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

FIRST APPEAL NO.654 OF 2011

1. Smt. Jayashri Murlidhar Kharche,
Aged 47 years, Occ.: Nil,

2. Ku. Prajakta Murlidhar Kharche,
Aged 22 years, Occ.: Education,

3. Dhananjay Murlidhar Kharche,
Aged 14 years, Occ.: Education, Minor,
through natural guardian, mother
i.e. appellant No.1.
All R/o JivanJyoti Hospital, Malkapur,
Tq. Malkapur, Distt. Buldhana. **APPELLANTS**

// VERSUS //

1. Sayaji Totaram Patil,
Aged 30 years, Occ.: Driver,
R/o At Post: Warad, Tq. Erandol,
Distt. Jalgaon.
(Deleted as per order passed below Exh.49.)

2. M/s Progressive Petroleum Corporation Ltd.,
Director – Shri P. S. Jakhite,
Aged 41 years, Occd.: Tanker owner,
R/o Total Petrol Pump, Paldhi, Tq. Erandol,
Distt. Jalgaon.

3. The New India Assurance Company Ltd.,
Through : it's Branch Manager, The New
India Assurance Company Ltd., Mandor
Market, Behind Dadhiwala Bungalow,
Tq. and Distt. Jalgaon. **RESPONDENTS**

Mr. Bharat D. Vora, Advocate for appellants.
Mr. M. B. Joshi, Advocate for respondent No.3.

<u>CORAM</u> : URMILA JOSHI-PHALKE, J.
RESERVED ON : 20/01/2023
PRONOUNCED ON : 18/04/2023

<u>JUDGMENT</u>

1. By preferring this appeal, the appellants who are original claimants are seeking enhancement of compensation which is granted by the Motor Accident Claims Tribunal, Buldhana in Motor Accident Claim Petition No.133/2005.

2. Brief facts which are necessary to decide the appeal are as follows.

On 21.04.1997 deceased Murlidhar Tryambak Kharche at about 2.30 p.m. was proceeding by his Maruti car bearing No. MH-18-A-37 from Malkapur to Edlabad, at the relevant time Tanker bearing No.19-J-0264 was driven by its driver in rash and negligent manner without observing the traffic rules and regulations and gave dash to the Maruti car of the deceased on National Highway No.6 near Ghodasgaon. Due to the severe dash, Murlidhar Kharche died on the spot. As per contention of the claimants, the said tanker was driven by its driver in a very rash and negligent manner without observing the traffic rules and regulations. The respondent No.2 is the owner of the offending vehicle driven by respondent No.1 and validly insured with respondent No.3. As the said accident took place due to the rash and negligent driving of the tanker driver, alleged accident took place. Therefore, crime was registered against the tanker driver vide Crime No.71/1997 at Edlabad Police Station. As per the claimants that as the said accident took place due to the rash and negligent driving of tanker driver owned by respondent No.2, driven by respondent No.1 and validly insured with the respondent No.3, therefore all the respondents are jointly and severally liable to pay the compensation.

3. At the time of accident, deceased was practicing as a Medical Practitioner aged about 38 years and earning Rs.30,000/- per month. Due to the sudden and severe accident of the deceased, claimant No.1 has lost the support of her husband. Claimant Nos.2 and 3 lost their father. The deceased was running hospital of 24 beds. The yearly income of deceased for the year 1995-96 was Rs.2,97,340/-. Deceased would have earned more income in the future and would have develop his hospital in future. But, due to the accident, the future of all the claimants ruined, and therefore they are claiming the compensation.

4. In response to the notice, the respondent No.3 appeared and contested the claim. As per the defence of the Insurance Company, the accident took place due to the negligence of the deceased. Therefore,

Insurance Company is not liable to pay compensation. Insurance Company further denied that accident took place because of negligence on the part of driver of tanker. It is further contended that as per the police papers deceased was travelling in Maruti car and accident took place because of his negligence, therefore claimants are not entitled for any compensation.

5. During pendency of the claim petition, the name of the respondent No.1 was deleted. Respondent No.2 appeared but did not file written statement. Hence, the claim was proceeded against him without the written statement.

