

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2220 OF 2007
IN
M.A.C.T. APPLICATION NO. 3901 OF 1997

The State of Maharashtra

At the instance of the Commissioner of Police,
Mumbai.

.. Appellant

(Org. Opponent)

Versus

1. Smt. Vandana Ramesh Mungekar

Aged about 35 years,
w/o. The deceased.

2. Kumari Rashmi Ramesh Mungekar

Aged about 10 years,
daughter of the deceased

3. Master Rohit Ramesh Mungekar

Aged about 7 years,
s/o. Deceased.

All are r/at 2/93, HexBhopkar Chawl,
Vakola Bridge, Dhobighat, Santacruz (E),
Mumbai – 400 055.

.. Respondents

(Org. Claimants)

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- Mr. N.B. Patil, AGP for State
 - Mr. T.J. Mendon for the Respondents
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CORAM : MILIND N. JADHAV, J.

Reserved on : JULY 21, 2022

Pronounced on : OCTOBER 13, 2022

JUDGMENT :

1. Heard learned AGP appearing for the Appellant – State and learned Advocate for Respondents and with their able assistance, perused the entire record of the case.

2. By the present First Appeal, Appellant i.e. State of Maharashtra has challenged the legality of the Judgment & Order dated 11.07.2002 passed by the Chairman, Motor Accident Claims Tribunal, Mumbai (for short “**trial Court**”). The operative part of the Judgment and Order reads thus:-

“The claim application is allowed.

The Opp. Party do pay Rs. 5,85,500/- (Rupees Five Lakh Eighty Five Thousand Five Hundred Only) inclusive of Rs. 50,000/- awarded under Section 140 of the Motor Vehicles Act, 1988 together with interest at the rate of 9% p.a. from 1st February, 1998 till its realization.

The respective parties shall bear their own costs of the application.

The amount is appointed as follows:-

(a) Rs. 2,35,500/- together with proportionate amount of interest be paid to the applicant No. 1.

(b) Each applicant Nos. 2 and 3 shall be paid Rs. 1,50,000/- together with proportionate amount of interest and same be invested in the name of respective minor applicants in any Nationalized Bank, till each of them attains the age of majority”.

3. The challenge in the First Appeal is principally raised on three grounds viz.

- (i) that the learned trial Court erroneously considered in taking into account the income of the deceased @ Rs. 4000/- per month for arriving at the final compensation;
- (ii) that the learned trial Court erroneously applied the multiplier of 15 under the provisions of Section 163A

read with Schedule 1 of the Motor Vehicles Act, 1988 (for short “**the said Act**”) in computing the final compensation payable to the Respondents; and

- (iii) that the learned trial Court committed an error of law in deducting the compensation to the extent of 20% for contributory negligence to the accident on the part of the deceased and that trial Court ought to have deducted the compensation awarded / computed to the extent of more than 50% therefrom.

4. For appreciating the challenge by the State Government, the facts which emerge for consideration from the record of the case need to be considered. They are as follows:

4.1. On 07.08.1997 the accident occurred in which Ramesh Vishram Mungekar, husband of Respondent No. 1 and father of Respondent Nos. 2 and 3 was injured.

4.2. It was Respondents' case that Ramesh Mungekar who was crossing Aliyawar Jung Road, Near New Agripada signal on 07.08.1997 at around 10:45 p.m. in the night was hit by a motor car bearing No. MH-01/P-797 driven at a high speed rashly and negligently. He sustained serious injuries. He was taken to V.N. Desai Hospital, Santacruz (E) initially and thereafter shifted to Nair Hospital on 14.08.1997. He succumbed to his injuries in Nair Hospital on

23.08.1997. C.R. No. 480 of 1997 was registered against the driver of the offending car.

4.3. It was Respondents' case that deceased Ramesh was then aged 38 years. He was working with Alkast Foundary Pvt. Ltd. as a Salvage Inspector on a monthly salary of Rs. 5,200/-. He was in good health and could have lived upto 75 years of age in normal course. That the offending vehicle was driven rashly and negligently.

4.4. It was contended by the opposite party that deceased Ramesh was crossing Aliyawar Jung Road from east to west at the time when the incident occurred. That he was under the influence of liquor and was not able to control his walk. That the offending vehicle was driven with proper care and precaution. That though the driver of the offending vehicle had blown the horn and it was the negligence of deceased Ramesh while crossing the road which led to the accident.

