

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

FIRST APPEAL NO.4 OF 2009.

APPELLANT : Smt. Pratibharaje w/o Late
(Ori. Claimant) Pratakumar Mane, Aged about 64
years, Occupation – Household,
R/o of Gujarwada, Tulsibag Road,
Mahal, Nagpur (On R.A.)

-- 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).

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.

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.1081 of 1999, by which awarded the compensation of Rs.7,72,500/- alongwith interest at the rate of 6% per annum from the date of application till its realization. The claimant preferred this appeal for enhancement of compensation.

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

Deceased Rishiraj Pratapkumar Mane on 08.12.1998 alongwith other four was proceeding in his Maruti Car MH-31-Z-2291 from Khapari to Mahal Nagpur. At the relevant time,

one Prashant Dhote was driving the Maruti Car. As per the contention of the claimant, 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 Rishiraj died in an accident at the spot itself. 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 insured with respondent No.4 - United India Insurance Company Limited.

4. The appellant is the mother of deceased Rishiraj. Deceased Rishiraj was 25 years of age and was unmarried. He was healthy and had completed his B.E. in Industrial and

Production Engineering from Bangalore University in 1997. He had worked as a Marketing Engineer at about one year at Bangalore. Thereafter, he was at Melborn in Australia for further studies. He came to Nagpur for attending the marriage of deceased Mahendrasingh and died in an accident. The applicant No.1 is mother, who depend upon him, he was the only earning member in the family in future. Deceased was having bright future and would have earned handsome amount. But, due to the death of the deceased, the claimant have lost her support, love and affection, and therefore, she is entitled for the compensation.

5. 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, respondent No.4 is not liable to pay compensation.

6. To substantiate the contention, applicant No.1 Pratibharaje adduced her evidence and reiterated about the occurrence of the accident. The certified copies of the police papers are filed in claim petition. Petitioners relied upon FIR Exh-71, Spot Panchanama Exh-72, Post-Mortem Report Exh-74, Accident Form Exh-75 etc. The Insurance Company respondent No.3 adduced evidence by examining their Assistant Manager Damodar Rajaramji Raut vide Exh-82 who testified that the 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.

7. 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 had considered the income of the deceased as Rs.12,000/- per month and after deducting 1/3rd, awarded the compensation towards loss of dependency, loss of estate and funeral expenses.

8. Being aggrieved and dissatisfied with the judgment and award, present appeal is preferred by the appellant, who is the mother of the deceased Rishiraj for enhancement on the ground that the learned Tribunal had not considered that deceased was graduate in engineering and would have earned handsome amount in future. The Tribunal has awarded inadequate compensation which is liable to be enhanced.

9. Heard learned Counsel Mr A. Manohar for appellant. He submitted that the deceased was graduate in engineering and was also pursuing his higher studies in abroad. The Tribunal has only considered his income to the extent of Rs.12,000/- per

month and awarded the compensation which is inadequate. He submitted that the basic requirement is, that the compensation is to be awarded by appreciating the evidence and it should be 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. 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. In support of his contention, he placed reliance on *Sarla Veram (SMT) and others ..V/s.. Delhi Transport Corporation and another*, reported in *(2009) 6 SCC 121, Bessarlal Laxmichand Chirawala ..Vs/.. Motor Accidents Claims Tribunal*, reported in *AIR 1970 Bombay 337, Salamma ..V/s.. K. V. Ramachandra*, reported in *1973 SCC OnLine Kar 45, Jubeda Kom Moulasab ..Vs/.. Kansoor Group Dodda Pramanada Prathamika Pattina Vyavassaya Shahakari*, decided on 24 and 25.01.1980 by

the Karnataka High Court, Karnataka State Construction Corporation Limited ..V/s.. United India Fire and General Insurance Company Limited, decided on 06.06.1980, Maharashtra State Road Transport Corporation ..Vs/.. Ramchandra Ganpatrao Chincholkar, reported in (1992) 2 Mh.L.J. 1156, Gyatri Devi ..V/s.. Baijnath Sahu, reported in 2008 SCC OnLine Jhar 256 and United India Insurance Company Limited ..V/s.. Shila Datta, reported in (2011) 10 SCC 509.

10. 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 claimant was not dependent upon the deceased and hence not entitled for compensation.

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

i) Whether the claimant is entitled for enhanced amount of compensation ?