6. Learned Tribunal recorded the evidence and after hearing both the sides granted compensation of Rs.10,76,656/- along with the interest at the rate of 7.5 % per annum from the date of the petition till realization of amount.

7. Being aggrieved and dissatisfied with the Judgment and Award passed by the learned Tribunal, original claimants preferred this appeal for enhancement on the ground that the Presiding Officer of the Tribunal had not considered the evidence on record that the deceased was Medical Practitioner running the hospital of 24 beds. It is further

contended by the claimants that Tribunal had not considered the income of the deceased in a proper prospective, the future income by increasing the ten percent for every year is also not considered by the learned Tribunal, and therefore the claimants are entitled to receive the enhanced compensation.

8. Heard learned Advocate Mr. Bharat Vora for the claimants and learned Advocate Mr. M. B. Joshi for respondent No.3 – Insurance Company.

9. Learned Advocate Mr. Bharat Vora for the claimants submitted that claimant No.1 has adduced her evidence and she specifically deposed before the Court that due to the accidental death of the deceased she had lost her husband. Her husband was Medical Practitioner. He was qualified as M.D. Medicine and was running the hospital since last 12 years. Till 31.03.1997 he was running the hospital on rented premises. Since 01.04.1997, he started his hospital in his own premises which is of 24 beds. The hospital was having facilities like Intensive Critical Care Unit, deceased has obtained the loan for constructing the said hospital. Since 01.04.1997 till the date of accident i.e. on 21.04.1997 he had earned Rs.56,000/- in 20 days. Thus, the income of the deceased for the year 1995-96 was Rs.2,21,130/-. In the

year 1996-97 his income was Rs.2,28,119/-. He was also earning agriculture income from the agriculture property. Thus, his total income was Rs.2,43,948/- for the year 1996-97. She has also filed on record the acknowledgment of income tax returns filed by the deceased and after death of deceased, she had filed the same. He further submitted that in view of Judgment of **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **(2009) 2 SCC (Civil) 770**. The amount of compensation is to be calculated by considering his income of Rs.2,43,948/-. He further placed his reliance on **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680** wherein it is held that the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses with escalation to be granted. In the said judgment it is further held by the Hon'ble Apex Court that 40% to be added towards the future prospects if the deceased is unskilled labour and below the age of 40 years, but these aspects are not considered by the Tribunal. He further relied upon the judgment of the Hon'ble Apex Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, wherein the Hon'ble Apex Court considered the judgment of Constitutional Bench in **Pranay Sethi** (supra) which dealt with the various heads under which compensation is to be awarded. One of these heads is loss of consortium. In para No.8.7 it is held by the Hon'ble Apex Court, which is reproduced hereinafter for reference.

> "In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parantal consortium', and 'filial consortium'. 'The right to consortium would include the company, care help, comfort, guidance, solace and affectionof the deceased, which is a loss of his family'."

10. He further submitted that in view of the judgment of the Hon'ble Apex Court the appellants are entitled for the consortium by considering that appellant No.1 has lost her husband. Appellant Nos.2 and 3 lost their father. He submitted that appellants are also entitled for the expenses towards loss of estate, funeral expenses by considering 10% increase in the amount. Thus, he submitted that appellants are entitled for enhanced compensation amount.

11. Learned Advocate appearing for the Insurance Company Mr. M. B. Joshi, submitted that in fact deceased was responsible for the said accident, therefore claimants are not entitled to receive any compensation. He submitted that the compensation awarded by the Tribunal is adequate compensation and no interference is called for.

12. Heard rival submission of the parties. Perused the evidence on record. It is well settled that just compensation is to be awarded to the legal representatives of the person who died in an accident, and the injured who sustained the accidental injuries in the accident. The provision of compensation under the Motor Vehicles Act is enacted to compensate the legal representatives whose near and dear one met with an accident or sustained injuries in an accident. The concept of just compensation should be on the basis 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 the 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 case of **Sarla Verms Vs. Delhi Transport Corporation and another** reported in **(2009) 2 SCC (civil) 770.** The duty of the Tribunal and the Court has to see that just compensation is to be awarded by including addition of future prospectus on the approved income.

