

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

FIRST APPEAL NO.1238 OF 2010

APPELLANT : The New India Assurance Company Ltd.
Through it's Manager at 4th Floor, MECL
Premises, Dr. Ambedkar Bhawan, Seminary
Hills, Nagpur.

//VERSUS//

RESPONDENTS : 1. Shri Pradip s/o Vitthalrao Dhote,
Aged about 32 years, Occupation : Labour,
R/o Ramnayar Ward, Ward No.2,
Hinganghat, District : Wardha.

2. Mr. M.M. Panghal,
Aged about Major, Occupation: Owner,
R/o Wardhaman Nagar,
Baba Santosh Pales, Plot No.303,
Bhandara Road, Nagpur.

OR

C/o Choudhari Transport
H.No.17, Adilabad (A.P.)

WITH

FIRST APPEAL NO.1235 OF 2010

APPELLANT : The New India Assurance Company Ltd.
Through it's Manager at 4th Floor, MECL
Premises, Dr. Ambedkar Bhawan, Seminary
Hills, Nagpur.

//VERSUS//

RESPONDENTS : 1. Shri Pradip s/o Vitthalrao Dhote,
Aged about 32 years, Occupation : Labour,
R/o Ramnayar Ward, Ward No.2,

Hinganghat, District : Wardha.

2. Mr. M.M. Panghal,
Aged about Major, Occupation: Owner,
R/o Wardhaman Nagar,
Baba Santosh Pales, Plot No.303,
Bhandara Road, Nagpur.

OR

C/o Choudhari Transport
H.No.17, Adilabad (A.P.)

WITH

FIRST APPEAL NO.1240 OF 2010

APPELLANT : The New India Assurance Company Ltd.
Through it's Manager at 4th Floor, MECL
Premises, Dr. Ambedkar Bhawan, Seminary
Hills, Nagpur.

//VERSUS//

RESPONDENTS : 1. Shri Pradip s/o Vitthalrao Dhote,
Aged about 32 years, Occupation : Labour,
R/o Ramnayar Ward, Ward No.2,
Hinganghat, District : Wardha.

2. Mr. M.M. Panghal,
Aged about Major, Occupation: Owner,
R/o Wardhaman Nagar,
Baba Santosh Pales, Plot No.303,
Bhandara Road, Nagpur.

OR

C/o Choudhari Transport
H.No.17, Adilabad (A.P.)

Ms. Anita Mategaonker, Advocate for the Appellant.
Shri B.S. Mandhare, Advocate h/f Shri P.S. Mirache, Advocate for
Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 11th FEBRUARY, 2022.

ORAL JUDGMENT

01] The Appellant has assailed the judgment dated 25.05.2010 passed by the Motor Accident Claims Tribunal, Nagpur (hereinafter referred to as “the Tribunal”) in M.A.C.P Nos.1106/2004, 1107/2004 and 1148/2004.

02] The Respondent No.1, who shall be hereinafter referred to as the Claimant, had filed three separate Petitions under Section 166 of the Motor Vehicles Act, 1988 (for short “the said Act”) in view of death of his wife and two minor children in a motor vehicular accident on 30.09.2004, involving Truck bearing No.AP01/T-1328, which was insured by the Appellant/Insurance Company.

03] The case of the Claimant is that on 30.09.2004 his wife Nirmala Dhote and two minor children viz. Tejas Dhote and Shrikant Dhote were travelling by Jeep bearing No.MH33/F-3100. It was alleged that the offending Truck bearing No. AP01/T-1328, which was owned and driven by Respondent No.2 dashed against the said Jeep, resulting in death of his wife and two minor children. The Claimant alleged that the accident was caused

solely due to rash and negligent driving by the driver of the offending Truck. He, therefore, filed Petitions under Section 166 of the said Act against the insurer and the insured of the offending vehicle.

04] The Appellant/Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle, but claimed that the accident was caused solely due to rash and negligent driving by the driver of the Jeep. The Appellant/Insurance Company, therefore, denied its liability to pay any compensation to the Claimant.

05] Upon considering the evidence on record, the Tribunal held that the accident was caused solely due to rash and negligent driving by the driver of the offending Truck. Insofar as the minor children who were 3 and 5 years of age, the Tribunal considered the notional income at Rs.15,000/- per annum, deducted 1/3rd towards personal expenses and on applying multiplier of 16, assessed loss of dependency at Rs.1,60,000/-. The Tribunal also awarded compensation of Rs.5,000/- each towards loss of love and affection, loss of estate and funeral expenses leading to an award of total compensation of Rs.1,75,000/- each with interest at the rate of 7.5% per annum.

