

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1357 OF 2003

1. Sadhana w/o Subhash Nagare
Age : 26 years, Occu.: Household,
2. Somesh s/o Subhash Nagare,
Age : 08 years, Minor
3. Deepali d/o Subhash Nagare,
Age : 06 years, Minor

(Claimant No.2 & 3 being minor
through their guardian of claimant
No.1 i.e. real mother)

4. Uttam s/o Sitaram Nagare
(Deleted)
5. Haubai w/o Uttam Nagare
(Deleted)

All R/o.: Hivarkheda,

Tq. Sindhkhedraja, Dist. Buldhana ... APPELLANTS
(Ori. Claimant Nos.1 to 5)

VERSUS

1. The Divisional Controller
M.S.R.T.C. Office, Nanded,
Through its Local Office, Jalna,
Tq. & Dist. Jalna.
2. Balaji s/o Mahajan Gadekar,
Age : Major, Occu.: Driver,
R/o : Kandhar, Tgq. Kandhar,
District : Nanded

.... RESPONDENTS

(Ori. Resp.Nos.1 & 2)

...

Mr. M. L. Kolhe, Advocate for the appellants.
Mr. Amol Mali, Advocate holding for Mr. D.S.Bagul, Advocate
for respondent No.1.

...

CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 07.08.2023
Judgment pronounced on : 09.08.2023

Judgment :

1. The present appellants, who are the original claimants, have filed this appeal for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Jalna (hereinafter referred to as the “learned Tribunal”) in Motor Accident Claim Petition No. 123/2001 vide judgment and award dated 06.09.2003. During pendency of this appeal, the appellant Nos.4 and 5, who are the parents of deceased Subhash, died and therefore, their names were deleted since the other dependents of deceased are already on record.

2. The brief facts giving rise to the present appeal are as under :

One Subhash Uttam Nagare on 21.04.2001 was returning to Mantha from Jalna on motorcycle bearing registration No. MH-21-E-6027 alongwith his friend Jagdish Rathi. However, at about 8.30 p.m. when they reached in front of Mahindra Hybrid Seeds Company Ltd on Jalna to Mantha road, one S.T. bus bearing registration No. MH-20-D-

4557 came from opposite direction in high speed, which was being driven by present respondent No.2 Balaji, and gave dash to the motorcycle of deceased. The concerned police station i.e. Taluka Police Station, Jalna registered Crime No. I-78/2001 against respondent No.2 i.e. S.T. driver for the offences punishable under Sections 304-A, 336 and 337 of the Indian Penal Code. Thereafter on 15.05.2001 the present appellants filed claim petition under Section 166 of the Motor Vehicles Act for getting compensation of Rs. 15,00,000/- before the learned Tribunal and against their claim, the learned Tribunal, after considering the material on record, awarded compensation of Rs. 4,01,128/- inclusive of "NFL" amount of Rs. 50,000/- to the appellants. Feeling aggrieved with the said quantum of compensation, the appellants – claimants have filed this appeal for enhancement only on the ground that the learned Tribunal committed mistake while granting such less amount of compensation by illegally deducting 50% amount from the salary of deceased towards pensionary benefits which were being received by the appellants – claimants.

3. The learned Counsel for the appellants – claimants submits that the Hon'ble Apex Court has already settled that

except the deduction towards income tax and professional tax, no other deductions are permissible while computing the amount of compensation and therefore, such deduction to the extent of 50% from the salary of deceased was therefore an error apparent on the part of the learned Tribunal. He further submits that the appellants are also entitled for future prospects and consortium amount as observed in the subsequent judgments of the Hon'ble Apex Court. The learned Counsel for the appellants admitted that the award passed by the learned Tribunal has already been satisfied. In support of his submission, he relied on the following judgments :

- A) *Anita Arun Memane vs. Maharashtra State Road Transport Corporation, Ahmednagar and others, reported in 2021(2) Mh.L.J. 396;*
- B) *N. Sivammal and others vs. Managing Director, Pandian Roadways Corporation and another, reported in (1985) 1 SCC 18;*
- C) *Helen C. Rebello and others vs. Maharashtra State Road Transport Corporation and another, reported in 1998(3) Mh.L.J. (S.C.) 674;*
- D) *Bishansing Thakursing vs. Nasira Kadar Shaikh and others, reported in 2003(1) Mh.L.J. 68 and*
- E) *Judgment of this court bench at Nagpur, in First Appeal No.1627 of 2008 (Smt. Snehalata Arunkumar Pandya and others vs. Premchand Abhyakumar Mishrikotkar and others) passed on 26/02/2022.*

4. On the contrary, learned Counsel for the respondents supported the impugned judgment and opposed the quantum of compensation on the ground that the learned Tribunal applied wrong multiplier of “17” instead of “16” as the deceased was 32 years old at the time of accidental death.

5. Heard rival submissions. Also perused the entire oral and documentary evidence on record alongwith impugned judgment. I have also gone through the judgments relied upon by the appellants.

6. It is significant to note that the age, income and the manner in which accident took place is not disputed by either of the parties. Moreover, the learned Counsel for the appellants – claimants also not disputed about deduction from the total compensation amount towards the negligence of deceased in the accident to the extent of 20%. However, the present appeal involves two main aspects viz; (1) whether the deduction made by the learned Tribunal from the salary of deceased to the extent of 50% on account of receiving pensionary benefits by the appellants is permissible? and (2) whether just and fair compensation can be arrived at in the light of the subsequent judgments of the Hon’ble Apex Court which were not in existence while the impugned judgment

and award was passed?

