IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 1063 OF 2020

1. Smt. Mirabai W/o. Bhanudas Jawale,
Age 57 yrs., Occu. Household,

2. Ajay S/o. Bhanudas Jawale,
Age 40 yrs., Occu. Service,

3. Girish S/o. Bhanudas Jawale,
Age 37 yrs., Occu. Nil,

4. Suhas S/o. Bhanudas Jawale,
Age 36 yrs., Occu. Service,

All R/o. Pokhardi, Tq. Nagar,
Dist. Ahmednagar. ....Appellants.
(Ori. Claimants)

Versus

1. Nitin S/o. Popat Dhiwar,
Age Major, Occu. Owner,
R/o. Plot No. 72, Yeshwant Talija,
Bhavani Nagar, Pipeline Road,
Savedi, Ahmednagar.

2. Reliance General Insurance Company Ltd.,
Through its Branch Manager,
"A" Wing, 2nd Floor Ambar Plaza,
Near Old Bus Stand, Ahmednagar. ....Respondents
(Ori. Opponents 1 & 2)

Mr. Umakant U. Wagh, Advocate for appellants.

Mr. U.A. Sayyed, Advocate h/f. Mr. K.N. Shermale, Advocate for respondent No. 1.

Mr. A.S. Usmanpurkar, Advocate for respondent No. 2.

CORAM : KISHORE C. SANT, J.
CLOSED ON : 01/08/2024
DELIVERED ON : 07/08/2024

JUDGMENT :

1) This appeal is by the original claimants for enhancement in the

amount of compensation and challenging the judgment and order passed by the learned Motor Accident Claims Tribunal, Ahmednagar dated 1.8.2017 passed in MACP No. 902/2011 to that extent. The learned Tribunal has directed to pay amount of Rs. 3,24,000/- towards loss of dependency considering the income of Rs.3,000/- p.m. of the deceased, towards consortium Rs.25,000/-, towards love and affection Rs. 30,000/-, towards ambulance charge Rs. 3,000/- and towards funeral expenses Rs. 5,000/- and thus, awarded total compensation of Rs. 3,87,000/- to the appellants/ original claimants (for the purpose of convenience the appellants are referred as 'claimants', respondent No. 1/owner of offending vehicle as 'owner' and respondent No. 2 as 'Insurance Company' hereinafter).

2) The facts in short are that deceased Bhanudas Jawale met with an accident on 4.11.2011 when he was taking evening walk at about 7.45 p.m. He was dashed by one Bajaj Pulsar motorcycle bearing registration No. MH-16/AU-2127 which was coming from Aurangabad to Ahmednagar. The claimants wife and three sons filed claim petition. In the claim petition, they prayed for an amount of Rs. 9,20,000/-. The deceased was trained mechanic of diesel engines, generator sets, pump sets etc. He was working in one firm namely K.P. Bhalerao and Sons since 1972 and used to do job work. He was earning Rs.10,000/- p.m. by doing the work of repairing the above mentioned engines and Rs. 2,000/- to Rs.3,000/- from supply of milk to the households at Ahmednagar. Thus, the income of the deceased was claimed to be Rs.12,000/- p.m.

3) The owner filed written statement, stating that the motorcycle was

not driven in rash and negligent manner. The deceased abruptly came on the road and received dash of the motorcycle.

4) The Insurance Company took the defence that it was the deceased who was negligent. There was no fault on the part of motorcycle. The driver of the motorcycle was not having valid and effective driving license. The age and income of the deceased were denied.

5) Before the Tribunal, claimant No. 1 got herself examined on behalf of all claimants at Exh. 22. In her cross examination, she accepted that claimant Nos. 2 to 4 are in service in MIDC and are married. She could not produce proof of actual income of the deceased.

6) PW 2 – Vishwesh Yashwant Bhalerao is the person who run a firm namely M/s. K.P. Bhalerao and Sons. He deposed that the said firm is having dealership of Kirloskar Company’s diesel engine, water pump-set, electric pump-set, generators and spare-parts. They also had the workshop for repairing work. The deceased was working in the said firm since 1972. The deceased had undergone the training programmes arranged by Kirloskar Company from time to time. He proved various certificates at Exh. 20 showing that the deceased had undergone various training programmes. So far as income in concerned, he deposed that the deceased was earning Rs.9,000/- to Rs.10,000/- p.m. by doing the work of repairing engines. He could not produce any entries to show that the firm used to send customers to the deceased.

