

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 596 OF 2023

Cholamandalam M. S. General Insurance Co.
Ltd. Through its Manager,
Shop No. 21/4B, Above BMW Showroom,
Seth House, Bundgarden road, Pune - 411001.
Also having address at Dastor House, 2nd Floor,
Above Union Bank of India, Perin Nariman Street
P.M.Road, Fort, Mumbai-400 001

...Appellant

Versus

1. Smt. Poonam Gupta
Age: 32 years, Occu- Household,
Ganesh Park, Flat No.105,
Chitanyanagar, S.N.281, Dhanakwadi
Pune-411043

2 Eknath Rambhau Ghule.
R/at: Lonikand, Tal. Haveli, SO Panshet,
District Pune.

3. Shri. Prasad Shah
Age: 78 years, Occ- Retired

4. Saroj Gupta
Age: 64 years, Occ - Household
Both R/at: Main Road, Shastrinagar,
Konark Cinema Road, Munger Bihar.

...Respondents

WITH
CROSS OBJECTION (ST) NO. 6039 OF 2023
WITH
INTERIM APPLICATION NO. 7177 OF 2024
IN
FIRST APPEAL NO. 596 OF 2023

1. Smt. Poonam Gupta

...Applicant/
Cross
Objectionist

SNEHA
NITIN
CHAVAN

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Date: 2024.10.10
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In the matter between:

Cholamandalam M.S. General Insurance Co. Ltd. ...Appellant

Versus

Smt. Poonam Gupta and Ors. ...Respondents

Mr. Rajesh Kanojia a/w Ms. Prachi Pawar i/b Res Juris for the Appellant.
Mr. Yogesh Pande for Respondent No.1 in First Appeal and Applicant in
IA/7177/2024 and for Cross objectionist in Cross Objection (ST)No.
6039/2023.

CORAM : M.M. SATHAYE, J.

DATE : 10 OCTOBER 2024

:JUDGMENT :

1. Heard learned counsel for the Appellant/Insurance Company, learned counsel for the Respondent No.1-Claimant. Respondent nos. 3 and 4 are duly served through newspaper publication as permitted by the Court under order dated 13.12.2022. An Affidavit of service dated 05.06.2023 has also been filed with relevant newspapers. However, none appears for them. Appeal is already dismissed against Respondent No.2 under conditional order dated 25.04.2022. The appeal was posted for final hearing under earlier order dated 23.08.2024. Taken up for final disposal by consent of learned counsel appearing for the parties.

2. This is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 ('the said Act' or 'the M.V.Act' for short) challenging the Judgment and Award dated 19.04.2018 passed by the Member, Motor Accident Claims Tribunal (MACT), Pune in Motor Accident Claim Petition (MACP) No.129 of 2015. By the impugned Judgment and Award, the claim of Respondent No.1 is granted and the Appellant Insurance Company is directed to pay Rs.50,60,000/- to

Respondent No.1 Claimant and Respondent Nos. 3 and 4 along with interest @7.5% per annum from the date of claim application till its realization. It is further directed that the Appellant/ Insurance Company will deposit the amount, but will be entitled to recover it from Respondent No.2 owner/driver of offending dumper (registration No. MH-12-DT-1855). The learned Tribunal has thereafter apportioned the compensation amongst Respondent No.1 and Respondent Nos. 3 and 4. Thus, the impugned award is a 'pay and recover' award.

CASE

3. Few facts necessary for disposal of this appeal are as follows. The claim is under Section 166 of the said Act. On 16.01.2014 at about 10.30 a.m., deceased Prabin Kumar was proceeding from Pashan towards Chandani Chowk on his motorcycle bearing No. MH-12-GG-398. When he reached a spot in front of Jain Temple, Bavdhan, the offending dumper was proceeding in the same direction, when due to high speed, the driver of the dumper lost control over the vehicle and gave dash to the said motorcycle from cleaner side. In the said accident, the deceased sustained severe multiple injuries, who was rushed to the hospital, but he was declared dead. Respondent No.1 is the widow of the deceased and Respondent Nos. 3 and 4 are parents of deceased. Claim is filed only by widow. It is the case of the Claimant/widow that the offending dumper was being driven in rash and negligent manner due to which accident occurred. Hinjewadi police station has registered crime against the driver of the offending dumper. It is the case of the Claimant/widow that the deceased was 39 years old at the time of accident, who was running business in the name and style of M/s. Rajhans Telecom and Peripheral Services since 2004. They had no children. Deceased was wholesaler, reseller and retailer of Tea/coffee vending machines, fax, printer, projector, video conferencing equipment,

