



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

FIRST APPEAL NO. 1097 OF 2010

APPELLANTS

:

Amendment carried out as
per Court's Order
dt.22/08/2023

1. Shri A. Kesavan, Aged about 56 years,
Occ: Nil. **[Deleted]**
2. Smt. Thankamma Kesavan, Aged 50
years, Occ: Nil, Both resident of Alayil
Home Elamanoor, P.O., Kerala-24.

//VERSUS//

RESPONDENTS

:

1. Shri Chhatrasingh B. Choudhary,
Aged Major, Occ : Truck Owner, R/o.
Choudhari Transport, Quetta Colony,
Ghas Bazar, Nagpur. **[Dead]**
2. The Divisional Manager, The New
India Assurance Co. Ltd., Divisional
Office No. II "Uddham" West, High
Court, Dharampeth, Nagpur.

Mr. S.N. Kumar, Advocate for the Appellants.

Mr. M.M. Sudame, Advocate for Respondent No.2.

CORAM : G. A. SANAP, J.

DATED : 14th SEPTEMBER, 2023.

ORAL JUDGMENT

In this appeal, filed by the original claimants, challenge is to the judgment and order dated 24th November, 2009, passed by the Member, Motor Accident Claims Tribunal, Nagpur (hereinafter referred to as "the Tribunal"), whereby the Tribunal

partly allowed the claim petition and awarded the compensation of Rs.3,51,000/- including “NFL” amount and directed the respondent Nos.1 and 2 to pay the compensation.

02] BACKGROUND FACTS:

The original claimants/appellants are the parents of deceased Ramesh Kesavan. During pendency of the appeal, appellant No.1 died. Similarly, respondent No.1/owner of the offending vehicle also died. On 8th August, 1999, the deceased was proceeding to Chandrapur from Nagpur in a Maruti Car bearing registration No.MH-31/Z-5082 with his employer. It is stated that near Kondha Nala on Nagpur Chandrapur Highway at about 1:00 a.m. on 9th August, 1999, a Truck bearing registration No.AP-1/T-1516 came from opposite direction in high speed and gave dash to the Maruti Car. The driver was driving the Truck in rash and negligent manner. In the accident, the deceased and his employer died on the spot. A crime bearing No.152/1999 was registered against the driver of the Truck at Police Station, Bhadrawati. Initially, the claimants/appellants claimed the compensation from the owner and the Insurance Company of the Truck. They amended the claim petition and made the owner and the Insurance Company of the Maruti Car as party. According to the appellants, the deceased was their breadwinner. They were dependant on his

income. With the death of the deceased, they have lost their breadwinner. Therefore, they claimed the compensation of Rs.6,00,000/-.

03] Respondent No.1/owner of the offending Truck did not appear before the Tribunal. Respondent No.2/insurer of the offending Truck filed the written statement and opposed the claim. It was denied that the accident occurred due to rash and negligent driving by the driver of the offending Truck. It was stated that both the vehicles, involved in the accident, were equally responsible for the accident. The owner of the Maruti Car did not oppose the claim. The Insurance Company of the Maruti Car filed the written statement. It was contended that the driver of the Truck was solely responsible for the accident. The criminal case was filed against the driver of the Truck. The investigation revealed his negligence and therefore, the charge-sheet was filed against him. It was stated that, therefore, the Insurance Company of the Maruti Car would not be liable to pay the compensation.

04] The Tribunal framed the issues. The claimants/appellants examined three witnesses. Witness No.1 is the proprietor of M/s. Excel Fiber Industries at Wani, Nagpur. He was examined to prove the salary of the deceased. He has stated that

the salary of the deceased was Rs.4,000/- per month. Witness No.2 is the father of the deceased. He has stated in his evidence about the accident, the salary of the deceased and the dependency on the deceased. He has further stated that on the date of the accident, his son had completed 23 years of age. He has categorically stated that the driver of the Truck was responsible for the accident. Witness No.3 was examined to translate the evidence given by the claimant No.1 in Malyalam language. The Tribunal partly allowed the claim petition and awarded the compensation under different heads as follows:

Sr. No.	Particulars	Amount (in Rs.)
i.	Loss of dependency: Monthly salary of Rs. 4000 X 12 = 48,000/- After deduction of 50% towards personal expenses of deceased, annual dependency taken at Rs.24,000/- Considering the age of the Petitioner No.1 at 45 years and Petitioner No.2 at 40 years, the multiplier of 14 is adopted. Loss of Income – Rs. 24,000/- X 14	3,36,000/-
ii.	Loss of consortium, love and affection	5,000/-
iii.	Loss of estate	5,000/-
iv	Funeral Expenses	5,000/-
Total		3,51,000/-
Less No Fault Compensation		50,000/-
Total		3,01,000/-
The said compensation granted along with interest @ 7.5% p.a. from the date of award till realisation.		