7) Witness No. 3 for the claimants deposed that the deceased used to supply milk to his home every day. Witness No. 4 for the claimants also deposed on the same line. Both these witnesses could not produce any documents to show that they were taking milk from the deceased.

8) The claimants further relied upon the documents such as spot panchanama, inquest panchanama, P.M. report, R.C. book and Insurance Policy of offending vehicle and also driving licence of the driver of the offending vehicle. The respondents did not produce any evidence in support of their defence. After considering the evidence, the learned Tribunal passed the award as stated above. The claimants are, thus, before this Court.

9) In this Court, the learned advocate for the claimants vehemently argued that the deceased was skilled person, having special knowledge in repairing of diesel engines, water pumps, generators etc. He was highly demanded person for repairing work. The Tribunal ought to have considered his income to be Rs.10,000/- p.m. as on every day he used to get 2-3 jobworks of repairing the engines. So far as the details of the offending vehicle and license of the driver of the offending vehicle are concerned, there is no dispute. He further submits that the age of the deceased was 56 years at the time of accident. The multiplier of 9 is rightly applied, however, he submits that 10% future prospects ought to have been given which the Tribunal has not given. He submits that towards loss of consortium, the Tribunal has awarded only Rs.25,000/- to claimant No. 1 only and has not considered award of consortium to claimant Nos. 2 to 4. Thus, the Tribunal has not properly appreciated the loss of consortium. Even for love and

affection meager amount was awarded. Towards funeral expenses also the amount of Rs.15,000/- ought to have been awarded by the Tribunal.

10) As regards considering notional income, the learned advocate for the claimants relied upon judgment in the case of **Neeta w/o. Kallappa Kadolkar & Anr. Vs. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur** reported as **(2015) 3 SCC 590** and the **Gazette of India of the Central Government dated 31.5.2010,** wherein the Ministry of Labour and Employment published a notification specifying monthly minimum wages to be Rs.8,000/-. The said notification is under sub-section (1B) of section 4 of the Employee's Compensation Act, 1923. The learned advocate also relied upon the judgments in the cases of **Mohammed Siddique and Anr. Vs. National Insurance Company Ltd. And Ors.** reported as **(2020) 3 SCC 57 and Royal Sundaram Alliance Insurance Co. Ltd., Chennai Vs. Varsha Rajendra Pache & Ors.** reported as **2017 96) Mh.L.J. 308**.

11) The learned advocate for the Insurance Company vehemently opposes the appeal. He submits that the Tribunal has rightly considered the income of the deceased at the rate of Rs.3,000/- p.m. The claimants could not produce any material to show the proof of income of the deceased. As per the evidence of PW 2 also, the firm in which the deceased was working is closed and thus, there is no question of his getting any salary. About the milk business, he submits that there is no evidence. So far as interest on future prospects is concerned, he relied upon the judgment in the case of **National Insurance Company Limited Vs. Aisha Bano & Ors. decided by Jammu and Kashmir and Ladkh High Court in Mac App No. 33/2022, CM No.**

6083/2022 and CM No. 3307/2023 reported as **MANU/JK/0700/2023** and the judgments decided by this Court in the cases of **Wahida Abdul Rauf Chaus and Ors. Vs. Sharad Namdeo Thange & Ors. in the First Appeal No. 849/2011 dated 18.10.2022 reported as MANU/MH/3730/2022** and **Suman & Ors. Vs. The Branch Manager, Bajaj Allianz Genereal Insurance Co. & Ors. in First Appeal No. 1381/2017 dated 22.11.2021** reported as **MANU/MH/4390/2021**.

12) Thus, looking to the submissions and the judgments relied upon by the respective parties, this Court proceed further to examine, whether the compensation awarded in this case is fair and reasonable ?, whether the Tribunal has rightly considered the income of the deceased to be Rs.3,000/- p.m. ?, whether the Tribunal was right in awarding consortium amount to claimant Nos. 2 to 4 and whether the funural expenses are rightly granted by the Tribunal ?

13) So far as income of the deceased is concerned, this Court finds that there is ample evidence on record to show that the deceased was a skillful worker. To consider the income of the deceased to be Rs.3,000/- only is certainly on much lower side. In the case of **Neeta Kadolkar** (supra), the Supreme Court had relied upon the minimum wages and held that in absence of salary slip/certificate, the monthly salary of both the deceased ought to have been considered at the rate of Rs.12,000/- p.m. In the said case, the accident had taken place on 22.3.2011. In the Gazette of India for the year the minimum wages for the year 2010 was declared to be Rs.8,000/- p.m. In view of the above, this Court holds that in no case, the

income of the deceased can be taken less than Rs.8,000/- p.m.

