

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1005 OF 2019

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1. Mulchand Dhanji Shah

Adult, Indian Inhabitant, Age : 62 yrs.
 Father of Deceased, Occ. : Retired,
 But looking after the business of
 Deceased

2. Mrs. Ranjanben Mulchand Shah,

Adult, Indian Inhabitant, Age : 60 yrs.
 Mother of Deceased, Occ : Housewife,
 Both was having address at B-312,
 Anant, 46, M.M. Malviya Road,
 Opp. Tel. Exchange, Mulund (W),
 Mumbai – 400 080.

... Appellant
 (Orig. Applicants)

Versus

1. Mr. Noordam Iraj Ahmed

Owner of the Truck No. GJ-15X-8541
 Residing at Near Railway Gate, St.
 Bhilad,
 Taluka – Umargaon, District : Valsad
 Gujarat

...Respondent No.1
 (Opp. Party No.1)

2. Mr. Skraj Dehri, S. Yadav

(Driver of Truck No. GJ.15X-8541,
 Age : 45 years, residing at
 Dahaliwadi, Taluka – Umargaon,
 District : Valsad Gujarat

..Respondent No.2
 (Opp. Party No.2)

**3. The Oriental Insurance Company
 Limited,**

Divisional office at Jogeshwari
 Branch, 103/104,
 Paizen Apartment, S.V. Road,
 Jogeshwari, Mumbai-400 102 and
 Regional Office No.2,
 Oriental House, 7, J. Tata Road,
 Mumbai – 400 020.
 Policy No. 122201/31/2004/1487

..Respondent No.3

Valid upto : 21.08.2003 to 20.08.2004 (Opp. Party No.3)
Vehicle No. GJ.15X-8541

Mr.Gaurav Parkar, Advocate for appellant.
Mr.Saumen S. Vidyarthi, Advocate for respondent No.3.

CORAM : N.J. JAMADAR, J.
Reserved for Order on : 2nd DECEMBER 2021.
Pronounced on : 10th JANUARY 2022.
(THOUGH VIDEO CONFERENCE)

JUDGMENT :

1. This appeal is directed against a judgment and award in Application No.288 of 2005 dated 27th February 2013, passed by learned Member, Motor Accident Claims Tribunal, Mumbai (Tribunal'), whereby the compensation of Rs. 3,20,000/- was awarded under section 166 of the Motor Vehicles Act, 1988 ('MV Act') in respect of the death of Digesh Mulchand Shah, the deceased son of the appellants-original applicants. (The parties hereinafter are referred to in the capacity, they were arrayed before the learned Member, Tribunal).

2. Shorn of unnecessary details, the background facts leading to this appeal can be stated as under :

Digesh, the deceased son of the applicants, then 24 years of age, was on his way to Mumbai in a car, alongwith a friend. When they reached village Waliv near Vasai, a truck bearing No. GJ-15-X-8541 ('offending vehicle'), owned by opponent No.1,

driven by opponent No.2, and insured with opponent No.3, came in a high speed and gave dash to the deceased's car. The deceased and his friend sustained injuries in the accident. The deceased was pronounced dead on admission at Agarwal Hospital. The deceased was dealing in a business and used to earn Rs.2,00,000/-per annum. The applicants were totally dependent on the income of the deceased. Hence, the applicants preferred application for compensation under section 166 of the M.V. Act.

3. The opponent Nos.1 and 2 did not appear, despite service of notice. Hence, the application proceeded ex-parte against opponent Nos.1 and 2. The opponent No.3-insurer resisted the application by filing written statement (Exh.13). The material averments in the application adverse to the interest of the insurer were denied. It was contended that the driver of the offending vehicle was not at fault and the impact occurred on account of the negligence on the part of the driver of the car.

4. The learned Member of the Tribunal recorded the evidence of Mulchand Shah (AW-1), the applicant No.1. After appraisal of the oral evidence and the documents tendered for perusal, the Tribunal returned the finding that the accident occurred due to rash and negligent driving of the offending vehicle by the

opponent No.2 and the deceased died on account of the injuries sustained therein. The Tribunal assessed the loss of dependency, by reckoning the notional income of the deceased at sum of Rs.3,000/- per moth. Deducting $\frac{1}{2}$ towards personal and living expenses, and applying the multiplier of '17', the loss of dependency was determined at Rs.3,06,000/-. Sums of Rs.4,000/-, towards funeral expenses, and Rs.10,000/-, towards loss of love and affection were added, to award, total compensation of Rs.3,20,000/-.

