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

FIRST APPEAL NO.1034 OF 2016

1. Smt. Usha Sahebrao Bambole,
Aged 53 years, Occu. Household, (Original Claimants)

2. Pankaj Sahebrao Bambole,
Age 30 years, Occu. Education,

3. Ku. Karuna Sahebrao Bambole,
Age 29 years, Occu. Education,

4. Ku. Rupali Sahebrao Bambole,
Age 27 years, Occu.: Education,
All r/o Vrundavan Colony,
Near Chilamchhavani, Tq. &
Distt. Amravati. **APPELLANTS**

// VERSUS //

1. Gunsekar Kandaswami Udayar, (Original Respondents)
Age Major, Occu: Driver, (On.R.A.)
R/o. 7/54, Elluppanatham,
PO- Gangawalli, TK, Selam(T.N.)
(Driver of Offending Truck no.
TN-30-AK-8838)

2. Chandrashekar Singh Hirasingh,
Age Majaor, Occu: Not Known,
R/o 226 Indian Bank Colony,
Narasothipatty, Salem- 636 00 (TN)
(Owner of offending Truck no.
TN-30AK-8838)

3. United India Insurance Co. Ltd.,
through it's Divisional Manager,
Division Officer, Kanchan Bavan,
Dasara Maidan, Badnera Road,
Amravati, Tq. & District : Amravati.
(Insurance co. of offending truck no.
TN-30-AK-8838) **RESPONDENTS**

Mr. S. S. Alaspurkar, Advocate for the appellants.
Mrs. Anita Mategaonkar, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/02/2023

ORAL JUDGMENT

1. By preferring this appeal, original claimants seek enhancement of the compensation which is granted by the learned Motor Accident Claims Tribunal, Amravati by passing Award on 12.02.2016.

2. Brief facts of the case in nutshell are as under.:

Appellant No.1 is wife and appellant Nos.2 to 4 are children of deceased Sahebrao Raghoji Bambole who was serving as a teacher. As per the contention of the appellants, on 10.01.2012 at about 10.00 p.m. deceased Sahebrao along with others was travelling by Maruti Omni Car bearing No. MH-31/CR-4559 from Nagpur. When the said Maruti Car reached near PIX Company on National High Way No.6, at the relevant time, one truck bearing No. TN-30-AK-8838 came from the opposite side in an excessive speed and in a rash and negligent manner and dashed against the Maruti Omni Car in which the deceased was travelling. The said truck was driven by its driver in a rash and negligent manner without observing the traffic rules and regulations. Due to the severe dash, the deceased Sahebrao Raghoji Bambole sustained grievous injuries and died on 11.01.2012, while taking treatment in Sure Tech Hospital, Nagpur. In the said accident, other two persons died on the spot and two others were also seriously injured. Regarding the said accident, Crime was registered vide Crime No.8/2012 at Kondhali Police Station, Nagpur.

3. It is further contention of the appellants/claimants that the offending vehicle was owned by respondent No.2 and validly insured with the respondent No.3. Respondent No.1 was driving the said truck at the relevant time. As the said accident took place due to the rash and negligent driving of the truck driver, all the respondents are jointly and severely liable to pay compensation.

4. It is further case of the claimants that at the relevant time, the deceased was High School Teacher and drawing salary of Rs.34,002/- per month. Due to the accidental death of the deceased, the appellants lost their earning source and as the accident took place due to the rash and negligent driving of the truck driver, all the respondents are jointly and severally liable to pay compensation.

5. Respondent Nos.1 and 2 driver and owner though served with the notice, remained absent, hence petition proceeded *ex-parte* against them.

6. Respondent No.3 – Insurance Company resisted the claim and denied all the contentions of the claimants. As per the contention of the Insurance Company, the Maruti Omni Car driver is also responsible for the said accident. As per the contention of the Insurance Company, the said accident took place due to the negligence of the Omni Car driver, and therefore Insurance Company is not liable to pay compensation. The Insurance Company further raised the defence that truck driver was not holding valid driving licence, and therefore, there is a breach of policy and hence Insurance Company is not liable to pay compensation.