4.5. Respondents filed MACT Application No. 3901 of 1997 before MACT and claimed compensation of Rs. 6,00,000/-.

4.6. With the above rival contentions, both sides led evidence of witnesses in support of their respective cases. PW-1 - Vandana Ramesh Mungekar (Respondent No.1 herein) deposed the incident as narrated above. She has stated that Ramesh was 38 years old at the time of his death. He was earning monthly salary of Rs. 3500/- and average monthly overtime wage of Rs. 1500/-. He was in employment since

28.05.1977. PW-1 in support of her case placed on record a true certificate issued by Ramesh's employer giving the particulars of his service and wages earned. This certificate was taken on record in evidence and marked 'X' for identification.

4.7. PW-2 is Dr. Ramesh R. Savardekar attached as Medical Officer to Nair Hospital. He carried out postmortem on the dead body of Ramesh after his death and opined that the cause of death was due to acute renal failure in a case of cometic fracture of pelvis (unnatural). He has prepared the postmortem report (Exh. 11) which is proved in evidence.

4.8. PW-3, Vijay Vishwasrao is the Personal Officer working in Alkast Foundary Pvt Ltd. i.e. Ramesh's employer. He has deposed that Ramesh was drawing monthly salary of Rs. 5500/- [including overtime charges] at the time of his death . He has further deposed that as per the Company's rules, the age of his retirement was 58 years. On the date of his deposition i.e. 25.06.2002, Ramesh would have drawn a monthly salary of Rs. 8000/-. There is no reason to disbelieve the evidence of PW-3. It is also discernible that Ramesh had almost 20 years of service still left before superannuation.

4.9. PW-4 - Mr. Anil Patil is the Police Constable who was on patrolling duty at the traffic signal where the accident occurred. He has deposed that he saw Ramesh crossing the road at the traffic signal

junction and going from east to west. He has deposed that when Ramesh had crossed the distance halfway, the red light turned green which was a signal to the traffic to proceed which was coming to Santacruz from Vile Parle. That on the light turning green, the vehicular traffic started and he saw that a white ambassador car giving a dash to Ramesh. Since he was at the traffic junction, he noted down the registration number of the car i.e. MH-01/P-797. He and the driver of the offending car removed Ramesh to V.N. Desai Hospital nearby. He has next deposed that the accident took place because of negligence of the driver of offending car. In his cross-examination, PW-4 has vividly described the proximity of the spot of incident from the place where he was standing. He has stated that he was standing at a distance of 10 feet from the spot of accident and the offending car was at a distance of 7 to 8 feet from him when the lights turned green. At that time the offending car moved in front. He has deposed that after he heard the sound of impact, his attention was drawn and he immediately went to the accident spot. That Ramesh was alone while crossing the road. That Ramesh was not keeping his balance and he appeared to be slightly dizzy. That after suffering the knock from the offending car, Ramesh was unconscious when he kept him in the car for removing him to hospital.

4.10. The ocular evidence given by PW-4 assumes significance as

he is the star witness of the incident. It is pertinent to note that in his examination-in-chief PW-4 has stated that the accident took place because of the negligence of the driver of the offending car whereas in his cross-examination, he has stated that while crossing the road, Ramesh was not keeping his balance and he did not know the reason for the same.

4.11. The above evidence of PW-4 will have to be considered in juxtaposition with the evidence of DW-1 who is the driver of the offending car.

4.12. PW-5 is the Investigating Officer (for short “IO”) who has deposed on behalf of the prosecution. He has stated that he carried out the investigation of the offence of the accident and submitted chargesheet against the driver of the offending vehicle before the Metropolitan Magistrate.

4.13. In the above context, the evidence of DW-1 now needs to be considered. DW-1 is the driver of the offending vehicle. He has deposed that he has been working as driver in the Police Department since 01.04.1991. The offending vehicle was driven by DW-1 and was assigned to Mr. Pathak, D.C.P. On the date of incident, DW-1 was driving the car from Santacruz Airport to the residence of Mr. Pathak when it neared the traffic junction on Aliyawar Jung Marg at about 10:30 p.m. Since there was a red light, DW-1 slowed down the speed

of the car but found that one pedestrian (Ramesh) was crossing the road without keeping his balance properly. That Ramesh fell on the car when it was 30 feet away from the signal while crossing the road from east to west. That he had blown the horn of his car. That upon the happening of the accident, he stopped his car immediately and removed Ramesh initially in taxi to Vakola Police Station and thereafter to V.N. Desai Hospital. He has deposed that when he lifted Ramesh to put him in the taxi, he smelt alcohol from his mouth. He has blamed Ramesh for the accident.

