

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

FIRST APPEAL NO.2 OF 2009.

APPELLANT : Smt. Pratibharaje w/o Late
(L.R. of Original Pratap Kumar Mane, Aged about 64
Claimant) years, Occupation – Household, r/o
of Gujarwada, Tulsibag road,
Mahal, Nagpur (On R.A.)

(Legal Representative of Original
petitioners No.1 and 2 viz. Late
Smt. Satwasheeladevi w/o
Tejsinhrao Gujar and Raje
Tejsinhrao @ Abasaheb s/o
Venkatrao Gujar,
Both have expired)

--VERSUS--

RESPONDENTS : 1 Sau. Charulata w/o Sunil Bhosle,
(Original Non- Aged about 54 years, R/o Tulsibagh
Applicants) Road, Mahal, Nagpur (Owner of
Metador)

2 Ashok s/o Shankarrao Shende,
Aged about 34 years, Occupation –
Driver, r/o Bela, Tahsil and District
Nagpur. (Driver of Metador)

3 National Insurance Company Ltd.
through its Divisional Manager,
Balraj Marg, Dhantoli, Nagpur
(Insurer of Metador No.MWY-
5886, belonging to Non-applicant
No.1)

- 4 United India Insurance Company Ltd. through its Divisional Manager, Branch No.3, Mount Road, Sadar, Nagpur (Insurer of Maruti-800 No.MH-31-Z-2291).
- 5 Smt. Bhagyashreeraje wd/o Shivajirao Dhanwatey (Dead) through LRs
- 5A Harshwardhan Shivajirao Dhanwatey, Aged about 55 years, Occupation – Business.
- 5B Shreewardhan Shivajirao Dhanwatey, Aged about 39 years, Occupation – Business.
- 5C Yashowardhan Shivajirao Dhanwatey, Aged about 53 years, Occupation – Business.
- 5D Smt. Uma Shivajirao Dhanwatey, Occupation – Business, Age 47 years.
- All residents of ‘Shivneri’, Ramdaspath, Nagpur.

Mr A. Manohar, Adv. h/f Mr N. A. Gaikwad, Advocate for Appellant.
Mr A. G. Paunikar, Advocate for Respondent No.3
Mr D. Chatterjee, Adv. h/f Mr B. Lahiri, Advocate for Respondent No.4.
Mr Y. N. Sambre, Advocate for Respondent Nos.5A to 5D.

CORAM : **URMILA JOSHI-PHALKE, J.**

RESERVED ON : **17th APRIL, 2023.**

PRONOUNCED ON : **6th JUNE, 2023.**

JUDGMENT

. Heard learned Counsels appearing for the parties.

2. The appellant has challenged the judgment and award dated 30.04.2008 passed by the Motor Accident Claims Tribunal, Nagpur ("Tribunal", for short) in Claim Petition No.1080 of 1999, by which awarded the compensation only under the head of medical and hospital bills, loss of estate and funeral expenses.

3. The brief facts, which are necessary for the disposal of the appeal, are as under :

Deceased Mahendrasingh Tejsinhrao Gujar on 08.12.1998 alongwith other four was proceeding in his Maruti Car bearing No.MH-31-Z-2291 from Khapri to Mahal, Nagpur. At the relevant time, one Prashant Dhote was driving the Maruti Car. As per the contention of the claimants, the Maruti Car driver was driving the said car by left side of the road by observing traffic rules and regulations. At about 3:45 a.m., said

Maruti Car reached at Chinchbhawan locality at Wardha Road, at the relevant time, one Matador bearing No.MWY-5886 driven by its driver came from opposite direction in excessive speed and dashed against the Maruti Car. Due to the severe dash, said Mahendrasingh sustained grievous injuries. Regarding the said accident, crime No.206 of 1998 was registered against the Matador driver at Sonegaon Police Station. The Matador was driven by respondent No.2 owned by respondent No.1 and validly insured with respondent No.3 - National Insurance Company. The Maruti Car was owned by deceased Mahendrasingh and insured with respondent No.4 United India Insurance Company Limited.

