



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 336 OF 2015

1. Sahebrao Hari Shelke
Age 40 years, Occu: Agri.
 2. Kamalbai Sahebrao Shelke,
Age 35 years, Occu: Household
Both R/o At Post Wasai Tq. Sillod,
Dist. Aurangabad
- ... **Appellants
(Claimants)**

VERSUS

1. Rahul Hiralal Sure,
Age Major, Occu: Driver,
R/o Surewadi, Harsul, Aurangabad
 2. Vitthal Digambar Jadhav
Age Major Occu: Vehicle Owner
R/o As above.
 3. ICICI Lombard General Insurance Co. Ltd.
Through its Divisional Manager,
Divisional Office at Adalat Road,
Aurangabad
 4. Sanjay Bhaurao Sapkal
Age 30 years, Occu: Driver,
R/o Wasai, Tq. Sillod, Dist. Aurangabad
 5. Yeduba Hari Jarare
Age 50 years, Occu: Agril.
R/o Wasai, Tq. Sillod, Dist. Aurangabad
 6. United India Insurance Co. Ltd.,
Through its Divisional Manager,
having office at 7 Hills, Corporation Colony,
Jalna Road, Aurangabad
- ... **Respondents**

Mr. Ravindra V. Gore, Advocate for the Appellants,
Mr. Abhijit G. Choudhari, Advocate for Respondent No.3
Mr. R. R. Karpe, Advocate for Respondent No.5
Mr. Anand Dale h/for Mr. S.S. Rathi, Advocate for Respondent No.6
None present for Respondent Nos. 1, 2 and 4.

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 27th March, 2024

PRONOUNCED ON 18th April, 2024

JUDGMENT:-

1. Present Appeal is directed against the Judgment and Award dated 30.08.2013 passed by the learned Chairman, Motor Accident Claims Tribunal at Aurangabad in Motor Accident Claim Petition No. 402 of 2010 to the extent of enhancement of compensation.

2. The facts giving rise to the present appeal are as under:

(i) On 21.02.2010, at about 12.45 Hrs., deceased Sanjay Sahebrao Shelke, son of Claimant Nos. 1 and 2 and others were travelling in Mahindra Pickup van bearing registration No. MH.20.AT.3069 which was proceeding to Wasai from Aurangabad. When said vehicle reached near the spot of incident at that time a goods truck bearing registration No. MH.04.CU.5130 came in high speed from opposite direction and gave dash to Mahindra Pickup van and accident occurred.

(ii) According to the claimants, because of negligence of drivers of both the vehicles accident occurred. Therefore, owners and Insurance

Companies of both the vehicles were made parties they are liable to pay the compensation.

(iii) The drivers of both the vehicles were prosecuted in relation to the accident in question.

(iv) Before the Tribunal, a specific defence was raised by the insurer of Mahindra van that, the owner of the insured vehicle committed breach of terms and conditions of policy by carrying passengers in a goods vehicle on payment of fare charges. Further there was no negligence on part of the driver of the Mahindra van while occurrence of the accident.

(v) On 30.08.2013, learned Tribunal, on the basis of the evidence available on record held that, the drivers of both the vehicles were negligent in equal proportion for alleged accident and consequently, held that the owner and insurer of both the vehicles liable to pay amount of compensation of Rs. 2,20,000/- in equal proportion to the claimants.

3. The learned counsel appearing for the appellants canvassed that the learned tribunal failed to consider the gross income of Rs.4,000/- per month of the deceased and only granted Rs. Two lakhs towards loss of dependency without considering the future loss of income. Though the learned Tribunal has held that the deceased Sanjay was 15 years of age at the time of accident, however, wrongly applied the multiplier of '13'

instead of '15' as per the ratio laid down in the case of ***Sarla Verma Vs. Delhi Transport Corporation***, reported in (2009) 6 SCC 121.

