

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.340 OF 2020

1. Dr. Sunil Shankar Patil,
2. Sahil Sunil Patil,
3. Sneha Sunil Patil. ...Appellants

Versus

1. Suhel Shaukat Shaikh,
2. Shaukatali Babalal Shaikh,
3. United India Insurance Co. Ltd.,
Taluka Karad, District – Satara. ...Respondents

Mr. Mahindra B. Deshmukh for the Appellants.

Ms. Varsha Chavan for Respondent No.3.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

Date on which the Arguments were Heard : 6th March 2024.
Date on which the Judgment is Pronounced : 28th March 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

. This First Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, ('M.V. Act') by the legal heirs of the deceased challenging the order passed by the Motor Accident Claims Tribunal, Pune ('Tribunal') dated 5th September 2019, in MACP No.500 of 2011

since the Tribunal granted claim of Rs.1,31,37,171/- against claim of Rs.3,69,20,000/-.

2. Brief facts are as under:-

- (i) On 3rd January 2011, Appellant Nos.1, 2 and the deceased, Ms. Madhuri S. Patil, were travelling from Sangli towards Pune in Maruti Swift Dzire. While they reached village Vele on Pune Bangalore National Highway, one Innova car collided with the car in which the Appellants and the deceased were travelling. Ms. Madhuri S. Patil died while being taken to the hospital and the Appellants sustained injuries.
- (ii) On 3rd May 2011, the Appellant filed an application under Section 166 of the M.V. Act with the Tribunal which was numbered as MACP No.500 of 2011 claiming *interalia* compensation of Rs.3,69,20,000/- along with other claims and interest @ 12% per annum from the date of application till realisation of the entire amount. The claim was made against the owners of Innova and United India Insurance Co. Ltd.
- (iii) The parties led their respective evidence in support of their pleas and filed various documents which were exhibited by the Tribunal. On 5th September 2019, the Tribunal partly allowed the claim as under:

Nature of Claim	Rupees
Towards dependency	Rs.1,30,67,171/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Interest	6% per annum
Total	Rs.1,31,37,171/-

(iv) Being aggrieved by the aforesaid order of the Tribunal, the Appellants have challenged the order by filing an appeal to this Court under Section 173 of the M.V. Act. The Insurance Company, Respondent No.3, has not challenged the order of the Tribunal.

(v) The Appellants have now claimed before us Rs.2,40,45,753/- as under:

Nature of Claim	Rupees
Towards dependency	Rs.2,17,35,753/-
Loss of estate	Rs.1,00,000/-
Loss of consortium	Rs.1,60,000/-
Funeral expenses	Rs.50,000/-
Loss of domestic services	Rs.18,00,000/-
Loss of love and affection	Rs.2,00,000/-
Interest	10% per annum
Total	Rs.2,40,45,753/- (excluding interest)

3. We have heard learned Counsel for the Appellants and Respondent No.3-Insurance Company and with their assistance have perused the paper book containing exhibited documents filed before the Tribunal. We have also perused the Written Submissions filed by both the parties and the case laws relied upon by them. The following points arise for determination:-

Points for determination	Decision
(a) Whether the Tribunal was justified in relying only upon income tax return and not giving any reason for rejection of salary certificate for the purpose of determining annual income to arrive at just compensation?	(a) No. The Tribunal ought to have given reasons and ought to have considered the salary certificate with respect to items which did not appeared in the income tax return.
(b) Whether the Tribunal was justified in taking 30% towards future prospects without considering the evidence on record and giving reasons for rejection of the claim made by the Appellant of 50%.	(b) Partly allowed. The Tribunal ought to have considered 40% towards future prospects.
(c) Whether the Tribunal was justified in not considering the Appellant's claim on account of domestic services without giving any reason.	(c) No. The Tribunal ought to have given its reasons for not considering the same in arriving at compensation. Rs.9 lakh is awarded towards the same.
(d) Whether the amount awarded on account of loss of estate, funeral expenses and consortium is contrary to the decision of the Supreme Court.	(d) Yes.
(e) Whether the Tribunal was justified in not granting Rs.2 lakh towards loss of love and affection.	(e) No. However, same is considered while awarding compensation for domestic services.
(f) Whether the Tribunal was justified in granting interest at 6% on the amount awarded as against the claim of the Appellant of 9% to 12% p.a.	(f) Yes.

We now propose to deal with each of the aforesaid points hereinafter.

4. **Point No.(a) [Towards Dependency]:-**

- (i) The contention of the Appellants is that the salary certificate of the deceased which was exhibited as Exhibit 67 certifies that cost to

the Company per annum of the deceased where she was serving was Rs.17,03,416/- which is reproduced at page 12 of the impugned order. It is the submission of the Appellants that for the purpose of loss of income the figure of Rs.17,03,416/- shown in the said certificate should be considered.

