IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1317 OF 2009

Smt. Sushila Laxman Pawar and Ors. ...Appellants
Versus
Khandu Ragho Wadge and Anr. ...Respondents
...
Ms Aditi Naikare with Ms Nazia and Mr. P.J. Thorat for the Appellants.
Ms P.M. Bhansali with Ms Dharini Jain i/b. M/s. G.S. Hegde and Associates for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 8th SEPTEMBER, 2022.

P.C.:-

1. The Appellants (hereinafter referred to as 'the Claimants') have challenged the Judgment and Award dated 30/04/2009 passed by the Claims Tribunal, Nashik in Claim Petition No.49 of 2006. By the impugned judgment, the Claims Tribunal has awarded compensation of Rs. 2,00,000/- with interest @ 7.5% p.a. from the date of the petition till final realization.

2. The Claimant No.1 is the widow and Claimant Nos.2, 3 and 4 are the children of the deceased Laxman Pawar, who expired in a motor vehicular accident involving ST Bus No.MH12-FA-1469, owned by Respondent No.2-Corporation. On 28/12/2005 at about 6.00 p.m. the

deceased was returning home on his motorcycle bearing registration No.MH Z 5783. The offending ST bus which was proceeding from Nashik to Ghoti dashed against his motorcycle at Modak signal on Tryambak Road. The deceased died on the spot due to the injuries sustained in the accident. It is the case of the Claimants that the accident was caused solely due to rash and negligent driving by the driver of the offending ST Bus.

3. The deceased was 55 years of age and was working as a Manager in 'Nashik Zila Majur Sanstha Sahakari Sangh Maryadit, Nashik' and was earning Rs.14,100/- per month. In addition the deceased was also getting agricultural income of Rs.50,000/- per annum. The Claimants have stated that the deceased was the only earning member of the family and they were totally dependent on him. Hence, they filed a petition under Section 166 of the Motor Vehicles Act, 1988 for Rs.8,50,000/-.

4. The Respondent No.2-Corporation denied that the accident was caused due to rash and negligent driving by the driver of the ST bus and raised the defence that the accident was caused due to the negligence of the deceased, the rider of the motorcycle. The Respondent also disputed the age and income of the deceased.

5. The Tribunal recorded a finding that accident was caused due to rash and negligent driving of the driver of the ST bus. The Tribunal observed that the deceased was in permanent employment and earning gross salary of Rs.14,100/- per month and after excluding the deductions, the deceased was getting net salary of Rs.5,964/- per month. The Tribunal held that since two vehicles were involved in the accident, the Claimants are entitled for compensation of Rs.2,00,000/-. Accordingly, the Tribunal directed Respondent No.2-Corporation to pay to the Claimants sum of Rs.2,00,000/- with interest @ Rs.7.5% per annum from the date of the petition till final realization. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Claimants have filed this appeal.

6. Heard Ms Naikare, learned counsel for the Claimants and Ms Bhansali, learned counsel for the Respondent No.2-Corporation. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable.

8. At the outset it may be mentioned that Section 168 of the

MV Act enjoins upon the Claims Tribunal to make an award determining the amount of compensation which appears to it to be just. Though the section gives vast discretion to the Tribunal to determine "just compensation", the wide amplitude of the power does not empower the Tribunal to determine the compensation arbitrarily by ignoring the settled principles relating to the determination of the compensation.

9. In ***Kerala State Road Transport Corporation vs. Susamma Thomas, (1994) 2 SCC 176*** the Hon'ble Supreme Court observed that in a fatal accident action the accepted measure of damages awarded to the dependents is the pecuniary loss suffered and is likely to be suffered by each dependent as a result of the death. It was reiterated that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the Claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, i.e., balance of loss and gain to a dependent by the death, must be ascertained. The Hon'ble Court held that the multiplier method is the sound method of assessing compensation. The principle that the multiplier method is the sound method of assessing compensation and that there should be no departure from the multiplier method has been affirmed in ***U.P.S.R.T.C. v/s. Trilok Chandra (1996) 4 SCC 362.***