13. In the light of the above legal principles, it has to be seen whether the appellants are entitled for enhanced compensation. In

support of contention appellant No.1 Jayshree Murlidhar Kharche stepped into the witness box and adduced her evidence. It is not disputed that the accident took place on 21.04.1997 at about 2.30 p.m. when the deceased was proceeding in his Maruti Car bearing No. MH-18-A-37 on Edlabad - Malkapur Highway. It is also not disputed that the offending vehicle tanker bearing No. MH-19-J-0264 came from the opposite side and gave dash to the Maruti car and due to the said dash husband of the appellant No.1 died on the spot. The offending vehicle is owned by the respondent No.2 and validly insured with the respondent No.1. Regarding the said accident, offence registered against the driver of the tanker vide crime No.71/1997 at Edlabad Police Station for the offence punishable under Section 279 and 304-A of the Indian Penal Code. Then certified copies of the police papers i.e. FIR Exh.78, extract from charge-sheet final summary report Exh.79, Postmortem report Exh.80, Accident Report Form Exh.81 is filed on record. The recitals of the FIR and summary report shows that alleged accident took place when Maruti car driver was attempting to overtake. The genuineness of the police papers is not disputed by the Insurance Company. The postmortem report is also on record at Exh.80. The respondent No.3 - Insurance Company raised the defence that said accident took place due to the contributory negligence of the Maruti car driver however Insurance Company has not adduced any evidence to that effect. Even the finding of the Tribunal is not challenged by the Insurance Company by preferring an appeal. The Insurance Policy Exh.84 shows that offending vehicle was validly insured with the Insurance Company.

14. In support of the contention that deceased was earning more than Rs. 2,00,000/- per year, the appellant No.1 as well as the evidence of PW-2 Jayant Jagannath Bhide, the Tax Consultant is examined vide Exh.91. As per the oral evidence of PW 2, he is practicing income Tax consultant. Deceased Murlidhar Kharche was his client. In the year 1995-96 after deducting the expenses his income was Rs.1,75,208/-. The acknowledgment of the assessment year 1996-97 is at Exh.69 and Exh.68 is the income and expenditure account. The professional income was shown as Rs.35,100/-. Thus, in the year 1995-96 the yearly income of the deceased was Rs.1,75,208/-. The income for the financial year 1996-97 was shown as Rs.62,895/- and after his death income tax for the year 1997-98 was deposited as Rs.73,200/-. This witness is cross-examined at length. During cross-examination he admitted that the agriculture income is not included in the tax returns as it was the income of the family. Thus, the evidence of PW.2 shows that for the year 1995-96 the income of the deceased was Rs.1,75,208/- and for the year 1996-97 his income was Rs.62,895/-. Though this witness cross-examined at length nothing incriminating came on record. The

learned trial Court had considered the income tax returns filed on record. The learned trial Court has on the basis of that income tax returns taken into consideration the income of the deceased at the rate of Rs.1,00,000/- per year. After deducting 1/3 amount, he has considered the income of the deceased as Rs.66,666/- multiplier of 16 was applied and compensation was granted of Rs.10,66,656/-. The evidence of the claimant No.1 as well as evidence of PW 2 shows that the deceased was Medical Practitioner. Admittedly, the accident occurred on 21.04.1997. The income tax acknowledgments which are filed on record shows that for the period 01.04.1997 to 21.04.1997 the total income of the deceased was Rs.57,329/- that is of only of 20 days which is at Exh.63. The acknowledgment Exh.66 for the year 1995-96 his net income was shown as Rs.1,75,208/-. For the year 1996-97 his net income was shown to be Rs.62,895/-. The trial Court has considered average income of the deceased by disbelieving the income tax acknowledgment which is filed after the death of the deceased. Admittedly, the Tribunal had not considered the income by adding 40%, in view of the Judgment of Hon'ble Apex Court in **Sarla Verma** (supra) as well as **in Pranay Sethi** (supra). The Hon'ble Apex Court in **Pranay Sethi** (supra) held that although the wages/income of those employed in unorganized 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. It is further held by the Hon'ble Apex Court that "judicial notice" of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the later 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 living increases and the prices of essential go up, it is but natural for him to increase the cost of his labour. So will be the cases the ordinary skill and unskilled labour like barber, blacksmith, cobbler meson etc.