14) So far as contributory negligence is concerned, the Apex Court in the case of **Mohammed Siddique** (supra) has laid down that the contributory negligence is the fact which needs to be established. In the said case, the High Court had reduced the compensation by 10% towards contributory negligence. The said award was set aside by the Apex Court. In the case of **Royal Sundaram** (supra), there was no proof to prove the salary of the deceased. The employer had deposed that he paid the salary of Rs.10,000/- p.m. In that case, the accident took place on 16.1.2012. The Apex Court held that the salary ought to have been taken at Rs.9,000/- p.m. In that case, the Tribunal and the appellate Court had disbelieved the oral evidence of employer about the salary. In this case, this Court finds that the evidence of employer i.e. P.W. 2 should have been relied upon by the Tribunal by considering that the deceased was a skilled worker and used to work in the firm prior to the closing of the firm and thereafter, was doing the jobwork of repairing engines on job basis. This Court finds no difficulty in accepting the case of the claimant considering the accident took place in the year 2011.

15) Coming to the submission of the Insurance Company, this Court does not find much substance. So far as the judgment relied upon by the learned advocate for the Insurance Company in the case of **National Insurance Company Limited Vs. Aisha Bano and Ors.** (supra) is concerned, it is in respect of award of interest on future prospects. In all the three judgments relied upon by the learned advocate for the Insurance Company, it was held that the future prospects are events in future and therefore, no interest be

awarded from the date of claim. This Court finds that this interest is not by way of any penalty. It is only for the reason that the claimants are deprived from compensation immediately for some period and therefore, they should not be deprived of such interest. Considering the above, this Court holds that the award of the Tribunal needs to be modified.

16) In the present case, the deceased was working as trained mechanic. Considering the date of accident in the year 2011, the income ought to have been taken Rs.8,000/- p.m. Thus, this Court holds that the notional income of the deceased was Rs.8,000/- p.m. The said amount needs to be deducted by 1/3rd towards personal expenses of the deceased as claimant Nos. 2 to 4 are in employment and were not dependent on the deceased. The amount would come to Rs.5,334/- p.m. (rounded to Rs.5350/-) i.e. Rs.64,200/- per year. The age of the deceased was 57 years at the time of accident. The multiplier would be of 9 as rightly applied by the Tribunal. Considering that the figure comes to Rs. 5,77,800/- + 10% towards future earning. Thus, the total compensation comes to Rs. 6,35,580/- towards loss of dependency. This Court holds that the consortium amount would come to Rs.1,60,000/-, amount towards funeral expenses would come to Rs.15,000/- and amount towards loss of estate would come to Rs.15,000/-. Thus, the claimants are entitled to get total compensation as follows :-

Towards loss of dependency	Rs. 6,35,580/-
Towards consortium	Rs. 1,60,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total	Rs. 8,25,580/-

Thus, this Court holds that claimants are entitled to receive amount of Rs. 8,25,580/- towards compensation on all counts. Thus, the amount of compensation be paid accordingly by deducting Rs. 3,87,000/- which is already awarded by the Tribunal. The enhanced amount shall carry interest as awarded by the Tribunal i.e. 9% p.a. from the date of claim petition till realization of the amount. Considering the above facts, this Court holds that claimant No. 1 is entitled to receive 55% of the amount of compensation and claimant Nos. 2 to 4 are entitled to receive 15% each. In view of the discussion made above, the impugned judgment and award is modified accordingly. Hence, the following order.

ORDER

(I) Appeal is partly allowed.

(II) Respondent Nos. 1 and 2 do jointly and severally pay amount of Rs. 8,25,580/- to the appellants including no fault liability by deducting Rs. 3,87,000/- which was already awarded by the Tribunal.

(III) Appellant No. 1 is entitled to receive 55% of the amount of compensation and appellant Nos. 2 to 4 are entitled to receive 15%, each, of the amount of compensation.

(IV) The amount should carry interest at the rate of 9% p.a. on enhanced amount from the date of filing of the claim petition i.e. 15.12.2011 till actual realization of the amount.

(V) The amount be deposited in this Court within eight weeks from today.

(VI) The appeal stands disposed of with no order as to costs.

[KISHORE C. SANT, J.]

SSC/

17) At this stage, learned advocate for the appellant seeks direction to the office to allow the appellants to withdraw the amount, after it is deposited in the office of this Court.

18) Office is, therefore, directed to allow the appellants to withdraw the amount after it is deposited in the office of this court without requiring any formal application.

[KISHORE C. SANT, J.]