(ii) Per contra, the contention of Respondent No.3-Company is that the income shown as per income-tax records for the year of accident should be considered which after reducing income-tax works out to Rs.8,69,856/-for 9 months up to the date of death and by extrapolating for 12 months annual income would be Rs.11,59,808/- which is what the Tribunal has considered towards loss of income. The Respondent No.3 further submitted that there are various items in the salary certificate which do not appear in the pay slip of the deceased for the month of November 2010 and, therefore, the Tribunal was justified in considering the income shown as per income-tax return.

(iii) We have considered the rival submissions on this issue. The items of difference between the service certificate and the pay slip of the deceased relates to leave travel allowance of Rs.40,000/-, performance bonus of Rs.65,000/- p.a., perks and benefits of Rs.1,10,656/- p.a., superannuation of Rs.1,08,000/- p.a, provident fund of Rs.86,400/- p.a. and gratuity of Rs.34,560/- p.a.

- (iv) Mr. Sandip Kumar Kumbhar, Assistant Manager (Human Resource) of the employer was examined on the above issue. He, in his evidence has stated that the salary slip of November, 2020 does not include annual pay amount such as provident fund, superannuation, gratuity, indirect benefits, annual perks, LTA and bonus. However, all these form part of salary and are compulsorily payable on which tax is also required to be paid. All these amounts are shown separately in service certificate and, therefore, total annual emoluments of the deceased for the year 2010-11 was Rs.17,03,416/-. In the cross-examination, Mr. Sandip Kumar Kumbhar stated that the deceased was not entitled for bonus. However, in the same paragraph, he states that the bonus amount mentioned in his Affidavit is correct. Further in the cross-examination, he confirmed that indirect benefit of Rs.2,68,960/- p.a. includes LTA Rs.40,000/- p.a., superannuation Rs.1,08,00/- p.a., provident fund Rs.86,400/- p.a. and gratuity Rs.34,560/- p.a.
- (v) In the evidence of one Mr. Milind Marathe, representing Life Insurance Company, he has stated that after the death of the deceased Rs.6,16,128/- has been paid towards superannuation, etc. There is no rebuttal to the same. Therefore, in our view the Appellants cannot claim superannuation, provident fund and gratuity in the present appeal. Furthermore, the Tribunal has given

a finding that these amounts must have already been received by the Appellants and same has not been rebutted before us. Therefore, while calculating loss on account of dependency, these amounts cannot be considered and which has been correctly dealt with by the Tribunal.

- (vi) With respect to LTA, the service certificate categorically states that sum of Rs.40,000/- p.a. was to be paid to the deceased. In the evidence also Mr. Sandip Kumar Kumbhar has stated that the said amount is payable whether availed or not. Since this amount is payable at the end of the year, same would not appear in the monthly pay slip of the deceased. Furthermore, the Tribunal without giving any reasons for rejecting the service certificate has come to a conclusion that income as per the income tax return would be considered. In our view there are various emoluments which an employee receives for the services he renders but on which no tax is payable either because it is exempted or the amount received is less than what is specified in the Income-tax Act for calculation of the perquisite. The income for the purpose of income tax is to be calculated in accordance with Section 15 to Section 17 of the Income-tax Act, 1961 which has its own calculation and the object is to arrive at the tax on such calculated income whereas the salary as per the salary certificate is what is

actually agreed to be received by an employee from the employer and same is based on contractual arrangement between the said two parties. For example, capital gains under the Income-tax Act, 1961 is calculated after indexing the cost of acquisition whereas in effect the gain received by a person selling capital asset is simple mathematical calculation of reducing the cost price from the selling price. There are various such examples to show that actual income received would be different than the income calculated as per the Income-tax Act. There are various receipts in the nature of reimbursement on which no income tax is levied. The Income-tax Act itself recognises that many a times the profits shown in the books of accounts is different and more than the income calculated under the Income-tax Act and therefore the provision in the Income-tax Act is made for levying tax which is known as Minimum Alternative Tax, for eg. Section 115J. This is only to illustrate that income computed under the Income-tax Act is not the same as what is actually received by a person. Therefore, income tax returns cannot be considered as the sole basis for determining the compensation under the M. V. Act. The Tribunal is required to consider the ingredients of the income as per the contract and it is this income which is to be considered for the purpose of arriving at compensation under the M.V. Act. This is so

because the object of compensation under the M.V. Act is to compensate for the loss of pecuniary benefits and to mitigate hardship which is different than the object of the Income-tax Act which has its own provisions to calculate the taxable income for the purpose of payment of tax. Therefore, it would depend on the facts of each case as to whether sole reliance can be placed on the income tax return filed under the Income-tax Act for the purposes of compensation to be calculated under the M.V. Act. Therefore, in our view the Tribunal was not justified in considering the income as per the income tax return without giving any reasons for rejecting the income shown as per the salary certificate. Therefore, in our view the LTA at Rs.40,000/- p.a. should have been considered by the Tribunal for the purpose of calculating loss of dependency.

