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

FIRST APPEAL NO.1195 OF 2012

1. Lata wd/o Ratansingh Chavan
Aged about 43 years,
Occupation – Household worker,

2. Bhumika d/o Ratansingh Chavan,
Aged about 19 years,
Occupation – Education

3. Sarausha s/o Ratansingh Chavan (minor)
Aged about 15 years,
Occupation – Education
through guardian Mother–appellant No.1.

4. Devkabai d/o Bansisingh Chavan
Aged about 72 years,
Occupation – Household worker,

All R/o. At-Post- Achalpur,
Tah. Achalpur, District Amravati

...APPELLANTS

VERSUS

1. Ajab s/o Tukaram Chandurkar,
Aged – Major,
Occupation – Owner of the vehicle,
R/o. At – Post Pipla Kevalram,
Tah. Narkhed, District Nagpur
(Owner of Metador Reg.
No. MH-31/M-6334)

2. The New India Assurance Co. Ltd.
Notice to be served on,
The Divisional Manager,
The New India Assurance Co. Ltd.,

Dharamdaya Cotton Fund Road,
Wallcut Compound Amravati,
Tah. and District Amravati

3. Ashok s/o Shankarrao Waghare,
Aged Major, Occupation – Driver,
R/o. At-Post – Tishati (Bu),
Tah. Kalmeshwar, District Nagpur
(Driver of Metador Reg.
No. MH-31/M-6334)

Matter has been dismissed against R-3 vide Registrar(J.) order dated 30/07/2013.

...RESPONDENTS

Shri P.R. Agrawal, Advocate for the appellants.
Ms Anita Mategaonkar, Advocate for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 13, 2023.
PRONOUNCED ON : MAY 03, 2023.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. Present appeal is preferred by the claimants for enhancement of the compensation by challenging the judgment and award in Claim Petition No.35/2006 passed by the Member, Motor Accident Claims Tribunal, Achalpur on 22/02/2011.

3. Brief facts which are necessary for the disposal of the appeal are as under :

A] On 13/01/2006, the deceased was travelling on motorcycle bearing registration No.MH-40-D-683 as a pillion rider which was driven by his friend. When they reached in the Shivar of Lohgarh near the farm of Shyamrao Fuse, one metadoor bearing registration No.MH-31-M-6334 came from the opposite side in a rash and negligent manner and dashed against the motorcycle. They were proceeding from Saoner to Katol. Due to the severe dash, rider of the motorcycle died on the spot whereas deceased in the present case sustained grievous injuries and was admitted in the KIMS Hospital, Nagpur. During treatment he succumbed to the death on 24/01/2006.

4. As per contention of the claimants, the said accident took place due to the rash and negligent driving of Matador driver which was owned by respondent No.1 and validly insured with respondent No.2. Regarding the said accident at Kelwad police station registered the Crime bearing No.005/2006 against the Matador driver.

5. As per contention of the claimants, the deceased was aged about 44 years and was serving as a Lecturer in District Institution of Education and Training, Ravi Nagar, Nagpur and drawing salary of Rs.17,219/- per month. The deceased was a qualified person as well as

he was Singer, Musician and Author. The deceased used to organise the programmes of musics and was earning from the same. Due to the said accident, claimants have lost their bread earner, and therefore, they are claiming compensation towards pecuniary and non-pecuniary damages. Claimant No.1 is the wife, claimant Nos.2 and 3 are the children and claimant No.4 is the mother of the deceased.

6. In response to the notice, respondent No.1 failed to appear but respondent No.2 resisted the claim on the ground that the motorcycle rider was also responsible for the said accident, therefore, it is a case of contributory negligence hence, the liability of the present respondent is only to the extent of 50%. It is further contention of the Insurance company that it is not responsible to pay the compensation as the driver of the Matador was not having valid driving license and was also not experienced driver thus, opponent No.1 has contravened the terms and conditions of the policy. Hence, Insurance Company is not liable to pay compensation.

7. To substantiate the contention, claimant No.1 stepped into the witness box and narrated about the occurrence of the accident as well as the income of the deceased. Besides her oral evidence, she placed reliance on the certified copies of police papers i.e. FIR, spot

panchnama, insurance policy, etc. which are at exhibits 31 to 41. She further testified that she has incurred the expenses of Rs.1,48,613/- for the medical treatment of the deceased.