5. After appreciating the evidence of the witnesses on both sides and the rival contentions, it is clearly seen that the evidence given by PW-4 is highly reliable. PW-4 is not an interested witness and has been a witness to the accident right before his own eyes. In so far as the deposition of DW-1 is concerned, the same on the face of it, appears to be unreliable. PW-4 in his deposition and cross-examination has not stated that Ramesh was reeking or smelling of alcohol whereas it is only DW-1 who has stated so. The reason for addressing this issue arises because the learned trial Court in its impugned Judgment & Order dated 11.07.2002 has given a finding that Ramesh had contributed to the accident and contributory negligence was attributable to Ramesh. The trial Court has therefore deducted the final compensation payable to Ramesh by 20%. It is the

case of the Appellant that on the strength of the evidence of DW-1, it ought to have been considered that there was contributory negligence on the part of Ramesh in the occurrence of accident and thus, the deduction in compensation ought to have been 50% and not 20%.

6. After minute perusal of the evidence given by the witnesses of both sides and re-appreciating the same as alluded to herein above, I am of the considered opinion that no contributory negligence can be made attributable to Ramesh for the accident. There is one more reason as to why I say this. It is only DW-1's deposition that Ramesh was smelling of alcohol. The medical casepapers of Ramesh's admission and treatment at V.N. Desai Hospital, Andheri are part of record. The said medical papers do not refer to Ramesh having been under the influence of alcohol at the time of accident. That apart deposition of PW-4, the only eye witness to the accident does not state that Ramesh was smelling from alcohol. It needs to be noted that PW-4 himself shifted and removed Ramesh from the road into the vehicle and assisted DW-1 to remove him to the hospital from the spot of accident. Another important factor which needs to be noted here is that the Appellant has sought to place reliance on the postmortem report of deceased Ramesh in support of the above ground. This reliance cannot be countenanced in view of the fact that the accident occurred on 07.08.1997, whereas Ramesh expired on 23.08.1997 and

the autopsy was carried out thereafter. Further in the postmortem report , no liquor has been observed in the stomach.

7. Next we come to the final ground raised by the Appellant with respect to the multiplier factor in the present case. It is Appellant's case that trial Court has wrongly applied multiplier factor of 15 to the present case. On considering the material and evidence placed on record by the Respondents (original Applicants), it does not appear so. Ramesh had a good 20 years of service left from the date of accident. In terms of the decision of the Apex Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors.**¹, for the age group of 36 to 40 years multiplier of 15 has been specified. Hence, I agree with the multiplier factor of 15 adopted by the trial Court and I would maintain the same at this stage.

8. Learned Advocate appearing on behalf of Respondents has referred to and relied upon the decision in the case of **United India Insurance Co Ltd v. Smt. Kunti Binod Pande & Ors**² in support of the proposition that even if there is no Cross Appeal or Cross-Objection preferred by the Respondents (claimants), the exercise of determining the just compensation will have to be carried out by this court in the present proceedings. In this decision, after considering various decisions of the Supreme Court and this Court, the learned Single

1 AIR 2009 SC 3104

2 2020 (2) TAC 664 (Bom)

Judge of this Court in paragraph Nos. 37 and 38 has held as under:-

“37. In so far as the judgment of Supreme Court in case of Ranjana Prakash & Ors. v/s. Divisional Manager and Anr. (supra) is concerned, the said judgment has been interpreted by this Court in various judgments already referred to aforesaid and after considering the later judgment of the Supreme Court, it is held by this Court that filing of substantive appeal or cross-objection by the claimant for seeking enhancement of the claims is not necessary. The principles of law laid down by the later judgment of Supreme Court and this Court in large number of judgments referred to aforesaid, apply to the facts of this case. The reliance placed by the learned counsel for the appellant on the judgment delivered by Shri Justice G.S. Patel on 29th June, 2017 in case of United India Insurance Company Limited v/s. Rajani Suresh Bhore and Ors. (supra) is misplaced. The judgment of the Supreme Court in the aforesaid judgment taking a different view, apply to the facts of this case. I am respectfully bound by the said judgment.

