

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

FIRST APPEAL NO.859 OF 2016

1. Mrs. Shahida Parveen w/o
Mehboobkhan Pathan,
Aged 49 years,
Occ. Household,
2. Mehboobkhan s/o Rahimkhan Pathan,
Aged 59 years,
Occ. Service,

Both R/o Samruddhi Nagar,
Takiya Ward, Bhandara

...APPELLANTS

VERSUS

1. Maharashtra State Road Transport
Corporation through Depot Manager,
Bhandara
2. Shivshankar Baliram Thavkar,
Aged 57 years, Occ. Driver,
R/o Mata Mandir, Gayatree Colony,
Ganeshpur, Bhandara

...RESPONDENTS

Shri P.A. Markandeywar, Advocate for the appellants.
Shri A.D. Lavhate, Advocate h/f Shri V.H. Kedar, Advocate
respondent No.1

CORAM : URMILA JOSHI-PHALKE, J.
DATED : MARCH 14, 2023.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the
parties.

2. By this appeal, the appellants are the original claimants seeking enhancement of the compensation on account of accidental death of Imran Khan Mehboob Khan Pathan who died in an accident on 27/10/2013.

3. The brief facts which are necessary to decide the issue are as follows :

(The parties hereinafter referred as per their original nomenclature.).

A] The claimant No.1 is the mother and claimant No.2 is the father of the deceased Imran Khan Mehboob Khan Pathan. The accident took place on 27/10/2013 when the deceased was proceeding towards Bhandara from Adyal on his motorcycle bearing No.MH-36-P-9098 and one Mohd. Bashir Mohd. Akil Sheikh who was a pillion rider. At about 5 kilometers from Adyal at about 6.00 pm one S.T. bus bearing No.MH-07-C-7024 was coming from opposite direction i.e. from Bhandara to Adyal in a rash and negligent manner and gave dash to the motorcycle of the deceased. As the bus was driven by its driver in a rash and negligent manner without observing the traffic rules and regulations and due to the severe dash Imran Khan Mehboob Khan Pathan who was riding the motorcycle sustained grievous injuries and died on the spot. As the said accident took place due to the rash and negligent driving of

the bus driver, the crime was registered against the bus driver vide Crime No.69/2013 at Adyal police station under Sections 279 and 304A of the Indian Penal Code read with Section 184 of the Motor Vehicles Act,1988. The said bus was driven by the respondent No.2 and owned by respondent No.1 – Maharashtra State Road Transport Corporation (hereinafter referred to as ‘MSRTC’ for short). As the said vehicle which was driven by its driver, respondent No.2 and owned by respondent No.1, both respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

4. It is further contention of the claimants that at the time of accident deceased was 24 years of age and was doing a private job with one Jahid Ali Wajid Ali Khan, Bhandara and was earning Rs.14,500/- per month. Due to the accidental death of the deceased who was the son of the claimants, they have lost their earning hand and support. Therefore, they are suffering from hardship and starvation. They have lost the love and affection of their son. Deceased was only 24 years of age at the time of accident. On all above the counts, the claimants have claimed the compensation from the respondents.

5. In response to the notice, respondent Nos.1 and 2 filed their written statement vide Exhibit 19 and 22 respectively. The respondent

No.1 denied the contention that the bus was driven by its driver in a rash and negligent manner and gave dash to the motorcycle. As per contention of the opponent No.1 it was the deceased who was riding motorcycle at a high speed without observing a traffic rules and regulations and was chitchatting with the pillion rider. Therefore, the contributory negligence is attributed to the deceased and hence opponent No.1 is not liable to pay compensation. Opponent No.2 also denied the contention that he was driving the vehicle in a rash and negligent manner. He also contended that the said accident took place due to the rash and negligent driving of the motorcycle rider i.e. the deceased, and therefore, he is not liable to pay compensation.

6. After considering the rival pleadings, learned trial Court has framed the necessary issues. The claimants have adduced the evidence by examining claimant No.2 – Mehboobkhan s/o Rahimkhan Pathan vide Exhibit 30. To prove the income of the deceased, claimants have also examined Jahid Ali Wajid Ali Khan with whom deceased was working. Admittedly, MSRTC has examined respondent No.2 who was driving the bus at the relevant time.

7. After hearing both the sides and after considering to the pleadings and the evidence, the Tribunal pleased to pass an Award and

granted compensation @ Rs.5,49,000/- along with no fault liability (NFL).