8. Besides her oral evidence, to prove the income she has examined PW-2 – Pramila Govindrao Tayade and PW-3 – Nandkishor Madhukarrao Jichkar to show that the deceased was Artist and was earning Rs.1,00,000/- from various music functions. The claimant No.1 has also examined Hemlata Pandurangji Mandave, Head Mistress, Swarupsingh School, Pathrot, District Amravati to show the income of the deceased.

9. To rebut the evidence, respondent No.2 has examined its officer Anil Dharamdas Wasnik to show that the motorcycle rider was not having valid driving license and he was negligent while riding the motorcycle. He further testified that the Matador driver was not expert driver. Thus, the owner has contravened the terms and conditions of the policy.

10. The learned Tribunal appreciated the evidence and awarded the compensation of Rs.21,50,329/- inclusive of NFL amount. Being aggrieved and dissatisfied with the quantum of compensation present

appeal is preferred by the appellants on the ground that learned Tribunal had not considered the income of the deceased in proper perspective and ignored the fact that the deceased was also entitled to receive the compensation by taking into consideration future prospects. Hence, claimants are entitled to receive compensation by adding future prospects.

11. Heard Shri P.R. Agrawal, learned Counsel for the claimants. He submitted that the yearly income of the deceased was Rs.2,85,906/-. As four dependents were depends upon the income of the deceased, deduction should be ¼th. After deducting ¼th i.e. Rs.71,477/- the yearly income comes to Rs.2,14,429/-. The claimants are also entitled for amount towards the consortium and hence claimants are entitled for enhanced amount of compensation. The claimants are also entitled to receive the compensation towards funeral and medical expenses.

12. *Per contra*, Ms A. Mategaonkar, learned Counsel submitted that the motorcycle rider was also responsible for the said accident. Therefore, contributory negligence is to be attributed to the motorcycle rider. In view of that, respondent No.2-Insurance Company is only liable to pay compensation to the extent of 50% of total compensation amount. She further submitted that there is no evidence as to the income of the deceased. Hence, claimants are not entitled for enhanced compensation.

13. After hearing both the sides, following points arise for my determination :

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

14. There is no dispute that the deceased met with an accident on 13/01/2006. The said accident took place between the motorcycle bearing registration No.MH-40-D-683 and the Matador bearing registration No.MH-31-M-6334. Though the learned Counsel Ms Mategaonkar raised the issue that the deceased – motorcycle rider was also responsible for the said accident and the contributory negligence is attributed to him however, the defence of contributory negligence was not raised in written statement. Moreover, Insurance Company has not preferred any appeal against the finding of the Tribunal or claiming the contributory negligence of the motorcycle rider. As the rash and negligent driving of the Matador driver is not under challenge in the present appeal only quantum of compensation is under challenge. Therefore, the issue regarding the negligence is not required to be looked into.

15. As far as the contention of the claimants is concerned that they are entitled for enhanced amount of compensation by considering

the income of the deceased by including future prospects at the rate of Rs.3,32,008/- per year. After deducting the tax of Rs.46,102/- and ¼th towards the deduction against the personal expenses, his yearly income comes to Rs.2,14,429/- and after applying the multiplier of 14 compensation amount comes to Rs.30,02,006/-. The claimant No.1 has examined herself. As per her evidence, deceased was serving as a Lecturer and drawing salary of Rs.17,219/- per month and was earning Rs.1,00,000/- from the various musical programmes. Thus, the income of the deceased was Rs.2,06,628/- per annum (+) Rs.1,00,000/- total income comes to Rs.3,06,628/-.

16. Besides her oral evidence, she examined Pramila Govindrao Tayade who is also Singer and used to participate in the musical functions along with the deceased. She also testified that the deceased was getting Rs.1,00,000/- yearly from the said functions. PW-3 Nandkishor Madhukarrao Jichkar was the owner of Sound Service and as per his evidence also the deceased was earning Rs.1,00,000/- from the said functions. PW-2 and PW-3 both are cross-examined. PW-2 stated during the cross-examination that per programme they used to get Rs.4000/- to Rs.5000/- honorarium. The claimant has also placed on record the various documents to show that the deceased was well educated and was having knowledge of music. The various certificates

placed on record shows that he has learnt the music and has participated in the various programmes of All India Radio also. The communications issued by All India Radio to the deceased shows that the deceased was participating in the various music programmes of All India Radio's. Thus, there is sufficient evidence to show that besides the salary deceased was getting income from the said musical functions also. Though these witnesses are cross-examined, nothing incriminating came on record to falsify their versions.