38. In my view, there is thus no embargo on this Court to enhance the claims not awarded by the Tribunal in favour of the original claimant. Those compensation can be awarded to grant "just compensation" in favour of the claimant to do complete justice in the matter. In my view, there is thus no substance in the submission of the learned counsel for the appellant that various judgments referred to and relied upon by the learned counsel for the respondent nos. 1 to 4 had not considered the provisions of Order XLI Rule 33 of the Code of Civil Procedure, 1908. The Division Bench of this Court in case of National Insurance Co. Ltd. v/s. Ms. Vaishali Harish Devare and Ors. (supra) had considered the provisions of Order XLI Rule 33 of Code of Civil Procedure in the said judgment. In my view, since it is the statutory obligation of the Tribunal and also the Court to do complete justice to the parties and award "just compensation", there is no restriction to enhance the compensation in appropriate case even in absence of cross-appeal or cross-objection. Appeal proceedings are in continuation of proceedings before Tribunal. In my view, claimant can be permitted to pay an additional amount of Court fees, if any on the additional compensation, allowed by the Appellate Court on the differential amount.”

8.1. Thus, it is seen that the principles laid down by the Supreme Court and more particularly, this Court in a large number of judgments clearly apply to the facts of the present case. In the present

case, the learned trial Court has returned a finding in paragraph No. 20 of the Judgment as under:-

“20. The Applicants, however, are not entitled for the compensation of the said amount of Rs. 7,29,500/-. For the reasons that the said deceased got confused, in the midst of road and fall on offending vehicle & had been careful too could have accident. He has therefore contributed the accidents. I, however, in view of the circumstances recorded above put more responsibility upon the driver of offending car. The compensation, therefore, will have to be reduced by 20%. The amount payable to the applicants, therefore, comes to Rs. 5,76,000/- and adding Rs. 9,500/-, the total amount of compensation comes to Rs. 5,85,000/-.”

8.2. The reasoning given by the learned trial Court for deducting 20% from the final compensation amount due and payable to the Respondents is attributed to the 'contributory negligence' of deceased Ramesh in the accident. *Prima facie* it appears that with a flash of the pen, the trial Court has given the said finding. It is pertinent to note that prosecution has relied upon the ocular evidence of PW-4 who was present at the distance of 10 feet away from the spot of accident when it occurred. Testimony of PW-4 is not only reliable but deserves to be accepted. PW-4 is not an interested witness in the present case but is a public servant who was doing his official public duty at the traffic signal on the date and time of occurrence of the accident. PW-4 in his deposition and cross-examination has not stated or deposed that deceased Ramesh was smelling of alcohol or he got confused. It is only the evidence of DW-1 i.e. the driver of the offending vehicle which states that deceased Ramesh was smelling of alcohol. However,

deposition of DW-1 is not corroborated or supported by the medical evidence which is adduced by the prosecution in the form of medical case papers and postmortem notes pertaining to deceased Ramesh. There is no material placed on record to support the defence theory that Ramesh was intoxicated or under the influence of alcohol when he met with the accident. This is required to be gone into in view of the fact that the learned trial Court has arrived at a finding that due to Ramesh's contributory negligence he had met with the accident. There is also positive evidence which has come on record in the deposition of PW-4 when he has stated that the offending car was standing stationery at the signal and only when the lights turned green, the offending car picked up speed and dashed Ramesh who was crossing the road at the traffic junction. Hence in view of the reliable deposition of PW-4, it cannot be derivated that there was contributory negligence on the part of Ramesh in the accident which occurred.

9. It is therefore directed that Appellant (original Respondent) is directed to deposit the balance 20% amount which has been deducted by the impugned order in paragraph 20 thereof in the trial Court along with simple interest @ 8% p.a. from the date of filing of the claim Petition till payment within a period of eight weeks from the date of this Judgment & Order. Respondents are permitted to deposit the additional court fees that would be required to be

deposited / paid in respect of the additional amount directed by this order in the trial Court. Such court fees shall be deposited within a period of eight weeks from the date of this judgment. It is further directed that apart from the above, if any earlier compensation awarded by the impugned judgment has been withheld by the trial Court and is required to be paid over to the Respondents if any, the same shall be paid forthwith on receipt of an authenticated copy of this Judgment & Order.

10. In the result, First Appeal is dismissed with the aforesaid directions to both the parties.

11. No costs.

12. Order accordingly.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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