8. Being aggrieved and dissatisfied with the judgment and award passed by the Tribunal, present appeal is preferred on the ground that learned trial Court failed to consider that the deceased was working with Jahid Ali Wajid Ali Khan and was earning Rs.14,500/- per month. Learned trial Court has also not considered the future prospects while awarding the compensation to the claimants. Thus, the judgment and award passed by the Tribunal granting compensation at the inadequate rate which is absolutely arbitrary, illegal and contrary to law. The learned Tribunal ought to have considered the income of the deceased as per the evidence adduced by the claimants while calculating the compensation. For all above these grounds, the claimants have claimed the enhanced compensation amount.

9. Shri Markandeywar, learned Counsel for the appellants-claimants submitted that tribunal had not considered the income proof which is adduced by the claimants before the tribunal. The evidence regarding the fact that deceased was working as a Receptionist with Jahid Ali Wajid Ali Khan and was earning Rs.14,500/- per month is not denied by the respondents. So the Tribunal ought to have considered

the said evidence while awarding the compensation amount. The claimants are also entitled to receive the amount towards the consortium. The compensation ought to have awarded in view of the judgment of the Hon'ble Apex Court in ***Sarla Verma and ors. Vs. Delhi Transport Corporation and anr. 2009 ACJ 1298*** as well as ***National Insurance Co. Ltd. Vs. Pranay Sethi and ors. 2017 ACJ 2700*** as well as ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors. (2018) 18 SCC 130*** and submitted that the appellants/claimants are entitled to receive the compensation under the head of parental consortium. In view of the judgments of the Hon'ble Apex Court, the claimants are entitled to receive the enhanced compensation.

10. On the other hand, Shri A.D. Lavhate, learned Counsel h/f Shri V.H. Kedar, learned Counsel for respondent No.1 submitted that the learned trial Court has rightly considered the notional income while awarding the compensation as PW-2 Jahid Ali failed to produce any documentary evidence to show that he was paying Rs.14,500/- per month to the deceased as a remuneration. He further submitted that the appellants are not entitled to claim compensation in view of judgment of *Sarla Verma* (supra) and *Pranay Sethi* (supra). As there is no evidence regarding the actual income of the deceased therefore, learned trial Court has considered the notional income of the deceased and awarded

the compensation which is just and reasonable one. Hence, no interference is called for.

11. Shri N.M. Jibhkate, learned Counsel for respondent No.2 endorsed the same contentions and submitted that in absence of any specific evidence regarding the income, learned trial Court has rightly considered the notional income of the deceased, and therefore, no interference is called for.

12. After hearing both the sides and perusal of the evidence on record following points arise for my consideration :

(i) whether the claimants have made out the case for enhancement of compensation?

13. Admittedly, respondent No.1-MSRTC as well as respondent No.2 have not challenged the award of Tribunal by preferring an appeal or cross-objection. Therefore, the issue regarding the rash and negligent driving is not under challenge in this appeal. This appeal is filed only to the extent of quantum of the compensation which is awarded by the Tribunal. Therefore, no discussion is required regarding the rash and negligent driving of the bus driver or who is responsible for the said accident.

14. Before the Claims Tribunal, claimant No.2-Mehboobkhan s/o Rahimkhan Pathan who is the father of the deceased stepped into the witness box vide Exhibit 30. He testified as per his pleading that at the relevant time the deceased was riding the motorcycle and the bus driver of the bus bearing No.MH-07-C-7024 was driven by its driver in a rash and negligent manner and gave dash to the motorcycle of the deceased. Due to the severe dash, deceased died on the spot. The occurrence of the accident is admitted. Issue regarding the rash and negligent driving is dealt by the Tribunal and held that it was the bus driver who was rash and negligent and responsible for the said accident. This finding is not challenged before this Court either by MSRTC or by the driver of the bus.