05] It is the case of the appellants that the compensation was grossly inadequate. The appellants have further submitted that the Tribunal, without any reason, failed to award interest on the quantified compensation from the date of filing of the claim petition. Learned advocate for the appellants filed a pursis and in the said pursis provided a chart to indicate the amount of compensation the appellants would be entitled to get under different heads. The said chart is reproduced below:

Sr. No.	Particulars	Amount
i)	Loss of dependency: Gross monthly salary of Rs. 4,000/- + 40% future prospects Rs. 1,600/- = Rs.5,600/- X 12 = Rs. 67,200/- 50% of Rs. 76,200/- i.e. Rs. 33,600/- X 18 being the applicable multiplier for the age of the deceased of 23 years.	Rs.6,04,800/-
ii)	Loss of consortium for Father – appellant No.1 Rs. 44,000/- Loss of consortium for Mother – appellant No.2 Rs. 44,000/-	Rs. 88,000/-
iii)	Loss of Estate	Rs. 16,500/-
iv)	Funeral Expenses	Rs. 16,500/-
	Total....	Rs.7,25,800/-
	Less : Amount awarded	Rs.3,51,000/-
	Balance amount	Rs.3,74,800/-

06] Learned advocate for the appellants submitted that this chart is prepared on the basis of the law laid down by the Hon'ble

Supreme Court in the case of ***Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another [(2009) 6 SCC 121]***.

07] Learned advocate for the Insurance Company submitted that this chart is prepared as per the formula provided in the decision in the case of ***Sarla Verma*** (supra). Learned advocate, however, submitted that the appellants have not made out a case to claim the interest on the claimed amount from the date of filing of the claim petition.

08] Learned advocate for the appellants, relying upon a decision in the case of ***Tehmina P. Jasawalla Vs. Mahadeo Sitaram Ghadi and Others [1983 A.C.J. 666]***, submitted that unless and until it is pointed out that the claimant was responsible for delay in disposal of the claim petition, the claimant could not be denied interest from the date of claim petition. Learned advocate, in order to substantiate his submission, placed on record the brief summary of the roznama from the date of filing of the petition till the decision of the petition. On the basis of this summary of the roznama, he has pointed out that only on three occasions, the adjournment was sought by the appellants. He took me through the summary of the roznama and pointed out that the appellants were not responsible for delay.

09] Learned advocate for respondent No.2/Insurance Company submitted that the finding recorded by the Tribunal is based on the evidence and therefore, no interference is warranted.

10] In order to satisfy myself, I have gone through the record and proceedings. The right to claim interest on the amount of compensation from the date of claim is the rule. In exceptional circumstances, the interest can be denied from the date of filing of the petition. Whether the party concerned was responsible for delay of the proceeding or not, is a question of fact and as such has to be addressed on the basis of the material available on record. In this case, the roznama does not indicate that there was intentional act on the part of the appellants to delay the proceeding. From the date of filing of the petition till the decision, only on three occasions, the adjournment was sought by the appellants. On other dates, the proceeding was adjourned on other grounds not related to the appellants. Therefore, in my view, in this case, the evidence does not support the finding recorded by the Tribunal, whereby the appellants/claimants were found not entitled to get the interest. In my view, the appellants would be entitled to get the interest on the amount of compensation quantified by the Tribunal as well as enhanced by this Court @ 7.5% per annum.

11] In the facts and circumstances, in my view, the appellants are entitled to get the compensation in terms of the chart submitted by learned advocate for the appellants, as reproduced above. Accordingly, the appellants are entitled to get total compensation of Rs.7,25,800/- (rupees seven lakhs twenty five thousand eight hundred only). Out of Rs.7,25,800/-, Rs.3,51,000/- will have to be deducted as the said amount is already paid to the appellants. Appellant No.1 died on 20th March, 2016. Appellant No.2/mother is the only dependent of the deceased Therefore, the appellant No.2 would be entitled to get the balance amount of Rs.3,74,800/- (rupees three lakhs seventy four thousand eight hundred only). The amount of compensation shall carry interest @ 7.5% per annum from the date of application till realization.

12] The appeal is accordingly **allowed** and disposed of. No order as to costs.

(G. A. SANAP, J.)

Vijay