15. By applying this principles even if it is considered that the deceased who was a Medical Practitioner qualified as M.D. Medicine was earning Rs.1,00,000 per annum. Considering his age 40% further prospects required to be added in the said Rs.1,00,000/-. Thus, the yearly income of the deceased is to be counted by adding 40% future prospects in view of the Judgment of the Hon'ble Apex Court in the case of **National Insurance Company Vs. Pranay Sethi and others** (supra). The said addition of future prospects is to be added considering that the deceased was below 48 years of age and there is every likelihood of

addition of income in his profession considering his qualification etc. So, after adding 40% of future prospects the amount of yearly income comes to Rs. 1,40,000/-. After deducting 1/3 yearly income of deceased comes to Rs.93.333/-. Thus, the appellants are entitled to receive the compensation Rs.93.333/- X 16 it comes to Rs.14,93,328/-. Besides the above amount of compensation, the appellant No.1 is the wife who lost her husband at the young age. At the time of filing the petition she was young. She has to lead her life without the love and affection of her husband. Appellant No.2 is the daughter and appellant No.3 is the son. They have lost love and affection of their father and has to lead their life without the love and affection of their father. The Hon'ble Apex Court in the case of **Pranay Sethi** (supra) has considered the aspect of consortium held that in legal parlance "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. Said non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other Countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the court should award at least of rupees one lakh for loss of consortium. The Hon'ble Apex Court had further laid down the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses as laid down the figures Rs.40,000/- towards loss of consortium Rs.15,000/- each towards loss of estate and funeral expenses. It is further held that the amount should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in span of three years.

16. In the light of the above principle laid down by the Hon'ble Apex Court, here in the present case, it appears that the learned trial Court has not considered the future prospects and awarded the inadequate compensation. Here in the present case, the deceased was

Medical Practitioner which is to be taken into consideration. The amount towards consortium to the appellant Nos.1 to 3 comes to Rs.1,32,000/-. The appellants are also entitled to receive compensation under the head of loss of estate and funeral expenses. The trial Court has only granted Rs.5,000/- towards loss of consortium, Rs.2,500/- towards funeral expenses and Rs.2,500/- towards transportation of the dead body. So, the claimants are entitled to receive Rs.12,500/- additionally towards the funeral expenses and Rs.15,000/- each towards loss of estate which comes to Rs.45,000/-.

17. It is not necessary to deal with the aspect of negligence as none of the respondents have challenged the finding on that aspect. The appellants have made out the case for enhancement of compensation as Tribunal has not considered the future prospectus and loss of estate as well as consortium. However, considering the evidence on record, the income of the deceased by adding 40% addition towards future prospects comes to Rs.1,40,000/-. After deducting 1/3 towards the expenses (Rs.1,40,000 – 46,666), the amount comes to Rs.93,333/-. Rs.93,333/- X 16 which comes to 14,93,328/-. In addition to, claimants are entitled to receive Rs.1,32,000/- towards consortium, Rs.45,000/- towards loss of estate, Rs.12,500/- towards funeral expenses. Thus, the amount of Rs.16,82,828/- is just compensation for the claimants.

18. Learned Advocate for the Insurance Company submitted that the respondent No.3 – Insurance Company has deposited the amount of compensation along with accrued interest on the compensation amount. He had also claimed that the interest on the enhanced amount of the compensation is to be awarded from the date of the filing of the appeal. The Tribunal has awarded the interest at the rate of 7.5% is just and reasonable one. Considering the compensation amount is enhanced by allowing this appeal appellants are entitled to receive the compensation from the date of filing of appeal i.e. 29.09.2014 on the enhanced compensation amount.

19. In view of this observations appeal is allowed.

20. The appellants are entitled to receive compensation of Rs.16,82,828/-.

21. After deducting compensation amount awarded by the Tribunal with interest at the rate of 7.5% from the date of filing of the appeal.

22. The appellants are directed to deposit deficit Court fees stamp on enhanced compensation amount.

23. The respondent No.3 - Insurance Company is directed to deposit the enhanced amount of compensation within two months from today before the Tribunal.

24. The appellants are entitled to withdraw the amount of compensation after depositing the deficit court fee stamps on enhanced amount.

25. The enhanced amount of compensation is to be apportioned equally between the appellant Nos.1 to 3.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-