5. Being aggrieved by and dissatisfied with the quantum of compensation, the applicants are in appeal.

6. I have heard Mr.Gaurav Parkar, the learned counsel for the appellants and Mr. Saumen Vidyarthi, the learned counsel for respondent No.3-insurer. With the assistance of the learned counsels for the parties, I have perused the material on record.

7. Mr.Parkar, the learned counsel for the appellants canvassed a three-pronged submission. Firstly, the Tribunal committed an error in assessing the income of the deceased on notional basis. In the face of the uncontroverted facts that the deceased was dealing in a business and was an income-tax assessee, the income of the deceased could not have been

assessed on notional basis. Even the notional income was reckoned at a much lower threshold of Rs.3,000/- per month. Secondly, no addition was made towards future prospects. Considering the fact that the deceased was only 24 years of age, it was incumbent upon the Tribunal to add at least 50% of the established/notional income towards future prospects. Thirdly, the Tribunal wrongly applied the multiplier of '17' instead of '18'.

8. Mr. Parkar further urged that in the face of the material on record and the attendant circumstances, the income of the deceased ought to have been assessed at Rs.10,000/- per month, in the minimum, for the purpose of computation of the loss of dependency. It was further submitted that appropriate amount is required to be awarded under the conventional heads of funeral expenses, loss of estate and filial consortium. Thus, the impugned judgment and award warrants interference.

9. Per contra, Mr.Vidyarthi, the learned counsel for respondent No.3 stoutly submitted that the Tribunal has ascribed justifiable reasons for assessing the income of the deceased on notional basis. The applicants had not placed on the record of the Tribunal any document to establish the fact that the deceased was dealing in any business. On the one hand, the nature of the business was not indicated. On the

other hand, the mode of ownership, namely whether it was a proprietary firm, partnership or company, was also in the corridor of uncertainty. In this view of the matter, the learned Member of the Tribunal was well within her rights in awarding compensation on the basis of notional income. Mr. Vidyarthi, however, fairly submitted that multiplier of '18' instead of '17', having regard to the age of the deceased, ought to have been applied.

10. To begin with, it is necessary to note that the finding of the Tribunal that the accident occurred due to negligence on the part of the opponent/respondent No.2-driver and on account of the injuries sustained in the said accident the deceased met death, has attained finality. The only question which crops up for consideration is the justness of the compensation awarded by the Tribunal. In the backdrop of the object of the provisions contained in section 166 of the M.V. Act, the Tribunal and Courts are expected to determine the compensation so as to place the dependents in the same position as they would have been, had they not lost the breadwinner, in the accident. Thus, the endeavour to ascertain as to what was the loss of dependency.

11. Undoubtedly, in the case at hand, the Tribunal

approached the task of determining just and fair compensation by resorting to the multiplier method. In the process, the multiplicand was assessed as Rs.18,000/- per annum (after deducting 1½ towards personal and living expenses) and the multiplier of '17' was applied. Whether the ascertainment of multiplicand and application of multiplier are justifiable is the question which comes to the fore in this appeal.

12. The Tribunal was of the view that the applicants failed to adduce any evidence to show the nature of the business, the deceased was allegedly dealing in, what was its ownership structure; whether a proprietary or a partnership firm, and had the deceased obtained any license to deal in the business. Thus, the learned Member thought it appropriate to reckon notional income at Rs.3,000/- per month.

13. Mr.Parkar assailed the aforesaid approach of the Tribunal. Inviting the attention of the Court to the fact that the claim of the applicants that the deceased was dealing in the business went uncontroverted and that the applicants had filed the copies of the income tax returns alongwith the application itself, Mr.Parkar would urge that the Tribunal took a very hyper-technical view of the matter.

14. On the aspect of the income-tax returns, the learned Member, specifically recorded in the impugned judgment that the applicants had produced invisible photostat copy of the form No.2D of the year 2001-2002. Neither original nor true or certified copy was placed on record. No other document was produced to substantiate the claim that the deceased was paying income tax. Thus, the Tribunal was not persuaded to take into account the said document.

15. It would be contextually relevant to note that the applicants claimed that the deceased was dealing in the business of paper as a sole proprietor thereof. Mr.Mulchand (AW-1) attempted to correct himself by affirming that the said business was carried on under the name and style of Jainum Credit Company. Mr. Mulchand (AW-1) conceded that he could not produce any statement of account maintained with any bank in the name of the deceased.