15. Now only question remains regarding the quantum of the compensation. Regarding the quantum of compensation, claimant No.2 has adduced the evidence that his son born on 15/08/1989. He was qualified by passing the 12th examination in the year 2007, thereafter he completed his education by completing the D.Ed. by obtaining the good marks. He was also learning the typing and passed the examination. He was working with Jahid Ali Wajid Ali Khan as a Receptionist and was drawing salary of Rs.14,500/- per month. At the time of accident,

deceased was 24 years of age. He was cross-examined at length by both the respondents. During the cross-examination the aspect of wages or salary is not challenged either by respondent No.1 or by respondent No.2. Thus, the evidence regarding the income of the deceased remained unchallenged. Besides the oral evidence, the claimants relied upon various police papers i.e. accident form-A Exhibit 31, FIR Exhibit 32, Accident report form Exhibit 33, Oral report Exhibit 34, Spot panchnama Exhibit 35, Inquest panchnama Exhibit 36, post-mortem report Exhibit 37, driving licence of the deceased Exhibit 38, RC copy of motorcycle Exhibit 39, etc.

16. As per the post-mortem report, the age of the deceased was shown between 20 to 25 years old. The age of the deceased is also not challenged by the respondents. To prove the income of the deceased, claimants have also examined Jahid Ali Wajid Ali Khan with whom the deceased was working. He testified that the deceased was working along with him since 2013 till 27/10/2013 and he was paying Rs.14,500/- per month to him. During cross-examination he admitted that he has no documentary evidence to show that he was paying Rs.14,500/- per month as a salary. It further came in his evidence that his business is not registered, 5 to 6 employees were working with him. He has not maintained the attendance or salary register of his

employees. Thus, except the bare words no other evidence is adduced by him to show that he was paying Rs.14,500/- per month to the deceased as a salary. Thus, after considering the evidence on record it is apparent that except the oral evidence of the claimants and the evidence of PW-2 – Jahid Ali Wajid Ali Khan no other evidence is available on record to show that the deceased was earning Rs.14,500/- per month as an income.

17. On behalf of the respondents, respondent No.2-Shivshankar Baliram Thavkar entered into the witness box. His evidence is only to the extent that it was the deceased who was rash and negligent at the time of the alleged incident. As already observed that the act of rash and negligent which was attributed to the bus driver is not under challenge in this appeal before this Court.

18. Now only issue raised in the appeal is for enhancement of the compensation. As already observed that except bare words no other evidence is available on record to ascertain that the deceased was earning Rs.14,500/- per month. In ***Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd. 2011(7) ALL MR 774 (S.C.)*** the Hon'ble Supreme Court has fixed the monthly income of the deceased as Rs.4500/- who died in an accident in 2004

who was a labour. The Hon'ble Apex court found fault with the Claims Tribunal, in reducing the monthly income from Rs.4500/- to Rs.3000/- for the purpose of computing the loss of contribution to the family and by fixing Rs.4500/- as monthly income computed the loss of contribution to the family. In a given case, where there is no evidence regarding employment and income earned by the deceased, the claims tribunal having regard to the number of dependents in other circumstances, can fix a reasonable income for the purpose of computing the loss of contribution to the family. At the time of filing the claim petition, the deceased was unmarried.

19. Considering the fact that the Hon'ble Apex Court has considered the income of the deceased when there was no evidence regarding the income at the rate of Rs.4500/- per month in the year 2004 the alleged accident has taken place after 10 years i.e. in the year 2013. Therefore, considering the rises in the prices of the essential commodities as well as hike in the labour charges also, no prejudice will be caused if the income of the deceased is taken into consideration by considering that he was doing a labour work and was earning more than Rs.200/- per day from the labour charges. Then definitely it comes to Rs.8000/- per month. Thus, I have no hesitation to hold that by applying the same analogy in view of the judgment of the Hon'ble Apex Court the

income of the deceased @ Rs.8000/- per month can be taken into consideration while competing the compensation amount.

20. The deceased was survived by the claimants who are the parents of the deceased. In view of the judgment of Sarla Verma (supra) when the deceased is unmarried then the deduction towards the personal expenses are to be deducted 50%. After deducting 50% the monthly income which he was spending for the parents comes to Rs.4000/- per month and the yearly income comes to Rs.48,000/-. The deceased was only 24 years of age as per the post-mortem report. Therefore, in view of the judgment of Sarla Verma (supra) the multiplier applied is to be 18.

21. It is well settled that just and reasonable compensation is to be awarded. In ***R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd.*** ***AIR 1995 SC 755*** wherein the Hon'ble Apex court held as follows :

“In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards.”

22. In another judgment in ***Divisional Controller, KSRTC Vs. Mahadeva Shetty and anr. (2003) 7 SCC 197*** in paragraph No.12, the

Supreme Court has held that :

“Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded.”