4. After the accident, Mahendrasingh was admitted in Dr. Babhulkar's Hospital, and thereafter, shifted to Orange City Hospital, Nagpur, but he succumbed to the death on 17.12.1998. The original applicant Nos.1 and 2 i.e. Satwasheela Tejsinhrao Gujar and Raje Tejsinhrao Venkatrao Gujar were the adoptive parents of the deceased. His natural parents

Pratap Kumar Mane and Pratibha Raje gave Mahendrasingh in adoption to original applicant Nos.1 and 2. by executing adoption deed on 21.10.1998. In view of said adoption deed, the name of Mahendrasingh was published in Government Gazette dated 03.05.1990. During pendency of the application, original applicant No.2 Raje Tejsinhrao died on 19.12.2004 and applicant Satwasheeladevi expired on 09.12.2006. Applicant Pratibha Raje and non-applicant No.5 Bhagyashreeraje are the sisters of Mahendrasingh. Being they are legal representatives of Mahendrasingh Gujar claimed the compensation.

5. Deceased Mahendrasingh was 27 years of age and was unmarried. He was healthy and graduate of Nagpur University. He was getting income from the properties of Hindu Undivided Family and from the family business. Average net annual income of the family was Rs.5,19,000/- in which deceased was having $\frac{1}{3}^{\text{rd}}$ share, which comes to Rs.1,73,000/-. After deducting $\frac{1}{3}^{\text{rd}}$ share, the average income of the deceased comes to Rs.57,666/-, therefore, the claimants are entitled to receive

compensation by adding future prospects.

6. In response to the notice of the petition, though respondent Nos.1 and 2 appeared, failed to file written statement. As per the defence of the respondent No.3 - National Insurance Company, on the day of accident, offending vehicle Matador bearing No.MWY-5886 was not insured with it, therefore, respondent No.3 denied the liability. Respondent No.4 United India Insurance Company admitted that Maruti Car bearing No.MH-31-Z-2291 was insured with it, but contended that as the Matador driver was negligent and no negligence was claimed against the car driver, the respondent No.4 is not liable to pay compensation.

7. To substantiate the contention, original applicant No.1 Satwasheeladevi adduced her evidence and reiterated about the occurrence of the accident. The certified copies of the police papers are filed in claim petition No.1081 of 1999 and the photo copies are filed in the present petition. Petitioners relied upon FIR Exh-71, Spot Panchanama Exh-72, Post-

Mortem Report, Accident Form Exh-75 etc. The Insurance Company respondent No.3 adduced evidence by examining their Assistant Manager Damodar Rajaramji Raut vide Exh-70 who testified that offending vehicle bearing No.MWY-5886 was insured for the period of 04.07.1997 to 03.07.1998. The accident occurred on 08.12.1998. Thus, the offending vehicle was not insured with the respondent No.3 on the date of accident.

8. After appreciating the evidence, the Tribunal held that vehicle was not validly insured with the respondent No.3 on the day of accident and exonerated the Insurance Company. While awarding the compensation, the Tribunal held that the applicant namely Pratibharaje Pratapkumar Mane and respondent No.5 Bhagyashreeraje Shivajirao Dhanwatey being the married sisters residing with their respective husbands were not dependent upon the deceased Mahendrasingh, and therefore, they are not entitled for compensation under the head of loss of dependency.

9. Being aggrieved and dissatisfied with the judgment and award, present appeal is preferred by the appellants, who are the sisters on the ground that the observation of the Tribunal that being they are married sisters are not entitled for compensation under the head of loss of dependency is erroneous and liable to set aside. The appellants are entitled for compensation being the legal representatives of the deceased Mahendrasingh. The further grounds raised are that the Tribunal ought to have held that this is a case of composite negligence, and therefore, claimants are entitled to receive the entire compensation from any of them. The ground further raised is that though Matador in question was not insured, but the Maruti Car which was insured and the directions was required to the respondent No.4 to pay the compensation amount. Therefore, the award passed by the Tribunal is liable to be set aside and quashed.