7. So far as the first aspect is concerned, the learned Tribunal has admittedly deducted 50% amount from the salary of deceased being pensionary benefits which the appellants were receiving, at the time of calculating the compensation amount. The learned Counsel for the appellants heavily relied on the judgment of this Court in the case of **Anita vs M.S.R.T.C. Ahmednagar** (supra) wherein the following observation is made by considering the decision of the Hon'ble Apex Court in the case of the case of Sebastiani Lakra and others vs. National Insurance Company Ltd., and others, reported at 2018 ALL SCR 2175 wherein the Apex Court has observed in paragraph Nos.12 to 16 as under :-

"In my view, the assessment of compensation made by the Tribunal is against the settled position in law. It is well settled position in law that except the statutory deduction to be made towards income tax, professional tax, no other deduction is permissible under law. The deduction from salary of the deceased towards insurance, pensionary benefits, gratuity or grant of employment to kin of deceased is not permissible. In this context, the learned counsel for the appellant has placed reliance upon the decision in the case of Sebastiani Lakra & others v. National Insurance Company Ltd. & another reported at 2018 ALL SCR 2175 wherein the Apex Court has observed in paragraph nos.12 to 16 as under:-

"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment

to akin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures etc.. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity

are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in Perry v. Cleaver [(1969) 1 ALL ER 555] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident."

From the aforesaid observation it is now settled that except deduction of income tax and professional tax, nothing can be deducted in case of a person who is salaried employee. Therefore, the deduction by the learned Tribunal to the extent of 50% from the income of deceased towards pensionary benefits which was being received by the present appellant No.1 i.e. the widow of deceased, is totally erroneous.

8. So far as the second aspect is concerned, it is also settled that though the subsequent judgments of the Hon'ble Apex Court such as ***Sarla Verma & ors vs Delhi Transport***

Corporation and Anr, (2009) 6 SCC 121, National Insurance Company Limited vs Pranay Sethi & ors., (2017) 16 SCC 680 and *Magma General Insurance Co. vs Nanu Ram Alias Churu Ram, (2018) 18 SCC 130* were not in existence at the time of passing the impugned judgment and award, but they are equally applicable to the pending claim petitions and also the appeals thereof. Therefore, the compensation in respect of accidental death of deceased needs to be assessed in the light of the observations and guidelines made in the aforesaid judgments.

9. The Hon'ble Apex Court in the case of *Sarla Verma vs Delhi Transport Corporation* (supra) has adopted multiplier system to arrive at just compensation. Further, the Hon'ble Apex Court vide judgment in *National Insurance Co. Ltd vs Pranay Sethi* (supra) has also authoritatively settled the law on future prospects on the income of deceased. It has been observed that if the deceased was in permanent employment and was below 40 years of age, then the future prospects to the extent of 50% of the income of deceased must be added. Further, the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd vs Nanu Ram* (supra) has discussed various categories of consortium namely spousal

consortium, parental consortium and filial consortium. Under these categories the appellant No.1 is entitled for spousal consortium and appellant Nos.2 and 3 are entitled for filial consortium to the extent of Rs. 40,000/- each. Thus, considering all these judgments, now I come to the assessment of just and proper compensation.

10. Admittedly the deceased Subhash was 32 years of age at the time of his accidental death and he was permanently employed as a Teacher and getting salary of Rs.7508/- per month rounded as Rs. 7500/- per month. The salary certificate to that effect is also on record at Exh.39. Moreover, as per S.S.C. Passing Certificate at Exh. 40, his birth date appears to be 10.09.1967. As such, if the salary of deceased Subhash is taken as Rs. 7,500/- per month and considering his age below 40 years, he is entitled for 50% future prospects i.e. Rs. 3750/-. As such, his monthly income comes to Rs. 11,250/-. There is no evidence on record whether the income of deceased was subjected for income tax deduction. Moreover, nothing of that sort is mentioned in his salary certificate (Exh.39). As such, considering the future prospects, his yearly income comes to Rs.1,35,000/- (11,250 x 12). From this amount one-third amount needs to be

deducted towards his personal expenses as per the observation of the Hon'ble Apex Court in the case of Sarla Verma (supra) and considering the number of claimants being reduced to 3 at this stage. As such, on deduction of one-third amount of Rs, 45,000/- from the aforesaid annual income, an amount of Rs. 90,000/- has arrived. It appears that the learned Tribunal has applied multiplier of "17". However, as per the judgment in the case of Sarla Verma, the multiplier of "16" for the age group of deceased is applicable. Therefore, by applying the proper multiplier of "16" to the aforesaid amount of Rs. 90,000/-, the loss of dependency comes to Rs. 14,40,000/-. In the said amount, an amount of Rs. 30,000/- on account of funeral expenses and loss of estate needs to be added alongwith the consortium amount of Rs. 1,20,000/- (calculated at the rate of Rs. 40,000/- each for the existing appellant Nos.1 to 3). On such addition, the total compensation comes to Rs. 15,94,000/- from which the amount towards negligence of deceased himself in the accident to the extent of 20% needs to be deducted. Such 20% comes to Rs. 3,18,000/-. Therefore, on such deduction, the total compensation amount comes to Rs. 12,72,000/- for which the appellants are now entitled.

11. Since I have decided the appeal in the year 2023, the current prevailing rate of interest will be applicable on the aforesaid amount of compensation which is 6% per annum. As such, I pass the following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellants are entitled for compensation of Rs. 12,72,000/- (inclusive of the amount under “no fault liability” under Section 140 of Motor Vehicles Act) alongwith interest at the rate of 6% per annum from the date of petition till its realization.
- (iii) The respondents shall deposit the balance amount of compensation so calculated within two months from the date of this order and on such deposit of amount, the appellant Nos.1 to 3 shall be entitled to withdraw the same in equal proportion.
- (iv) The award be modified and drawn accordingly.
- (v) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)