In paragraph No.15 in the said judgment, the Hon’ble

Supreme Court has held that :

“Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Though by use of the expression “which appears to it to be just”, a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just.”

23. In ***Nizam Institute of Medical Sciences Vs. Prasanth S. Dhananka*** 2010 ACJ 38 (SC), a three-Judge Bench was dealing with a

case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission the bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act. It is reproduced for reference :

“We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.... At the same time we often find that a person injured in an accident leaves his family in greater distress, vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.”

24. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future running however, as far as possible should be based on certain

principles. A person may have bright future prospect, he might have become eligible to promotion immediately, there might have been chances of an immediate pay revision whereas in another the nature of employment was such that he might not have continued in service, his chance of promotion, having regard to the nature of employment may be distant or remote. It is therefore, difficult for any Court to lay down rigid test which should be applied in all situation. There are divergent views in some cases it has been suggested that some sort of hypothesis or guess work may be inevitable. That may be so. The several other factors should be taken into consideration including the education of the dependents, the nature of the job. In the light of change societal conditions future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification, his past performance but also other relevant factors.

25. Having regard to the above facts in the present case, admittedly there is no evidence as to the income of the deceased. However, considering the observation of the Hon'ble Apex Court in the judgment of Sri Ramachandrappa (supra) the income of the deceased considering he was doing the labour work is taken into consideration. The question arises whether the Court can taken into consideration, the increase of income or future prospects of the employees who employed

in unorganised sector or self employed person. The Hon'ble Apex Court in Pranay Sethi (supra) in paragraph No.13 observed that :

“Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason, etc.”

26. Hon'ble Apex Court further held that therefore, we do not feel that while making the observation in the last three lines of paragraph No.24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is a self employed or who is paid fixed wages. Rather it would be reasonable to say that a person who is self employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of an accident then the same formula deserves to be applied for calculating the amount of compensation. The Hon'ble Apex Court further held that the degree-test

has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years and the addition should be 10% between the age of 50 to 60 years. Hon'ble Apex Court has laid down the guidelines regarding the compensation which is to be awarded. In clause 4th of paragraph No.61 of the judgment, the Hon'ble Apex Court held that in case the deceased was self employed or on a fixed salary and addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years and addition of 20% where the deceased was between the age of 40 and 50 years and 10% where the deceased was between the age of 50 and 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

27. Having regard to the observation of the Hon'ble Apex Court referred above and on the principles of law discussed by the Hon'ble Apex Court in the present case by deducting the 50% for his personal expenses and considering that 50% he was spending on his parents, by

considering Rs.4000/- per month his yearly income comes to Rs.48,000/-. After adding 40% in Rs.48,000/- it comes to Rs.67,200/-. His yearly income comes to Rs.67,200/-. Considering the age of the deceased multiplier applied is to be 18 as per the judgment of Sarla Verma (supra) which comes to Rs.12,09,600/-.

28. The Tribunal has already awarded the compensation under the head of love and affection and loss of estate as well as funeral expenses, therefore, no additional amount of compensation is awarded under the said head.

29. The Hon'ble Apex Court in the case of Pranay Sethi (supra) also dealt with the compensation under the head of loss of consortium. In Magma General Insurance Co. Ltd. (supra) it is held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the

death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. The Motor Vehicles Act is a beneficial legislation with an object of providing relief to the victim or their family.

30. In view of the above, the claimants who are the parents are entitled to be awarded loss of consortium at the rate of Rs.40,000/- each. Thus, additional amount of Rs.80,000/-, the claimants are entitled to receive towards the compensation under the head of filial consortium.

31. The amount of compensation which is calculated as above the claimants are entitled to receive. The respondent Nos.1 and 2 shall pay Rs.12,89,600/- by deducting Rs.5,49,000/- which is already paid to the claimants by the Tribunal and rate of interest @ 6% per annum from the date of institution of the petition i.e. from 23/01/2014 till realisation thereof.

32. In the result, I proceed to pass the following order :

- (i) Appeal is partly allowed.

- (ii) The appellants are entitled to receive enhanced amount of compensation Rs.7,40,600/- after deducting Rs.5,49,000/- on interest @ 6% per annum on enhanced amount of compensation from the date of petition till realisation of the amount.
- (iii) The respondent Nos.1 and 2 shall deposit the amount within 60 days from the receipt of copy of this judgment.
- (iv) Award be drawn accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*