



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

77 FIRST APPEAL NO. 134 OF 2021

SAKHARAM JAGANNATH AVHAD AND ANR
VERSUS
RAJENDRA SAHEBRAO GHULE AND ANR

Mr.Umakant U. Wagh, Advocate for the appellants.
Mr.Mohit Deshmukh, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
DATED : 23.07.2024

PC :-

01. Heard learned Advocates for the parties. The appeal is taken up for final disposal at the stage of admission by consent of the parties. Though the record and proceedings is not received, the learned Advocates for the parties submit that they are ready to go on with the copies of the documents produced on record, since question involved is only of the quantum of the compensation.

02. Present appeal is arising out of judgment and order dated 12.03.2020 passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar, in MACP No.205 of 2016. The facts in short are that the son of the present appellants-original petitioners before the Tribunal, died in an

accident. On 31.01.2016 at 04=00 p.m. deceased Shubham was proceeding from Pandharipool to Miri Road for purchase of grocery material. While crossing the road, he met with an accident due to severe dash given by the vehicle bearing registration No. MH-14-DN-3216, which was driven in high and excessive speed. The deceased received grievous injuries and was shifted to hospital for treatment. However, during the course of treatment, he succumbed to the injuries. The deceased was a child of 12 years age, taking education in 6th standard in Zilla Parishad School. The appellants filed claim petition seeking compensation. The learned Tribunal on going through the evidence and other documents, allowed the petition and awarded total compensation of Rs.4,30,000/- including the amount of 'no fault liability' along with interest @ 9% p.a. and Rs.30,000/- towards of loss of estate and funeral expenses, from the date of filing of the petition till realization. The learned Tribunal awarded compensation of Rs. 4 lakhs based on the judgment in the case of **Kishan Gopal and Anr. Vs. Lala and Others, (2014) 1 SCC 244.**

03. The learned Advocate for the appellants vehemently argued that the amount awarded is too meager. The amount is awarded on the basis of IInd Schedule of Section 163-A of the Motor Vehicles Act. This Schedule was

prepared in the year 1994, where the notional income of the child was considered to be Rs.15,000/- per year only. In the present case the child died in the year 2016. Considering this aspect, the learned Tribunal ought to have awarded at least double the amount towards compensation, by taking pragmatic approach. In support of the submission, he relied upon judgments in case of (i) Ali and Anr. Vs. Abduljabbar and Anr., 2020 SCC OnLine Ker 5539 (ii) Sannasi and Ors. Vs. Manager, National Insurance Co. Ltd., 2020 SCC OnLine Ker 5543 and (iii) Kishan Gopal and Anr. Vs. Lala & Ors., (2014) 1 SCC 244.

04. The learned Advocate for the respondent-insurance company submits that the learned Tribunal has rightly awarded the amount of compensation. He submits that Schedule II though prepared in the year 1994, still that is in force as on today. There is no provision made in the Act giving discretion to the Tribunal to consider income of a child and it has no power to award compensation more than the Schedule. He further submits that even while amending the Motor Vehicles Act in the year 2019, the legislature thought an amount of Rs. 5 lakhs fit to be awarded, which earlier used to be awarded under section 163-A and Schedule II of the Act. He further submits

that even the Hon'ble Supreme Court in the case of Kishan Gopal (supra) considered income of Rs. 30,000/- per annum instead of Rs.15,000/- per annum as given in IInd Schedule and awarded an amount of Rs.4,50,000/- considering annual income to be Rs.30,000/- x 15 multiplier. In that case additional amount of Rs. 50,000/- was paid under conventional head towards loss of love and affection, funeral expenses etc.

05. He relied upon judgment of the Hon'ble Supreme Court in the case of Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors., (arising out of SLP (Civil) No.5345 of 2019). In that case also, the Hon'ble Apex Court has granted Rs.5,00,000/- towards compensation. He thus submits that in that case the accident had taken place in the year 2003. He, thus, submits that in the year 2022 the Hon'ble Supreme Court considered an amount of Rs.5,00,000/- to be just compensation. He thus submits that in the present case, there is no scope to enhance the amount of compensation.

06. This Court has also considered judgment in the case of Ali & Anr. (supra). In the said judgment the High Court of Kerla considered the cost of inflation index right from 1995-96 prepared in the Income Tax Act. It is

further discussed that when value of rupee is diminishing every year, rupee is losing its value and that factor should be considered while determining the amount of compensation. Similar view is taken in the case of **Sannasi and Ors. (supra)**. This Court accepts that every year, Rupee is losing its value. However, that itself cannot be a factor to be considered while awarding compensation, when the award of compensation is fixed by the IIInd schedule.

07. It is true that since 1994, there is no change in the IIInd Schedule. However, the Legislature has not given any discretion to the Tribunals while determining the amount of compensation. It is the Legislature which has made specific provision in section 164 of the Act that compensation in such cases should be Rs. 5 lakhs. It is, thus, clear that the Legislature has not left this matter to the discretion of the Tribunal. In the case of **Kishor Gopal (supra)**, the Hon'ble Apex Court had also considered that amount of Rs. 12,000/- per year as income is not in tune with the inflation and diminishing value of Rupee.

08. The learned Advocate for the respondent has also placed reliance in the case of **Puttamma and Ors. Vs. K.L. Narayana Reddy & Ors., (2013) 15**

SCC 45. When the Hon'ble Apex Court has considered case of **Kishan Gopal (supra)** it is specifically held that it is not within domain of the Court to go into all these aspects, once there is specific schedule and the Court can only advise to re-consider. Thus, it is a matter for Legislature to determine the amount of compensation in such cases or otherwise to leave it to the discretion of the Court, so long as it is not done.

09. The learned Advocate for the respondent also placed reliance on the judgment in the case of **Meena Devi (supra)**. In that case in the year 2022, the Hon'ble Supreme Court granted amount of Rs. 5 lakhs as total compensation. In the said case the Hon'ble Supreme Court also considered case of **Kishan Gopal (supra)**.

10. Considering all above, this Court is left with no option than to accept the amount as per IInd Schedule. Considering the scheme of the Act, as it is a beneficial legislation, this Court would follow the judgment in the case of **Kishan Gopal (supra)**, wherein total compensation was Rs.4,50,000/-. This Court further finds it necessary to grant amount towards consortium and funeral expenses. The amount of consortium is thus granted Rs.40,000/- each

to the petitioners i.e. Rs.80,000/- plus Rs.30,000/- under other heads. This amount of Rs.1,10,000/- needs to be added to the amount of Rs.4,50,000/-.

11. Considering the above, following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant are held entitled to recover Rs.5,60,000/- including the amount of 'no fault liability' along with interest @ 9% p.a. from the date of filing of the petition till realization.
- (iii) The enhanced amount shall be deposited in this Court within eight weeks from today. On deposit of amount, the office shall disburse the amount to the appellants without requiring them to file formal application for withdrawal of the said amount.
- (iv) The award be modified accordingly.

[KISHORE C. SANT, J.]