7. The learned Motor Accident Claims Tribunal, Amravati has recorded the evidence and after hearing both the sides awarded the compensation of Rs.21,33,144/-. Being aggrieved with the said, the original claimants preferred this appeal for enhancement of the compensation on the ground that while calculating the compensation amount the learned trial Court deducted the amount towards provident fund, profession tax and income tax from gross salary. In fact, the

learned trial Court ought to have deducted only professional tax and income tax. Thus, the learned trial Court has calculated the amount erroneously and incorrectly and the claimants are entitled for enhanced amount of compensation.

8. Heard Shri. S. S. Alaspurkar, learned Advocate for the appellants. He reiterated the said contentions and submitted that the Insurance Company has also challenged the findings of the trial Court. However, the appeal of the Insurance Company was dismissed on merits. He further submitted that as per the settled law the trial Court has to deduct only against the professional tax and income tax. However, trial Court has deducted under the head of provident fund, professional tax and income tax and incorrectly calculated the amount. In support of the contention he placed reliance on **Manasvi Jain Vs. Delhi Transport Corporation** reported in AIR **2014 SC (Supp) 1746** wherein Hon'ble Apex Court held that net monthly income-voluntarily contribution made towards GPF, House Rent, insurance cannot be deducted from his monthly salary except contribution towards the income tax. He further placed reliance on the decision of the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680** and **Sarla Verma (SMT) and others Vs. Delhi Transport Corporation and another**, reported in **(2009) 6 SCC 121.** On

the basis of above cited decisions learned Advocate for the appellants submitted that just compensation is to be awarded to the appellants/claimants.

9. Per contra, Ms. Anita Mategaonkar, learned Advocate for the respondent No.3 submitted that the learned trial Court has granted interest at the rate of 8% per annum which is excessive and exorbitant one. She further submitted that the trial Court has rightly calculated the amount of compensation and rightly awarded the compensation, hence no interference is called for.

10. Heard both the sides.

11. Perused the record and following points arise for my determination.

(i) Whether the appellants have made out the case for enhancement of the compensation?

12. It is not disputed that the deceased Sahebrao met with an accident which took place on 10.01.2012 at about 10.00 p.m. As per the claim of the petitioners, deceased Sahebrao was proceedings in Maruti Omni Car bearing No. MH-31/CR-4559 from Nagpur. The said accident was occurred when the vehicle reached near the PIX Company on National Highway No.6. The involvement of the truck bearing No. TN-

30-AK-8838 is also not in dispute. It is also not disputed that the Crime No.8/2012 was registered against the truck driver at Police Station, Kondhali. Though Insurance Company has claimed that alleged accident has occurred due to the negligence of the Omni Car driver. However, Insurance Company has not adduced any evidence before the trial Court to prove the contention. It is further defence of the Insurance Company that truck driver was not holding valid driving licence, and therefore Insurance Company is not liable to pay compensation. When Insurance Company has come with specific defence, burden is on the Insurance Company to prove the same. Admittedly, in the present case, Insurance Company has not adduced any evidence by examining the official of Regional Transport Corporation to show that the truck driver was not holding valid driving licence. Moreover, the crime is not registered against the truck driver under the provisions of Motor Vehicles Act, as he was not holding valid driving licence. Thus, Insurance Company failed to prove the defence in support of the contentions. Moreover, it is admitted position that the Insurance Company has also challenged the findings of the learned trial Court by preferring separate appeal, however the said appeal is already dismissed by this Court on merits.

13. Now, only question arises regarding the enhancement of the compensation and it has to be seen whether the claimants are entitled

for enhance compensation amount. For that purpose, the evidence of the claimant is required to be considered. On behalf of the claimant No.1 wife of the deceased Smt. Usha Sahebrao Bambole stepped into the witness box and testified as per the pleadings. She reiterated the contentions, as per her evidence, her husband was aged about 55 years and was serving as a teacher in school. She also claimed the enhancement of the compensation by adding future prospect. As per her evidence, her husband was drawing salary of Rs.34,002/- at the time of accident. She further testified that in future there would have been addition in the salary of her husband, and therefore in view of the decision of the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) she is entitled to receive the compensation by adding 15% towards the future prospects. It is submitted by Mr. Alaspurkar, learned Advocate for the appellants that after adding future prospect the appellants/claimants are entitled to receive compensation of Rs.33,19,128/- including the compensation under other heads. However, the Tribunal has awarded the compensation at the rate of Rs.21,33,144/-. Therefore, the claimants are entitled to receive enhance compensation. In support of his contentions, he placed on record the calculation sheet. The salary of the deceased is not disputed. Deceased was earning Rs.34,002/- towards the gross income. It is apparent that while calculating the compensation learned trial Court has deducted the amount under the heads of professional tax, provident fund and income tax from gross salary. Admittedly, the contribution to the provident fund is for the benefits of the employee and it is to be deducted from his salary. Hon'ble Apex Court in the case of **Manasvi Jain** (supra) had considered this issue and held that except an amount towards the income tax and professional tax the voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide this net salary or take home salary. Here in the present case, also the monthly salary of the deceased is Rs.34,002/-. After calculating the net salary, the yearly income comes to Rs.4,08,024/- per year.