16. Indeed the applicants could not produce documentary evidence of unimpeachable character to demonstrate that the deceased was dealing in the business and was an income-tax assessee. Nonetheless, the nature of the proceedings under section 166 cannot be lost sight of. The purpose of the proceeding is to award just compensation under the statutory

provisions. Strict rules of evidence are not required to be adhered to.

17. In the case at hand, the learned Member of the Tribunal ought to have considered the nature of the avocation which the deceased was stated to be dealing in, and the situation in life of the deceased and the applicants. The deceased was a 24 years young man. The claim of the applicants that they were dependent on him could not be impeached. The applicants made an effort to substantiate their claim that the deceased was dealing in a business and earned income, by placing a copy of Form 2D.

18. The aspect of filing of a copy of the income-tax return, reflecting the income of the deceased for the year 2000-2001, was also adverted to in the written submissions on behalf of the insurer. It was claimed that the income reported for the years 2000-2001 was Rs.48,251/- per annum. No income-tax return was filed for the year ending 31st March 2004. Thus, after deducting 50% towards personal and living expenses, the annual dependency would be Rs.24,000/- per annum, was the submission on behalf of the insurer.

19. In the backdrop of aforesaid nature of the material

brought on record, the Tribunal had no other go but to resort to guess-work for assessing the income on notional basis. However, determination of the notional income at Rs.3,000/- per annum, in the backdrop of the attendant circumstances, to my mind, was on a much lower side. By any standard, a person who found himself in the similar situation as the deceased, in the year 2004, would have earned more than Rs.100/- per day.

20. Mr.Parkar was justified in placing reliance on the judgment of the Supreme Court in the case of ***Kirti and Ors. Vs. Oriental Insurance Co. Ltd.***¹. In the said case, the Supreme Court held that failure of the claimants to produce evidence in support of the income of the deceased does not justify adoption of the lowest tier of minimum wage while computing the income. The observations of the Supreme Court in paragraph No.12 are relevant and, hence, extracted below :

“11.....From the statement of witnesses, documentary evidence on record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased's family is a fundamental endeavour of motor accident compensation law. Thus, at the very least, the minimum wage of Rs 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case.”

1 (2021) 2 SCC 166

21. On the aforesaid touchstone, if the notional income of the deceased was to be computed, in the face of the material to indicate that the deceased had reported the income of Rs.48,000/- for the years 2000-2001, on a conservative estimate, notional income ought to have been assessed at Rs.60,000/- per annum. Deducting $\frac{1}{2}$ towards the personal and living expenses, the loss of dependency would come to Rs.30,000/- per annum.

22. In view of the pronouncement of the Constitution Bench of the Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi & Others* ², in case of a self-employed deceased, who was below 40 years of age, an addition of 40% of the established income is required to be made towards future prospects. In the case of *Hem Raj Vs. Oriental Insurance Co. Ltd. & Ors.* ³, it has been laid down that future prospects ought to be allowed for those with notional income as well. Thus, a sum of Rs.12,000/- per annum is required to be added towards the future prospects.

23. The multiplicand would thus be Rs.42,000/-. Since the deceased was 24 years of age, multiplier of '18' was required to

² (2017) 16 SCC 680

³ (2018) 15 SCC 654

be applied. Thus, computation of loss of dependency would be Rs.7,56,000/-.

24. In view of the pronouncement of the Supreme Court in the case of *Pranay Sethi* (Supra), a sum of Rs.15,000/- is required to be added towards loss of estate, Rs.15,000/- towards funeral expenses, and Rs.40,000/- towards filial consortium, to each of the applicants.

25. The applicants are, thus, entitled to the compensation under the following heads :

(i) Loss of dependency	:	Rs.7,56,000/-
(ii) Funeral expenses	:	Rs.15,000/-
(iii) Loss of estate	:	Rs.15,000/-
(iv) Filial consortium	:	Rs.80,000/-

Total	:	Rs.8,66,000/-
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26. For the foregoing reasons, the appeal deserves to be partly allowed by modifying the impugned award.

27. Hence, the following order :

O R D E R

- (i) The appeal stands partly allowed.
- (ii) The opponent Nos.1 to 3 -respondent Nos.1 to 3 do jointly and severally pay Rs.8,66,000/- alongwith interest @ 7.5 % per annum from the date of the application till realization, to the applicants.

(iii) The amount deposited by the opponent/respondent Nos.1 to 3, or any of them, shall be deducted from the amount of compensation, as awarded by this order.

(iv) Parties shall bear their respective costs throughout.

(iv) Award be drawn accordingly.

[N. J. JAMADAR, J.]