrant for interference with the impugned award. The learned counsel has relied on the Apex Court judgment in case of Malliga Vs. Thiruvalluvar Transport Corporation [(2000) 10 SCC 532].

7. Considered the submissions advanced. Perused the citations relied on. Also gone through the evidence in the matter. In case of Krishna Murthi, the Apex Court has observed as under :

The following principles can be culled out from the decided cases on this issue :

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poser would be : what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/ interest of the complainant to pursue a particular career, facilities available to him/ her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career, etc. If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) There may be cases where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.

(iv) After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof

> would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important.

8. Admittedly, the deceased died in a vehicular accident. He was 22 years old, Last Year M.B.A. student. His academic performance was very good. He was to appear for the last semester of the M.B.A. The appellants placed on record documentary evidence to indicate that, Reliance Securities had offered the deceased a job with annual pay package of Rs.3,00,000/- with other perks. The job offer letter is at Exh.56. It was issued a day after the deceased breathed his last. The letter reads :-

> "This is only an offer and not an appointment order. A formal appointment order will be issued to you on the date of joining, subject to you fulfilling the following terms and conditions of the offer :
>
> - You should be found medically fit,
>
> - You should satisfactorily complete the Post Graduate program that you are pursuing in your respective institute/ college. In the event that you are unable to complete your post-graduate program, this offer will stand null and

> void.
>
> - Your performance should be as per the standards and indicators as shared with you by way of your goal sheet. Your performance will be tracked on a regular basis and accordingly feedback will be provided to you. We are sure you will meet our expectations in the long run."

9. As regards pay and perks, it has been mentioned in the letter :-

> "Basic Conveyance and Retirement benefits, which include Provident Fund and Gratuity, as per company policy. In addition to this you will also be eligible for Performance Linked Variable Pay, Lunch Allowance and Mobile Phone reimbursement as per the company policy. You will be covered under Medical Insurance and Group Accident policy as applicable to your Grade."

10. The split up of the pay package has not been given. Some documentary evidence has also been placed on record to suggest that one Sneha, colleague of the deceased, had also been selected in a Campus Interview for a job with Reliance Company. She was examined as a witness. She placed on record the details of her salary. According to her, she was drawing a salary of Rs.18,000/- per month. It was her take home salary after certain deductions. The Tribunal

has, however, examined her Bank Statement to find that at no point of time the salary of more than Rs.14,000/- was deposited in her Bank Account.

11. The deceased was unemployed while he breathed his last. He was still a student of M.B.A. The job offer letter was conditional one. The salary was linked with his performance. The offer of the job was for a duration of one year subject to continuation on the basis of the performance. It is reiterated that, no split up of the proposed salary has been given. Moreover, one Manoj, colleague of the deceased was examined as a witness. It is in his evidence that, he was selected in the Campus Interview. His monthly salary was Rs.12,000/-.

12. Since the deceased died bachelor and unemployed, for grant of just and adequate compensation, this Court proposes to consider his notional income at Rs.1,80,000/- p.a. The fact that the father of the deceased is a pensioner is undisputed.

13. The Constitution Bench judgment of the Apex Court in case of **National Insurance Company Limited Vs.**

Pranay Sethi and others [(2017) 16 SCC 680] was not in the field when the impugned award was passed. The appeal being continuation of the original claim, needs to be governed by the Apex Court directions in Pranay Sethi's case (supra). In view of the same, the amount of compensation payable to the appellants herein is worked out as under :

14. The annual income of the deceased is considered at Rs.1,80,000/-. 40% thereof is added on account of future prospects, which comes to Rs.72,000/-. The total comes to Rs.2,52,000/-. Since the deceased died bachelor, one half thereof is deducted towards his personal and living expenses. Thus, the loss of annual dependency would come to Rs.1,26,000/-. Since the deceased died at the age of 22, multiplier of 18 is applied. Thus, applying the multiplier of 18, the total compensation on account of loss of dependency comes to Rs.22,68,000/-. A total sum of Rs.1,10,000/- is awarded towards loss of love and affection, funeral expenses and loss of estate. Thus, the total amount of compensation to which the appellants are entitled to, comes to Rs.23,78,000/-. With this, the appeal succeeds in terms of the following order :-

ORDER

(i) The appeal is allowed. The amount of compensation granted by the Tribunal is enhanced to Rs.23,78,000/-, to be paid along with interest @ 6% p.a. from the date of claim petition to the date of payment. However, the amount of Rs.1,10,000/- shall not carry interest pendent lite i.e. from the date of petition to the date of this order.

(ii) The amount which has already been paid by the respondent Insurance Company be given due set off.

(R. G. AVACHAT)
JUDGE

fmp/-