IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 53 OF 2009

1. United India Insurance Co. Ltd., Amravati Branch, through the Regional Manager, Nagpur Regional Office, Shankarnagar Square, Nagpur.

...APPELLANT

VERSUS

1. Smt. Varsha wd/o Jagjivan Wankhade, aged about 37 years, Occ. Household work.
2. Ku. Pooja d/o Jagjivan Wankhade, aged 17 years, occ : Student.
3. Master Shashank s/o Jagjivan Wankhade, aged about 15 years, occ : Student (Respondent nos.2 and 3 Minors through their mother and natural guardian Respondent No.1. All R/o Pooja Colony, Near Deep Nagar No.2, Farshi Stop, Chhatri Talao Road, Amravati, Tq. And Dist. Amravati.
4. Sou. Sushilabai w/o Bhaurao Wankhade, Aged 60 years, Occ : Household work
5. Bhaurao s/o Shankarrao Wankhade, aged about 65 years, occ. Nil. R/o Dhadi (Sahur) Tq. Aashti, Dist. Wardha.
6. Prashant s/o Motiram Dhonge, Aged about 30 years, Occ. Owner and driver of the vehicle bearing no.MH27/H6871, residing at Plot No.23, Deep Nagar, Farshi Stop, Tq. & Dist. Amravati.

...**RESPONDENTS**

Shri Cecil Anthony, Advocate for the Appellant.
Shri N.R. Saboo, Advocate for Respondent Nos.4 & 5.
Ms Aastha Sharma h/f Mr P.R. Agrawal, Advocate for Respondent No.6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19/01/2022

ORAL JUDGMENT :

. The Appellant-Insurance Company has filed this Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") challenging the Judgment and Award dated 14/01/2008 passed by the claims Tribunal, Amravati in Claim Petition No.125/2005.

2. By the impugned judgment, the Claims Tribunal has partly allowed the claim petition filed by the Respondent Nos.1 to 5 under Section 166 of the M.V. Act and awarded total compensation of Rs.12,80,036/- with interest at the rate of 7.5% per annum from the date of the petition till final realization.

3. The brief facts necessary to decide this Appeal are as under:

The Respondent No.1 is the widow, the Respondent Nos.2 and 3 are the children and the Respondent Nos.4 and 5 are the parents of the deceased-Jagjivan Wankhede, who expired on 02/02/2005 as a result of injuries sustained in motor vehicular accident involving Maruti Alto Car bearing No. MH 27/H-6871. The said vehicle was owned and driven by Respondent No.6 and insured with the Appellant-Insurance Company.

4. The Respondent Nos.1 to 5, who shall be hereinafter referred to as 'the Claimants', had claimed that the accident was caused due to rash and negligent driving by the Respondent No.6. The Claimants stated that the deceased was 42 years of age and was employed as a Junior Engineer in MSEB and was drawing salary of Rs.24,621/- per month. The Claimants claimed that they were totally dependent upon the income of the deceased, hence they filed petition under Section 166 of the M.V. Act claiming total compensation of Rs.45,76,000/-.

5. The Appellant-Insurance Company denied that the accident was caused due to rash and negligent driving by the Respondent No.6. The Appellant-Insurance Company claimed that the offending vehicle is a private vehicle and unless and until special premium is paid to cover the occupant as well as the owner/driver of the car, the Insurance Company is not liable to pay any compensation. The Insurance Company further claimed that on the relevant date, there were six passengers in the offending vehicle, while the policy covered risk of only four passengers, and as such the Insurance Company could not have been saddled with the liability to pay the compensation.

6. Upon considering the documentary as well as oral evidence adduced by the respective parties, the Tribunal held that the accident was caused due to rash and negligent driving of the Respondent No.6 i.e. the driver of offending vehicle, and that the death of Jagjivan Wankhede was caused due to the injuries sustained in the said accident. The Tribunal assessed loss of dependency on the basis of net salary of Rs.12,771/-. After deducting 1/3rd towards personal expenses of the deceased and on

applying multiplier of 13, the Tribunal computed loss of dependency at Rs.13,23,036/-. In addition, the Tribunal awarded compensation of Rs.2000/- towards funeral expenses and Rs.5000/- for loss of consortium and accordingly held that the Claimants are entitled for total compensation of Rs.13,30,036/-. The Tribunal held that the appellant company has failed to prove the breach of terms and conditions of the policy, it is liable to indemnify the insured. Being aggrieved by this judgment and compensation, the Appellant-Insurance Company has filed this appeal.

7. Shri Anthony, learned Counsel for the Appellant had urged that the premium of Rs.200/- paid by the owner covered only four passengers and that the liability of the Insurance Company was limited to Rs.1,00,000/-. He was unable to point out any specific defence raised to that effect in the written statement or such a clause in the terms and conditions of the policy. Furthermore, the witness examined by the Insurance Company had also deposed that the Insurance policy was a comprehensive policy. His evidence also did not indicate that the

liability of the Insurance Company was restricted to Rs.1,00,000/-. Faced with these difficulties, he stated that the Insurance Company does not wish to proceed with the appeal and sought leave to withdraw the appeal.

8. Shri Saboo, learned Counsel for the Respondents submits by the Tribunal has erred in computing the compensation, on the basis of net income. The Tribunal has also erred in applying multiplier of "13" and in deducting $1/3^{rd}$ towards personal expenses of the deceased. He submits that the amount awarded towards loss of consortium and funeral expenses is a meager amount. He contends that the compensation awarded by the Tribunal is not just and reasonable. Relying upon the decision of this Court in ***Reliance General Insurance Company Ltd. Vs. Manju and others 2021 (6) ALLMR 171,*** he submits that the Claimants are entitled for enhanced compensation even in the absence of cross objection.

9. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

10. It is not in dispute that Jagjivan Wankhede had expired as a result the injuries sustained in the accident. There is no challenge to the finding of the Tribunal that the accident was caused due to rash and negligent driving by Respondent No.6. The evidence on record reveals that the deceased was working as a Junior Engineer with MSEB. The salary slip for the month of December, 2005 reveals that the deceased was drawing gross salary of Rs.24,621/- per month. The Tribunal has computed the compensation on the basis of net salary of Rs.12,772/-, by excluding the amount deducted towards G.P.F., Provident Fund, etc.

11. In this regard, it is relevant to the refer to the decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Indira Srivastava & ors. - (2002) 2 SCC 763*** in the said case, the Hon'ble Apex Court has observed as under:

“8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monitory terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

10 to 16…..

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

Similarly, in **Raghuvir Singh Matolya & Ors. vs. Hari Singh Malviya & Ors. - (2008) 15 SCC 363, Sunil Sharma & Ors. vs. Bachitar Singh & Ors. - (2011) 11 SCC 425** and **Kalpanaraj & Ors. vs. Tamil Nadu State Transport Corporation - (2015) 2 SCC 764**, the Hon'ble Apex Court has reiterated that while accessing the income of the deceased, the deduction towards Dearness Allowance, H.R.A., G.P.F., Life Insurance Premium, Repayment of Loan, etc. should not be excluded from the income. The only amount to be excluded is the statutory deduction towards Income Tax/ Professional Tax etc.

13. The Tribunal has also held that the deceased was 45 years of age and applied multiplier of 13, while multiplier as per

the decision of Apex Court ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. - (2009) 6 SCC 121*** is 14. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased. The decisions of ***Sarla Verma (supra)*** which is approved by the Constitution Bench of the Hon'ble Apex Court in ***National Insurance Company Ltd. v. Pranay Sethi and ors.- 2018(3) Mh.L.J. 70*** provides that the deduction should be 1/4th where the number of defendants/family members is 4 to 6. It is held that since father is likely to have his own income, he will not be considered as dependent and mother alone will be considered as a dependent. In the instant case, the Claimant No.1 to 4 being the widow, children and the mother of the deceased were the dependents. Since there were four dependents, the Learned Tribunal was required to deduct 1/4th amount towards personal expenses of the deceased. The compensation awarded by the Tribunal towards, loss of consortium and funeral expenses is also very low. Under the circumstances, the compensation awarded by the Tribunal cannot be held to be just and reasonable compensation.

14. The next question which arises is whether in the absence of cross objection, this Court can enhance the compensation awarded by the Tribunal. In ***Reliance General Insurance Company limited*** (supra), this Court after considering the decision of the Hon'ble Apex Court in ***A.P.S.R.T.C. represented by its General Manager and anr. Vs. M. Ramadevi and others*** in ***2008 (1) T.A.C. 714 (S.C.)*** and ***Jitendra Khimshankar Trivedi and Ors. Vs. Kasam Daud Kumbhar and Ors.*** in ***2015 (1) WLN 163(SC)*** has held that under Motor Vehicle Act, there is no restriction for awarding compensation exceeding the claimed amount. This Court has held that while dealing with Claim Petition under Section 166 of the M.V. Act, which is the benevolent provision, the Tribunal/Court is not bound by the pleadings or strict rule of evidence and that the Tribunal/Court is under statutory obligation to determine "just compensation" without succumbing to the niceties or technicalities of the matter.

15. In the instance case, the evidence on record reveals that the deceased was 45 years of age and was in permanent employment as a Junior Engineer at MSEB. His gross salary was

Rs.24,221/- and upon excluding deduction toward Income Tax and Professional Tax, and conveyance allowance which was exclusively for his personal benefit, his net salary works out to Rs.20,902/- per month. Thus, the annual income of the deceased was Rs.2,50,908/-. Considering the fact that the deceased was 45 years of age and was in permanent employment, upon adding 30% towards future prospects, in the light of the principle laid down by the Hon'ble Apex Court in **Pranay Sethi and Magma General Insurance Company (supra)**, the amount works out to Rs.3,25,180/-. Upon deduction 1/4th towards personal expenses and applying multiplier of 14, the loss of dependency works out to Rs.34,24,890/-. Furthermore, considering the decision of the Hon'ble Apex Court in **Pranay Sethi and Magma General Insurance Company (supra),** the petitioners are also entitled for compensation of Rs.40,000/- each towards spousal, parental and filial consortium and in addition Rs.15000/- each towards loss of estate and funeral expenses. Thus the claimants are entitled for total compensation of Rs.36,54,890/-, which is rounded to Rs.36,55,000/-.

16. Under the circumstances and in view of reasons supra, the following order is passed:

i) The appeal is dismissed.

ii) Claimants are held to be entitled for compensation of Rs.36,55,000/- with interest on enhanced compensation from the date of this order till final realization.

iii) The Appellant-Insurance Company and Respondent No.6 shall jointly and severally pay to the Claimants the balance compensation amount within a period of three months from the date of this order.

iv) The Claimant No. 1 shall be entitled to withdraw 40% of the compensation whereas Claimant Nos.2 and 3 shall be entitled to withdraw 20% each. Claimant Nos. 4 and 5 shall be withdraw 10% each with proportionate interest, thereon.

v) The impugned judgment and award stands modified accordingly.

vi) The claimant shall pay the Court fees, if any, within two weeks.

JUDGE

R.S. Sahare