06] The deceased in M.A.C.P No.1107/2004 was the wife of the

Claimant. In the said claim petition, the Tribunal considered the notional income of the deceased at Rs.3,000/- per month. The Tribunal deducted 50% towards personal expenses and upon applying multiplier of 16, assessed the loss of dependency at Rs.2,88,000/-. In addition, the Tribunal awarded compensation of Rs.5,000/- each towards loss of love and affection, loss of estate and funeral expenses. The Tribunal thus awarded total compensation of Rs.3,03,000/- with interest at the rate of 7.5% per annum. Being aggrieved by these judgments, the Appellant/Insurance Company has filed these appeals under Section 173 of the said Act.

07] Ms. Anita Mategaonker, learned counsel for the Appellant/Insurance Company submits that the minor children had no income and, as such, the Tribunal was not justified in awarding any compensation towards loss of dependency. She further submits that the wife of the Claimant was a house-wife, hence the Tribunal was not justified in considering the notional income at Rs.3,000/- per month. She further submits that, considering that there were three dependants, the Tribunal ought to have deducted 1/3rd towards personal expenses. She further submits that the accident was caused due to rash and negligent driving by the driver of the Jeep in which the deceased were travelling. She submits that the Tribunal ought to have deducted 50% towards contributory negligence. She submits that the compensation awarded in all three Claim

Petitions is exorbitant and hence needs to be scaled down.

08] Shri B.S. Mandhare, learned counsel for the Claimant also submits that the finding on the issue of negligence merits no interference. On the quantum of compensation, he submits that the compensation awarded by the Tribunal is not just and reasonable. He submits that this Court can enhance the compensation even in the absence of the cross-objections. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Surekha and Ors. Vs. Santosh and Ors. reported in 2020 ACJ 2156. He further submits that the Tribunal has erred in considering the notional income of the minor children at Rs.15,000/- per annum each. He also submits that the Tribunal has not awarded any compensation towards future prospects and the compensation awarded on other conventional heads viz. loss of love and affection, loss of estate and funeral expenses is very meager. He, therefore, submits that the compensation awarded in these three Claim Petitions needs to be enhanced.

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

10] It is not in dispute that the wife and two minor children of the Claimant were travelling by Jeep bearing No.MH33/F-3100. There was a collision between the said Jeep and the offending Truck bearing No.AP01/T-

1328, which was insured by the Appellant/Insurance Company. The wife and the two minor children of the Claimant died in the said accident. It is to be noted that the wife and the children of the Claimant have not contributed to the accident and hence it cannot be a case of contributory negligence and at the most, it can be a case of composite negligence, which refers to negligence on the part of the two or more persons. In the case of composite negligence, the Claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. Reliance is placed on the decision of the Hon'ble Supreme Court in Khenyei Vs. New India Assurance Co. Ltd. and Ors. reported in (2015) 9 SCC 273. Be that as it may, in the instant case, the finding of the Tribunal that the accident was caused due to rash and negligent driving by the driver of the offending vehicle is based on the evidence on record and merits no interference.

11] The next question for consideration is whether the compensation awarded by the Tribunal can be considered as just and reasonable. It is to be noted that the deceased in M.A.C.P. Nos.1106/2004 and 1148/2004 were minor children of the Claimant aged about 3 and 5 years of age. In the case of New India Assurance Co. Ltd. Vs. Satender and Ors. reported in AIR 2007 SC 324, the Hon'ble Apex Court has held thus:

“8. In cases of young children of tender age, in view of

uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.”

12] In the case of Rajendra Singh and Ors. Vs. National Insurance Company Limited and Ors. reported in AIR 2020 SC 3144, the Hon’ble Apex Court has observed thus:

“12. The second deceased was a school going child aged about 12 years. She had a whole future to look forward in life with all normal human aspirations. She died prematurely due to the accident at a very tender age for no fault of hers even before she could start to understand the beauty and joys of life with all its ups and downs. The loss of a human life untimely at childhood can never be measured in terms of loss of earning or monetary loss alone. The emotional attachments involved to the loss of the child can have a devastating effect on the family which needs to be visualised and understood. Grant of non-pecuniary damages for the wrong done by awarding compensation for loss of expectation in life is therefore called for. Undoubtedly the injury inflicted by deprivation of the life of the child is very difficult to quantify. The future also abounds with uncertainties.

Therefore, the courts have used the expression “just compensation” to get over the difficulties in quantifying the figure to ensure consistency and uniformity in awarding compensation. This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation is for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to future prospects. It can safely be presumed that education would have only led to her better growth and maturity with better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages. (See R.K. Malik v. Kiran Pal, MANU/SC/0809/2009 : (2009) 14 SCC 1).”