12. Admittedly, the respondent No.3 - 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 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 vehicle was validly insured with the respondent No.3. Though, claimant has 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 claimant ought to have proved 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 claimant has 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. Learned Counsel Mr Manohar submitted that the strict rules of pleading and evidence are not applicable in the compensation cases. He placed reliance on Salamma (supra) and Maharashtra State Road Transport Corporation ..Vs/.. Ramchandra Ganpatrao Chincholkar (supra) to show that there was a composite negligence and Tribunal must apportion *inter-se* liabilities of the two vehicles. Admittedly, the strict rules of evidence are not applicable. It is well settled that the right of the claimant to recover the damages from the tortfeasor is also settled. Once the Court comes to the conclusion that the case is one of the composite negligence damages cannot be apportioned and petitioner is entitled to recover entire compensation from all or any of the joint tortfeasor. To prove the composite negligence, either oral evidence or it should reflect from the police papers. Here admittedly, the crime was registered against the matador driver. The claimant nowhere pleaded or adduced evidence that

alleged accident was a combined effect of contributory negligence. The expression composite negligence applies when there was an act or omission on the part of two or more persons. In the instant case, neither the petitioners claimed that alleged accident was an act or omission on the part of both the vehicle drivers nor the police papers disclose the same. Therefore, the contention of the claimant that respondent No.4 is also liable to pay compensation is not sustainable.

13. Now question is, whether the claimant is entitled for any enhanced amount of compensation ? It is well settled that the claimant is entitled for just compensation. The concept of just compensation is dealt by Section 168 of the Motor Vehicles Act. 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 perfect. The just compensation has to be viewed through the prism of fairness and reasonableness. In case of a death, the legal heirs of the deceased cannot expect a wind fall or an apology. It cannot be pittance. Though, the discretion is vested in the Tribunal is quite wide, yet it is obligatory on the part of the Tribunal

to be guided by the expression 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 Hon'ble Apex Court in **National Insurance Company Limited ..V/s.. Panay Sethi**, reported in **(2017) 16 SCC 680**, held that the benefit of future of prospects should not be confined only to those who have a permanent job and would extend to self employed individuals. In the case of self employed person an addition of 40% of the established income should be made where the age of the victim at the time of accident was below 40 years and entitled for compensation by adding future prospects. There is no dispute that deceased was 25 years of age and had already completed the graduation in engineering. He was pursuing his higher studies. He was having a better future ahead. The Tribunal by considering his education ought to have considered his income at least at the rate of Rs.15,000/- per month. The Tribunal has only considered Rs.12,000/- per month. His annual income comes to Rs.1,80,000/-. After deducting 50% towards personal expenses being he is unmarried his annual income comes to

Rs.90,000/-. After adding 40% towards future prospects, it comes to Rs.1,26,000/-. As deceased was only 25 years of age, the multiplier applies is to be 18, the amount comes to Rs.22,68,000/-. Besides the said amount, the claimant is entitled to receive the compensation under the head of loss of estate at Rs.15,000/-. The claimant being the mother of the deceased, she is entitled for filial consortium in view of the judgment of the Hon'ble Apex Court in *Magma General Insurance Company Limited ..V/s.. Nanu Ram Alias Chuhru Ram and others*, reported in *2018 (18) SCC 130*, wherein it is held that filial consortium is the right of the parents to compensation in the case of an accidental death of a child and 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 and companionship and their role in the family unit. In view of that the claimant is entitled to receive consortium at the rate of Rs.40,000/- The Tribunal has only awarded an amount of Rs.2,000/- towards

funeral expenses. Thus, additional amount of Rs.13,000/- is to be added towards the funeral expenses.

14. In view of the above discussion, the claimant is entitled to receive the entire amount of compensation of Rs.22,68,000/- Plus Rs.40,000/- Plus Rs.13,000/- = 23,21,000/-. Thus, the claimant is entitled to receive enhanced amount of compensation after deducting the compensation which is awarded by the Tribunal alongwith the interest at the rate of 6% per annum from the date of application till its realization. In view of above, I proceed to pass the following order :

ORDER

- i) First appeal is **allowed**.
- ii) The respondent Nos.1 and 2 shall jointly and severally pay total amount of compensation of Rs.23,21,000/- to the claimant-appellant alongwith the interest at the rate of 6% per annum from the date of application till realization of the amount.

iii) If the respondent Nos.1 and 2 have already deposited the amount awarded by the Tribunal, the same should be deducted from the above amount of compensation.

15. The appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)