(vii) Insofar as bonus is concerned, the salary certificate shows performance bonus of Rs.65,000/- per annum. In the examination in chief, Mr. Sandip Kumar Kumbhar has clarified that since this is an annual amount it does not appear in the monthly pay slip and he further confirms that the said amount is compulsorily payable and therefore shown separately in the service certificate. However, in the cross-examination there appears to be a contradiction when the said deponent states that deceased was not entitled to

performance bonus but in the very same paragraph at paragraph 22, he states that he has correctly mentioned Rs.65,000/- p.a. as bonus in his affidavit. We have not been explained this contradiction by the Appellants. Therefore, even if the bonus forms part of the service certificate in the light of paragraph 22, the Appellants cannot claim Rs.65,000/- towards loss of dependency.

(viii) Insofar as perks and benefits of Rs.1,10,656/- is concerned, same appears in the salary certificate and in the examination in chief of Mr. Sandip Kumar Kumbhar, where he has stated that since these are annual perks the same do not appear in the monthly slip, but they are compulsorily payable. In the cross-examination also this statement has not been rebutted. In the employment contract there are various perks and benefits which an employee is entitled to and therefore this is an amount which the deceased would have received had she been alive. We have already observed above as to why the figures shown in the income-tax return cannot be considered but what is to be considered is the contract of employment and the salary certificate which shows the actual receipt of emoluments which an employee would be entitled to.

(ix) Therefore, in our view the Tribunal ought to have considered LTA and perks and benefits (40,000/- p.a. + 1,10,656/- aggregating to

Rs.1,50,656/-) for arriving at an amount of compensation on account of loss of dependency.

(x) Insofar as other items specified in the salary certificate are concerned, i.e. basic salary, executive allowance, house rent allowance, conveyance allowance, medical reimbursement, etc. same has already been considered by the Tribunal since these very items appear in the pay slip of November 2010. Therefore, same is not considered in the present appeal.

(xi) The Supreme Court in the case of *National Insurance Co. Ltd. Vs. Indira Srivastava* in Civil Appeal No.5830 of 2007 dated 12th December 2007 in para 17 has held that the amounts which are required to be paid to the deceased by his employer by way of perks should be included for computation of monthly income as that would have been added to monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit.

5. **Point No.(b) [Future Prospects]:**

(i) The Tribunal has considered in para 20 of its order, 30% towards future prospects. The contention of the Appellant is that the deceased was a bright employee with excellent academic record and therefore the percentage granted by the Tribunal is less and it

should have been 50%. The deceased had completed her Bachelors of Engineering from Walchand College of Engineering. Her paper on electron beam welding was recognised by Indian Institute of Production Engineers.

- (ii) The Respondent No.3-Insurance Company has opposed the said submission and stated that this is not an exceptional case where the future prospects should be considered at 50%.
- (iii) The constitutional 5-Judge bench in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.***¹ in para 59.3 have observed that computation should be 30% towards future prospects if the age of the deceased was between 40 to 50 years. In the instant case before us, the age of the deceased was 48 and therefore the Tribunal has considered 30% towards future prospects. The Appellants have relied upon the decision of the Supreme Court in the case of ***Hemraj Vs. Oriental Insurance Co. Ltd.***² for seeking increase of percentage to 50% and has specifically relied on paragraph 32 of the said decision wherein the Supreme Court has found merit in the submission that there is no bar to future prospects being taken at a level higher than that specified in ***Pranay Sethi's*** case when there is actual evidence led to the satisfaction of the Court that future prospects were higher than the

1 (2017) 16 SCC 680

2 2018 ACJ 5

standard percentage. The decision in the case of *Sarla Verma (SMT) & Ors. Vs. Delhi Transport Corporation & Ors.*³ with regard to percentage to be taken for future prospects has been explained in the case of *K. R. Madhusudan & Ors. Vs. Administrative Officer*⁴ and the Supreme Court has clarified that if there is evidence on record then the percentage prescribed in *Sarla Verma's* case can be deviated where income of the deceased was bound to increase.