17. The evidence of PW-4 - Hemlata Pandurangji Mandave shows that the deceased was earning Rs.19,680/- per month as a salary. The said salary certificate is at Exhibit 75. Thus, the evidence on record sufficiently shows that the deceased was drawing salary of Rs.19,290/- and after statutory deductions he was receiving Rs.16,719/- per month. After taking into consideration the salary certificate, the monthly income of the deceased was Rs.16,719/- multiplied by 12, the yearly income comes to Rs.2,00,628/-. After adding the income of Rs.1,00,000/- from music programmes the income of the deceased comes to Rs.3,00,628/-. In view of judgment of Hon'ble Apex Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi (2017) 16 SCC 680*** held that 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 where the deceased was below 40 years and where the deceased was between the age of 40 to 50 years an addition of 25% would be reasonable. By applying this principle, the compensation to be awarded to the claimants.

18. After adding 25%, the yearly income comes to Rs.3,75,785/-. Admittedly, there is no evidence that the appellant was paying any income tax, therefore, as per the slab the income tax is to be deducted 30%, the amount comes to Rs.3,75,785/- (-) Rs.1,12,735/-. After deducting the tax amount, the income of the deceased comes to Rs.2,63,050/-. After deducting ¼th from Rs.2,63,050/- for personal expenses it comes to Rs.65,762/-. After deducting ¼th amount yearly income comes to Rs.1,97,288/-. As the deceased was aged about 44 years of age, the multiplier applied is to be 14. After application of multiplier 14, the amount of compensation comes to Rs.27,62,032/-.

19. It is well settled that the claimants are entitled for 'just compensation'. The concept of 'just compensation' is dealt by Section 168 of the Motor Vehicles Act, 1988. The concept of 'just compensation' has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can

never be in arithmetical exactitude. It can never be perfect. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness. In case of a death, the legal heirs of the deceased cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the Tribunal is quite wide, yet it is obligatory on a part of the Tribunal to be guided by the expression, i.e., 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 after applying the appropriate multiplier. The formula relating to multiplier has been clearly stated in the case of *Sarla Verma Vs. DTC (2009) 6 SCC 121* and it has been approved in the case of *Reshma Kumari Vs. Madan Mohan (2013) 9 SCC 65*. In view of the principles laid down by the Hon'ble Apex Court, the compensation is to be determined.

20. On perusal of the judgment of the Tribunal, it is apparent that the Tribunal had considered the income of the deceased but has not awarded the compensation under the head of consortium. The claimant Nos.2 and 3 are also entitled to receive the consortium. The Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram, 2018 (18) SCC 130*** held by referring the judgment of Constitution Bench in *Pranay Sethi* (supra) wherein the

Hon'ble Apex Court observed 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.

21. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their family, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

22. In view of the observation, appellant Nos.2 and 3 are entitled to receive parental consortium at the rate of Rs.40,000/- each. Claimant No.1 is entitled to receive Rs.40,000/- as a spousal consortium whereas appellant No.4 is entitled to receive Rs.40,000/- as a filial consortium. So in addition to Rs.27,62,032/- the claimants are entitled to receive additional amount of Rs.1,60,000/- under the consortium. The claimants are also entitled to receive the compensation towards loss of estate which is Rs.15,000/- each. The claimants are entitled to receive total Rs.55,000/-. The Tribunal has only awarded amount of Rs.5000/- as a loss of estate. The claimants are also entitled to receive the amount of Rs.12,500/- towards funeral expenses as the Tribunal has only awarded Rs.2500/- towards funeral expenses. Thus, the claimants are entitled to receive enhanced amount of compensation of Rs.29,89,532/-. Hence, the following order is passed :

(i) The appeal is allowed.

(ii) The claimants are entitled to receive compensation of Rs.29,89,532/- (Rs. Twenty nine lacs eighty nine thousand five hundred and thirty two) towards full and final amount of compensation.

(iii) The appellant-Insurance Company is directed to deposit the enhanced amount of compensation of Rs.29,89,532/- after deducting already paid compensation amount @ 7.5% per annum from the date of application till realization of the amount.

(iv) The respondent No.2 – Insurance Company shall deposit the amount within 12 weeks from the date of the receipt of the copy of the judgment.

(URMILA JOSHI-PHALKE, J.)

**Divya*