14. After deducting income tax and professional tax, in view of Exh.47 and Exh.46, the yearly income of the deceased comes to Rs.3,98,599/-. After adding 15% in view of the decision of **Sarla Verma** (supra) the yearly income comes to Rs.4,58,389/-. As the deceased was 56 years old multiplier of 9 would apply and after deducting $1/4^{th}$ towards the personal expenses the yearly income of the deceased comes to Rs.3,43,792 X 9 = Rs.30,94,128/-.

15. The Tribunal has already awarded the compensation under

the other heads i.e. Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.50,000/- for love and affection and Rs.50,000/- towards loss of estate. By adding these benefits, the total amount comes to Rs.33,19,128/-. The Tribunal has awarded the compensation at the rate of Rs.21,33,144/-. After deducting the compensation amount which is already awarded. The claimants have claimed enhance compensation amount at the of Rs.11,85,984/-.

16. Section 168 of the Motor Vehicles Act, 1988 deals with the concept of just compensation and the same has to be determined on the basis of reasonableness and by accepting the legal standard. It is also well settled that just compensation is to be awarded to the legal representative of the person who died in an accident or the injured who sustained the accidental injuries in the accident. The concept of just compensation should be on the basis of fairness, reasonableness, simultaneously the compensation cannot be granted as a bonanza though the discretion vested in the Tribunal is wide. It is obligatory on the part of the Tribunal to be guided by the expression that it just compensation. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter by applying the multiplier. The formula relating to multiplier has been determined in the case of **Sarla Verma (SMT) and**

others Vs. Delhi Transport Corporation and another, reported in **(2009) 6 SCC 121**. The duty of the Tribunal and the Court has also to see that just compensation is to be awarded by including addition of future prospects on the proven income at present.

17. The determination has to be on the foundation of the evidence which is adduced by the claimants and said determination has to be on the basis of evidence adduced before the Court. Here, in the present case, the documentary evidence Exh.47 is the income tax acknowledgement and Exh.46 is showing the deduction. Salary certificate is also on record. Thus, it is not in dispute that deceased was serving as a teacher and was drawing salary of Rs.34,002/- per month at the time of accident. The learned trial Court has erroneously calculated the amount by deducting the contribution made towards the provident fund which is the deduction towards the savings and it is the voluntarily deduction. In view of the decision of the Hon'ble Apex Court, the Tribunal cannot deduct the amount which is a voluntarily contribution made by the deceased in the nature of savings. Therefore, the appellants are entitled to receive the enhanced compensation as per the calculations made above. After deducing the compensation already awarded, the appellants are entitled to receive enhanced amount of

compensation of Rs.11,85,984/- along with the interest at the rate of Rs.7.5%. As the interest awarded on a fixed deposit by the Nationalized Bank is around 7 to 8 %, Therefore it will be just and proper to award interest at the rate of Rs.7.5% on enhanced amount of the compensation.

18. In the above circumstances, and the reasons mentioned above, the appeal is allowed.

19. The respondent No.3 – Insurance Company shall deposit the enhanced amount of compensation within two months along with the interest at the rate of Rs.7.5 % till realization of the amount, from the date of the petition i.e. dated 28.02.2012.

20. Award be drawn accordingly.

21. Appellants to deposit the deficit Court Fees on enhanced amount of compensation.

22. The appellants are entitled to withdraw the amount of compensation on depositing the deficit Court Fees.

(URMILA JOSHI-PHALKE, J.)

Sarkate.