4. According to the appellants, the deceased was earning Rs. 4000/- per month, however, no documentary evidence has been produced on record. Therefore, in absence of any documentary evidence, the learned Tribunal ought to have considered notional income of Rs.4000/- per month and ought to have granted compensation accordingly. However, the learned Tribunal wrongly calculated meager amount of compensation.

5. In support of his submissions, the learned counsel appearing for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & ors.** passed in Civil appeal arising out of Special Leave Petition (Civil) No. 5345 of 2019, decided on 13th October, 2022, wherein, the case of **Kishan Gopal and another Vs. Lala and others (2014) 1 SCC 244** has been considered for compensation which has been calculated by treating Rs.30,000/- as notional income including future prospects in place of Rs.15,000/- as specified in 2nd Schedule of the Motor Vehicles Act and applying the multiplier as specified in case of **Sarla Verma (Supra)**.

4. Per contra, the learned counsel appearing for the respondents submits that since the claimants failed to produce documentary evidence

in respect of monthly income of the deceased. The deceased was unmarried. therefore, the Tribunal granted compensation considering notional income, which is just and proper. Therefore, the appellants are not entitled for enhancement of compensation, hence prayed for dismissal of present appeal.

6. It is submitted that as per the ratio laid down in the case of **Kishan Gopal** (supra), the compensation required to be calculated by treating notional income to the tune of Rs.30,000/- including future prospects by applying multiplier as specified in case of **Sarla Verma (Supra)**. In the case in hand, it appears that at the time of accident, the deceased Sanjay was 15 years old. No doubt, as per postmortem report Exh. 39, age of deceased is shown as 13 years. Claimant No. 1 who is the natural father of the deceased knew the date of birth of his deceased son. Therefore, the multiplier of '15' would apply. Further, considering the evidence of claimant No. 2, the learned Tribunal awarded lump-sum compensation i.e. Rs.5000/- towards funeral charges and Rs.15,000/- towards loss of consortium. However, as per observations of the Hon'ble Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi & others reported in (2017) 16 SCC 680**, consortium and loss under various heads required to be considered to the tune of Rs.70,000/-. Therefore, the appellants/Claimants are entitled to receive the

compensation taking into consideration of notional income of Rs.30000/- per annum by applying multiplier of '15' and Rs. 70,000/- lump-sum towards all other heads according to **Pranay Sethi (supra)**, as under:

Heads	Amount
Notional yearly income of deceased Rs.30000 x Multiplier of '15' 30000 x 15=4,50,000/-	Rs. 4,50,000
Under all other heads as per Pranay Sethi (supra)	Rs.70000
	Rs.5,20,000/-

The learned Tribunal has granted total Compensation of Rs.2,20,000/- Therefore, compensation granted by the learned Tribunal is required to be enhanced to the tune of Rs. Rs.5,20,000/- from 2,20,000/-.

7. In view of the above, I pass the following Order.

ORDER

- (i) The appeal is partly allowed with proportionate costs.
- (ii) The Judgment and Award dated 30.08.2013 passed by the learned Chairman, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 402 of 2010 is hereby modified.
- (iii) Respondent Nos. 2 and 3 shall jointly and severally pay compensation of Rs. 2,60,000/- (Rupees Two lakhs sixty thousand) to the appellants/claimants along-with interest @ 9% per annum from the date of filing of the petition till realization of the amount.

- (iv) Respondent Nos. 5 and 6 shall jointly and severally pay compensation of Rs. 2,60,000/- (Rupees Two lakhs sixty thousand) to the appellants/claimants along-with interest @ 9% per annum from the date of filing of the petition till realization of the amount.
- (v) The Respondents Nos. 2, 3, 5 and 6 shall jointly and severally deposit said amount before this Court within a period of eight weeks from today.
- (vi) The amount if any already paid or deposited in pursuance of the award passed by the Tribunal shall be adjusted.
- (vii) Award be drawn Accordingly.

(Y. G. KHOBRADE, J.)

JPChavan