10. In ***Sarla Verma v/s. Delhi Transport Corporation (2009) 6 SCC 121,*** the Two Judge Bench reiterated the principles laid down in ***Susamma Thomas*** and ***Trilok Chandra*** and further observed that compensation awarded does not become 'just compensation' merely because the Tribunal considered it to be just. It was held that just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be bonanza, largesse or source of profit. In order to have uniformity and consistency in determination of quantum of compensation in case of death in a motor vehicle accident, the Apex Court held that the Tribunal should determine the compensation by following the well-settled steps viz., ascertaining the multiplicand, the multiplier and calculation of loss of dependency by multiplying the multiplicand by such multiplier. The Apex Court recommended multiplier arrived at by juxtaposing ***Susamma Thomas*** (supra)***, Trilok Chandra*** (supra) and ***New India Assurance Co. Ltd. v/s. Charlie (2005) 10 SCC 720,*** which has been approved by the Constitution Bench of the Apex Court in ***National Insurance Co. Ltd. v/s. Pranay Sethi (2017) 16 SCC 680.***

11. In the instant case, the Tribunal has recorded a finding that the accident has caused due to rash and negligent driving by the driver of the ST bus. The Tribunal observed that the net salary of the deceased was Rs.5,964/- per month and further observed that since both the vehicles were equally responsible for the accident, the claimants were entitled for lumpsum compensation of Rs.2,00,000/-.

12. The Tribunal having returned a finding that the accident was caused due to rash and negligent driving by the driver of the ST bus, was not justified in deducting any amount towards contributory negligence. Furthermore, the approach of the Tribunal in awarding lumpsum compensation by deviating from well recognized and accepted multiplier method in determining the compensation, is totally arbitrary and manifestly erroneous. Since the compensation awarded by the Tribunal is not just and reasonable, it is necessary for this Court to appreciate the evidence and determine the quantum of compensation.

13. It is not in dispute that the deceased was 55 years of age. He was employed with 'Nashik Zila Majur Sanstha Sahakari Sangh Maryadit, Nashik'. AW1-Sushila Pawar had produced the salary certificate at Exhibit – 24, proves that the deceased was drawing salary of Rs.14,100/- per month i.e., Rs.1,69,200/- per annum. After deducting

certain amount towards GPF, LIC, professional tax, etc., he was getting in hand net salary of Rs.5,964/- per month.

14. It is well-settled that while ascertaining the income of the deceased, deductions towards GPF, Life Insurance Premium, repayment of loan, etc. cannot be excluded from the income. The only permissible deduction is the amount paid towards income tax and professional tax. In this regard, the salary certificate (Exhibit - 24) indicates that an amount of Rs.200/- per month was deducted towards professional tax and an amount of Rs.3,700/- was deducted towards income tax. Upon excluding this amount, the deceased was getting monthly income of Rs.1,63,100/- per annum.

15. The deceased was a permanent employee and he was 55 years of age. In ***Pranay Sethi*** (supra), the Hon'ble Supreme Court endorsed addition of 15% of the actual income towards future prospect. Considering that there were total four dependents, 25% of the income has to be deducted towards personal expenses of the deceased. Considering the age of the deceased, loss of dependency has to be computed by applying multiplier of 11. In addition, the claimants would also be entitled for compensation on other conventional heads viz., loss of spousal and parental consortium, loss of

estate and funeral expenses.

16. Under the circumstances, the claimants are entitled for compensation as under :-

1.	Income of the deceased -	Rs. 1,63,100/- per annum
2.	Addition of 15% towards Future prospects	Rs.1,87,565/- [1,63,100 + 24,465/-]
3.	Deduction of 25% towards personal expenses	Rs.1,40,674/- [Rs.1,87,565/- - Rs.46,891/-]
4.	Loss of dependency by applying multiplier of 11.	Rs.15,47,411/- [Rs.1,40,674/- x 11]
5.	Loss of spousal and parental consortium	Rs.17,07,411/- [Rs.15,47,411/- + Rs.1,60,000/-]
6.	Loss of estate and funeral expenses	Rs.17,37,411/- [Rs.17,07,411/- + Rs.30,000/-]

17. Under the circumstances and in view of discussion supra, the claimants are entitled for total compensation of Rs.17,37,411/- which in my considered view, is just and reasonable compensation.

18. Hence, the Appeal is allowed. The impugned judgment and award is set-aside. The claimants are held to be entitled for compensation of Rs.17,37,411/- with interest @ 6% p.a. from the date of the petition till final realization. The Respondent No.2 – Corporation shall deposit the balance amount of compensation within a period of eight weeks from the date the order is uploaded. Request by the learned counsel for the Respondent No.2 to stay the operation of the

order, is rejected. Pending Civil/Interim Applications, stand disposed of in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)