13] On the issue of future prospects, the Hon’ble Apex Court in Rajendra Singh (supra) has held thus:

13. ... In R.K. Malik v. Kiran Pal, MANU/SC/0809/2009 : (2009) 14 SCC 1, considering grant of future prospects for the deceased child aged about 10 years it was observed as follows:

32. A forceful submission has been made by the learned Counsel appearing for the Appellant claimants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future

prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below.

33. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation. It is well-settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation...

14. In New India Assurance Co. Ltd. v. Satender, MANU/SC/8659/2006 : (2006) 13 SCC 60, the deceased victim of the accident was a nine year old school going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the compensation so determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms:

12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty.

Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

*15. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs.2,95,000/- by granting any further compensation under the separate head of “future prospects”. It may only be noticed that **R.K. Malik** (supra) does not consider **Satender** (supra) on the grant of future prospects as far as children are concerned.*

14] In the instant case as noted above, both the children were of 3 and 5 years of age respectively. The Tribunal has computed the compensation on the basis of notional income of Rs.15,000/- per annum. The same in my considered view can be considered at Rs.36,000/- per annum. Upon deducting 50% towards personal expenses and applying multiplier of 15 as in the case of **Rajendra Singh (supra)**, the loss of dependency is assessed at Rs.2,70,000/-. The Claimant would also be entitled for compensation of Rs.40,000/- each towards loss of filial consortium and Rs.30,000/- towards funeral expenses and loss of estate. The Claimant is thus entitled for compensation at Rs.3,40,000/- each in respect of death of the minor

children.

15] It is well settled that the Tribunal as well as the Court is under an obligation to award just and reasonable compensation. The Court cannot decline to award such reasonable compensation only for want of cross-objection. Reliance is placed on the decisions of the Hon'ble Apex Court in Surekha (supra) and of this Court in Reliance General Insurance Co. Ltd. Vs. Ramesh Ananda Kamble and Ors. reported in MANU/MH/3625/2019. Hence, it is held that the Claimant is entitled for enhanced compensation of Rs.3,40,000/- even in the absence of cross-objection.

16] As regards the deceased in First Appeal No.1238/2010 (M.A.C.P No.1107/2004), it is not in dispute that she was 27 years of age and was a home maker The Tribunal has computed loss of dependency on the basis of notional income of Rs.3,000/-. In Rajendra (supra), the Hon'ble Apex Court after considering the earlier decisions in the case of Lata Wadhwa Vs. State of Bihar reported in (2001) 8 SCC 197 and Arun Kumar Agrawal Vs. National Insurance Co. Ltd. Reported in (2010) 9 SCC 218 has considered the notional income at Rs.5,000/- per month. The Hon'ble Apex Court observed that if the deceased had survived, her skills as a matured and skilled housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and

for this reason the Hon'ble Supreme Court considered the future prospects at the rate of 40%.

17] In the instant case, the deceased was 27 years of age. She was taking care of the household and contributing to the welfare of the family. Hence, considering the nature of the service rendered by her, the notional income of the deceased can be considered at Rs.5,000/- per month, which works out to Rs.60,000/- per annum. Adding 40% towards future prospects, the income can be considered as Rs.84,000/- per annum. Since there were three dependants and upon deducting $1/3^{\text{rd}}$ i.e. Rs.28,000/- towards personal expenses, the income is considered as Rs.56,000/-. The deceased was 27 years of age and in view of the judgment of the Hon'ble Apex Court in the case of Sarla Verma (Smt) & Others Vs. Delhi Transport Corporation & Another reported in (2009) 6 SCC 121, the multiplier applicable is 17. Hence, the loss of dependency works out to Rs.9,52,000/-. In addition, the Claimant is entitled for compensation of Rs.40,000/- towards loss of spousal consortium and Rs.30,000/- towards loss of estate and funeral expenses. The Claimant is, therefore, entitled for total compensation of Rs.10,22,000/- on account of death of his wife.

18] Under the circumstances and in view of the discussion (supra), the Appeals filed by the Appellant/Insurance are dismissed. It is held that in

M.A.C.P No.1107/2004, the Claimant is entitled for compensation of Rs.10,22,000/- on account of death of his wife and in M.A.C.P Nos.1106/2004 and 1148/2004, the Claimant is entitled for compensation of Rs.3,40,000/- each in respect of death of the two minor children, along with interest at the rate of 7% per annum from the date of the petition till final realization.

19] The Appellant/Insurance Company has already deposited the amount, as per the award of the Tribunal. Learned counsel for the Appellant/Insurance Company states that the balance amount will be deposited before this Court within a period of three months. The Claimant is permitted to withdraw the amount so deposited by the Appellant/Insurance Company in First Appeal No.1238/2010, First Appeal No.1235/2010 and First Appeal No.1240/2010 along with interest accrued thereon.

20] The Appeals stand disposed of in above terms. Pending applications, if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

Vijay