- (iv) In the instant case, the evidence of Mr. Sandip Kumar Kumbhar, representative of the employer of the deceased, has stated that the deceased was always at the best because of her expertise and specialization in breaking systems and she in future could have been entitled to the position of Senior General Manager or Vice President. [In the said evidence, it is also stated that if she had continued till her retirement, and her salary raise every year would have been 11% then the projected emoluments at the end of her retirement would have been Rs.3,16,17,837/-]. This was on the basis that she continues at her current position without future promotion and if she had been promoted then the said emoluments would increase further. In the evidence her academic achievement is also stated and because of her expertise she had

3 (2009) 6 SCC 121

4 (2011) 4 SCC 689

represented the company in various foreign countries. In the cross-examination there is no rebuttal to the same.

(v) In our view, applying the ratio of the subsequent Supreme Court decision in the case of *Hemraj (supra)* wherein after considering the decision of *Pranay Sethi (supra)*, the Supreme Court has clarified that if evidence is led, then higher than the standard percentage can be awarded. In our view, the evidence of Mr. Sandip Kumar Kumbhar, the representative of the employer of the deceased, which is analysed by us above would certainly justify adoption of higher percentage than standardized in the case of Pranay Sethi. However, one cannot by mathematical precision arrive at the future prospects percentage. Therefore, in our view 40% future prospects would be reasonable to meet the ends of justice in the facts of the present case.

(vi) Therefore, the claim on account of dependency is worked out as under:-

Yearly income as per Tribunal's order	Rs.11,59,808/-
Plus LTA	Rs.40,000/-
Plus Perks and Benefits	Rs.1,10,656/-
Total	Rs.13,10,464/-
Plus 40% towards future prospects	Rs.5,24,185/-
Total	Rs.18,34,649/-

<i>Less 1/3rd towards personal expenses</i>	Rs.6,11,550/-
Total	Rs.12,23,099/-
<i>Multiplier</i>	x13
Total	Rs.1,59,00,287/-

6. **Point No.(c) [Domestic Services]:**

- (i) The Tribunal in the impugned order has not discussed this claim of the Appellants although in the application in paragraph 14, the Appellants have prayed for Rs.18,00,000/- against domestic services (10,000 per month x 12 x 15 years).
- (ii) The Appellants submitted that they had raised this claim in the application filed and also in the written arguments filed before the Tribunal. The Tribunal ought to have considered the same and given its finding thereon. The Appellants have relied upon the decision of the Allahabad High Court in the case of ***National Insurance Company Ltd. Vs. Rajendra Singh & Ors.***⁵, in support of the said claim.
- (iii) The Respondent No.3-Insurance Company has not disputed that this claim was raised and same does not find any discussion in the impugned order. However, it is submitted that the decision of the Allahabad High Court is not applicable to the facts of the present

5 2019 ACJ 1368

case since the deceased in the present case was a working woman whereas the deceased before the Allahabad High Court was a housewife.

- (iv) In our view, on a perusal of the Tribunal's order and the records we do not find any discussion on this issue by the Tribunal although same was raised by the Appellants. Normally we would have remanded the matter back to the Tribunal to adjudicate this issue. However, in the light of the fact that on all the other issues the Tribunal has given its finding and the claim is filed before the Tribunal in the year 2011 and the impugned order of the Tribunal has been passed in 2019 and the present appeal is taken up for hearing in the year 2024, this is a fit case where this Court should adjudicate this issue to prevent any further delay by remanding the matter back. Therefore, in the facts of the present case we propose to adjudicate this issue on merits in this appeal itself.
- (v) The basis of this claim is that a woman does various household chores like cooking, washing clothes, looking after and binding all the members of her family with love and affection, devoting herself completely to raising and nurturing her children's development, dreams and aspirations, etc. Merely because a woman is employed it would not mean that she would derelict her duties towards her home. On the contrary, she successfully balances her career and

family responsibilities with utmost grace. A working woman plays a dual role by putting in more hours so that she can discharge both her duties to the best of her abilities. Even while she is away at work, she is constantly in touch with her family members to ensure that they had their food, completed their studies, done their homework, etc. Therefore, in our view the distinction sought to be made by the insurance company that since the deceased was a working woman the claim on account of domestic service is not justified is misconceived.

- (vi) Therefore, in our view, it would not make any difference whether a woman is a housewife or a working woman when it comes to computation of loss on account of domestic service under the M.V. Act, moreso in the present case when the children of the deceased were minor. The Appellants have claimed a sum of Rs.10,000/- per month for a period of 15 years on this count. It would be difficult to put an exact figure on account of this claim. However, even if the theory of replacement cost is applied it would be applicable only to those services like cooking, washing, housekeeping, etc. but when it comes to love and affection of a mother we cannot attribute any monetary value. However, since we are called upon in the present appeal to determine the compensation, we propose to grant a sum of Rs.5,000/- per month to the Appellants on this

count. The total figure would be Rs.5,000 x 15 years x 12 months that works out to Rs.9,00,000/- which in our view would be just compensation under this head.