10. Heard learned Counsel Mr A. Manohar for appellants. He submitted that the claimants are the legal representatives of

the deceased Mahendrasingh. It is settled that all or any of the legal representatives of the deceased can move an application for compensation by virtue of Section 166(1)(c) of the Motor Vehicles Act, 1988. In terms of Clause (C) of sub-section (1), all or any of the legal representatives of the deceased become entitled to compensation and any such legal representatives can file a claim petition. The compensation constitutes part of the estate of the deceased. As a result, the legal representatives of the deceased would inherit the estate. Indeed, in that case the principle underlying sufficiently shows that the applicants are also entitled to receive the compensation being the legal representatives of the deceased. In support of his contention, he placed reliance on *Sarla Verma (SMT) and Others .. V/s.. Delhi Transport Corporation and another*, reported in *(2009) 6 SCC 121*, *Chandrakanta Tiwari ..V/s.. New India Assurance Company Limited and another*, reported in *(2020) 7 SCC 386*, *National Insurance Company Limited ..V/s.. Birender and others*, reported in *(2020) 11 SCC 356*, *Kirti and another ..V/s..*

Oriental Insurance Company Limited, reported in *(2021) 2 SCC 166* and *New India Assurance Company Limited ..V/s.. Kaliathal and others*, reported in *2002 (3) T.A.C. 663 (Mad.)*.

11. Per contra, learned Counsel Mr Chatterjee holding for Mr Lahiri for respondent No.4 supported the judgment of the Tribunal. Learned Counsel Mr A. G. Paunikar for respondent No.3 submitted that the claimants being the sisters are not dependent upon the deceased, and therefore, they are not entitled for compensation. Learned Counsel Mr Y. N. Sambre for respondent Nos.5A to 5D submitted that they are the legal heirs of original respondent No.5 Bhagyashreeraje who was the sister of deceased Mahendrasingh, and therefore, they are entitled for compensation.

12. After hearing all the parties, the only issue arises for consideration is :

i) Whether the claimants who being the married sisters of deceased are entitled for any compensation on account of death of deceased Mahendrasingh.

13. Admittedly, the respondent No.3 – National Insurance Company is exonerated from the liability, as police papers on record show that on the date of incident, vehicle was not insured with respondent No.3. The evidence of RW-1 Satwasheeladevi shows that as per the Cover Note No.179460, the offending vehicle Matador was insured for the period of 04.07.1997 to 03.07.1998. Admittedly, no other Insurance Cover Note is on record to show that the vehicle was validly insured with the respondent No.3. Though, the claimants have claimed that the compensation ought to have directed to be given by the respondent No.4 - United India Insurance Company. Admittedly, the crime was registered against the Matador driver. No evidence is adduced to show that the Maruti Car driver was also responsible for the said accident. To claim the compensation from the respondent No.4, the claimants ought to have prove that there was composite negligence. Where a person is injured or death is caused without any act or omission from his part, but as combined effect of the negligence

of two or more persons, it is a case of composite negligence and not a case of contributory negligence. Here, no negligence of the Maruti Car driver was claimed. The claimants have not adduced any evidence to show that there was an act or omission on the part of the Maruti Car driver and accident occurred due to the combined effect of negligence of both the vehicle drivers. Therefore, the contention of the claimants that the driver of Maruti Car is also responsible for the said accident and being vehicle was insured with respondent No.4, respondent No.4 is also liable to pay compensation is not sustainable.

14. Now question is, whether the applicant Pratibharaje and original respondent No.5 Bhagyashreeraje being the married sisters are entitled for any compensation ? Admittedly, they are the married sisters of the deceased. The locus to maintain an application for compensation under Section 166 of the Motor Vehicles Act and grant of compensation based on dependency of the claimants are two different aspects. While it would be open for a legal representatives to maintain

proceedings for grant of compensation, the entitlement for the compensation would depend on the evidence placed on record with regard to dependency of the claimants on the deceased. The right to claim compensation cannot straightway lead to the conclusion that such claimant was dependent on the deceased. It would be a matter of evidence which is to be led by the claimants in the proceedings, while determining the amount of compensation.