(vii) The decision of this Court in the case of ***Rambhau Vs. Shivlal & Ors.***⁶ was a case where the deceased was earning Rs.100/- per day by doing labour work and with respect to the claim on account of domestic service this Court calculated additional Rs.100/- per day since the deceased was a woman and mother of two children who would have also contributed to physical labour for maintenance of household and also taking care of her children and arrived at compensation of Rs.6,000/- per month. In our view, this decision supports the compensation granted by us above towards loss of domestic services.

7. **Point No.(d) [Loss of estate, funeral expenses and consortium]:-**

- (i) The Tribunal has granted Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and funeral expenses Rs.15,000/-.
- (ii) The Supreme Court in the case of ***Vimal Kanwar & Ors. Vs. Kishore Dan & Ors.***⁷ awarded Rs.1,00,000/- towards loss of consortium and loss of estate and Rs.25,000/- towards funeral expenses.

6 2021 (2) Mh.L.J. 637

7 (2013) 7 SCC 476

- (iii) In view of above, by following the decision of Supreme Court in the case of *Vimal Kanwar (supra)* we propose to award Rs.1,00,000/- towards loss of consortium and loss of estate and Rs.25,000/- towards funeral expenses.

8. **Point No.(e) [Loss of love and affection]:-**

- (i) The Appellants have claimed a sum of Rs.2,00,000/- under this head.
- (ii) We do not propose to grant the said claim since while dealing with loss on account of domestic service we have already discussed the issue of love and affection and awarded a consolidated sum of Rs.9,00,000/- under the said head which includes loss on account of love and affection.
- (iii) Therefore, this claim is rejected.

9. **Point No.(f) [Interest]:-**

- (i) The Tribunal has granted interest @ 6% from the date of claim petition till the realisation of the amount.
- (ii) The Appellants have relied upon various decisions of the Supreme Court wherein interest has been awarded @ 9% to 12% and therefore prayed that in the present case also they should be awarded interest @ 9% to 12%.

- (iii) The Respondent, on the other hand has relied upon decision of the Gauhati High Court in the case of the ***Oriental Insurance Co. Ltd. Vs. Smti Champabati Ray & Ors.*** MAC Appeal 378 of 2017 and the decision of Jammu & Kashmir & Ladakh High Court in the case of ***National Insurance Co. Ltd. Vs. Mst Aisha Bano & Ors.*** MAC Appeal 33 of 2022 and contended that no interest should be granted on future prospects as the same relates to an income to be given in the future.
- (iv) The contention of the Respondent that no interest should be granted cannot be accepted in the absence of an appeal by Respondent No.3-Insurance Company against the order of the Tribunal granting 6% p.a. interest. If the Insurance Company was aggrieved by this direction of the Tribunal then they ought to have challenged the same. In the absence of any challenge, the Respondents are not justified in placing reliance on the decisions of the Gauhati High Court and Jammu & Kashmir & Ladakh High Court.
- (v) Insofar as the Appellants are concerned, they have not shown us any document as to what was the rate of interest prevailing during the year 2011 and therefore unless the Appellants prove that the rate of interest prevailing in 2011 was in the range of 9 to 12%, we are unable to grant interest as claimed by the Appellants.

(vi) Therefore, the Appellants' claim on this count fails.

10. To conclude, in view of our above discussion, the Appellants are entitled to the following additional compensation:-

a.	Loss of estate and consortium	Rs.1,00,000/-
b.	Funeral expenses	Rs.25,000/-
c.	Compensation on account of domestic services	Rs.9,00,000/-
d.	Loss on account of dependency	Rs.1,59,00,287/-
e.	Total	Rs.1,69,25,287/-
f.	<i>Less</i> allowed by the Tribunal	Rs.1,31,37,171/-
	Total	Rs.37,88,116/-

11. The First Appeal is partly allowed in terms of the following order:-

- (i) The judgment of the Motor Accident Claims Tribunal, Pune in MACP No.500 of 2011 dated 5th September, 2019 is partly modified.
- (ii) The Respondent No.3-Insurance Company to pay additional compensation to the Appellants of Rs.37,88,116/- along with interest @ 6% from 3rd May 2011 to the date of payment within a period of 8 weeks from today.

(iii) The parties shall bear their own costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]