15. In Montford Brothers of St. Gabriel and another ..V/s.. United India Insurance Company Limited and another, reported in 2014 ALL SCR 1104, the question was whether the benefits received by a brother attached to a catholic church by way of salary, gifts, pension would belong to the community proceeding for grant of compensation were filed by the charitable society under Section 166 of the Motor Vehicles Act on account of the death of a “brother” in motor accident. The Insurance Company has not disputed the locus of the society. The Tribunal awarded the compensation which was challenged

by the Insurance Company by filing a writ petition. The High Court held that the judgment of the Tribunal was in favour of the persons who are not competent to claim the compensation under the Motor Vehicles Act. The decision of the High Court was challenged before the Hon'ble Apex Court. In that contest, it was observed that right is available to a legal representative or agent of the deceased to lodge claim for compensation. This claim is subject to the result of the dispute raised by the other side. The Insurance Company has not raised such objection before the Tribunal. By referring the earlier decision in Gujarat State Road Transport Corporation ..V/s.. Ramanbhai Prabhatbhai and Another, reported in 2013 ALL SCR (OCC) 351, wherein it was observed that only if there was a justification in consonance of principles of justice, equity and good conscience, a dependent of the deceased would be denied the right to claim compensation.

16. In the case of Manjuri Bera ..V/s.. Oriental Insurance Company Limited, reported in (2004) 2 CHN 370, the

question as regards entitlement of a claimant who was a married daughter of the victim came for consideration. It was held by the Hon'ble Apex Court that insofar as grant of compensation under Section 140 of the Motor Vehicles Act was concerned, even if there was no loss of dependency, the claimant, if he or she was a legal representative would be entitled for compensation. It was further observed by the Hon'ble Lordship S. H. Kapadia that there was a distinction between the "right to apply for compensation" and "entitlement to compensation". It was observed that insofar as no fault liability is concerned, the statutory compensation would form the part of the estate of the deceased and a legal representative who would inherit the estate would be entitled to receive the said amount. Thus, it was clear that this opinion was confined only insofar as "no fault liability" under Section 140 of the Motor Vehicles Act was concerned.

17. In Anju Mukhi and another ..V/s.. Satish Kumar Bhatia and others, reported in (2010) 15 SCC 630, during the pendency of petition, the widow of the victim remarried and it

was observed by the Hon'ble Apex Court that on remarriage there was no dependency and no loss of income as the dependency had shifted in view of the remarriage and widow was not granted compensation.

18. Thus, from the aforesaid decision, it is clear that the aspect of dependency has to be pleaded and proved by the claimants before any compensation is granted to them. In the present case, the pleading of the claimants only shows that they are entitled to receive the compensation being the sisters of the deceased. Admittedly, they are the married sisters and dependency is neither pleaded nor proved. There is no other evidence on record. The Tribunal has rightly come to the conclusion that there was no dependency, and therefore, they are not entitled for compensation under the head of loss of dependency. The Tribunal has rightly considered that they are only entitled for the compensation under the head of medical expenses and loss of estate. Though learned Counsel Manohar placed reliance on the judgment of Sarla Verma (supra), wherein

the principle of just compensation is discussed. There is no dispute about the same. He further placed reliance on Chandrakanta Tiwari (supra), wherein the facts are not identical. In the case of National Insurance Company Limited (supra), the Hon'ble Apex Court held that the legal representatives of the deceased being sons who would inherit the estate held entitled for the compensation. In Kirti and another (supra), the principle of just compensation is discussed.

19. Here in the present case, the claimants are entitled to receive the loss of estate. The principle of awarding the compensation under the various heads is discussed by the Constitution Bench of the Hon'ble Apex Court in the case of National Insurance Company Limited ..V/s.. Pranay Sethi, reported in (2017) 16 SCC 680, wherein the Hon'ble Apex Court has determined the amount of compensation under the head of loss of estate to the extent of Rs.15,000/- each and funeral expenses at the rate of Rs.15,000/-. Here in the present case, the amount of Rs.25,000/- towards loss of estate is already

granted. Therefore, the claimants are not entitled to receive the compensation under the head of loss of estate. Respondent No.5 sister is already expired and her legal heirs are not the legal representatives of the deceased. Therefore, they are not entitled for any amount under the loss of estate. The Tribunal has only awarded the amount of Rs.2,000/- under the head of funeral expenses. In view of the judgment of Pranay Sethi, (supra), the claimants are entitled to receive additional amount of Rs.13,000/- towards the funeral expenses.

20. In view of the above discussions, by holding that the appellant alongwith respondent Nos.5A to 5D are not entitled to any amount of compensation under the loss of dependency, they are only entitled to receive the compensation of Rs.13,000/- towards the funeral expenses alongwith the interest at the rate of 7.5% per annum from the date of application.

21. In the result, the appeal is partly allowed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)