cartridges, vending machines, photocopiers etc. It is contended that the deceased was an Income Tax payee ('IT' for short) having bright future. Based on his IT returns, compensation of Rs.1,81,00,000/- was claimed from the Appellant Insurance Company and owner/driver of the offending dumper jointly and severally. It is contended that the Respondent/claimant is a widow and there is no one to look after the business of the deceased. It is contended that father of the deceased is retired Government Officer getting handsome pension and he and deceased's mother are residing with their other sons and therefore, they are not dependent on the income of the deceased. Present Respondent No.2 (owner and driver of the offending dumper) did not appear in the Tribunal and the claim has proceeded *ex-parte*. The present appeal is also dismissed against him.

4. The Appellant- Insurance Company resisted claim contending *inter alia* that the offending dumper did not have valid fitness certificate and permit. It is contended that driver of the offending dumper was not holding valid and effective license at the time of accident. The age and alleged income of deceased as well as dependency is denied. It is further denied that the driver of the offending dumper was driving in rash and negligent manner. It is alternatively contended that even if the claim petition is allowed then only owner/driver of offending dumper would be liable due to breach of policy conditions in the form of driver not having valid and effective license, fitness certificate and permit.

5. Respondent Nos. 3 and 4 filed their say contending *inter alia* that they are old dependent parents of the deceased. It is contended that they are residents of Bihar. They contended that Claimant is their daughter in law and she is not a housewife, but a well educated person,

who was assisting the deceased in his business, having good experience. It is contended that she is handling the business of the deceased even after his death and earning handsomely out of it. It is contended that father of the deceased, though is a pensioner, the pension amount is not sufficient to maintain himself and his wife. It is contended that their other sons are not having sufficient means to take care of their own families along with the parents. On these grounds the parents of the deceased also claimed share in the compensation.

6. Learned Tribunal has concluded on appreciation of evidence that involvement of the offending dumper as well as rashness and negligence of its driver is duly proved. However, the Tribunal has held that Appellant Insurance Company in fact proved that the driver of the offending dumper was not holding valid and effective license and that is the reason why the impugned award is that of 'pay and recover'. Considering the evidence on record, the Tribunal has calculated the amount of compensation as indicated above, on the basis of Rs. 1,00,000/- per month as basic figure of loss of income, and then taking only 20% of the said amount i.e. Rs. 20,000 per month as managerial loss. Future prospects of 40% is then applied. No deduction towards personal expenses are applied. Multiplier of 15 is applied. The amount of loss of consortium is apparently awarded to the widow of the deceased alone (spousal consortium). Thereafter, conventional heads of funeral expenses and loss of estate are applied. The Tribunal has also apportioned the amount as : 60% to the widow of the deceased and 40% to the parents of the deceased together.

7. Respondent No.1 claimant (widow) has filed cross objections in the appeal seeking enhancement of compensation as well as raising

other grounds.

SUBMISSIONS

8. Mr. Kanojia, the learned counsel for the Appellant Insurance Company has restricted his argument to the aspect of quantum only. He submitted that Tribunal has erred in not applying deduction towards personal expenses. He submitted that managerial loss considered by the Tribunal @ 20% is on higher side and it should not be more than 10 to 15% in the facts and circumstances of this case. He submitted that since the parents of the deceased are supported by pension and being taken care of by their other sons, Respondent No.1 is the only claimant and dependent. Therefore, according to the Insurance Company, deduction of 50% towards personal expenses should be applied.

9. On the other hand, Mr. Pande, the learned counsel for Respondent No.1 claimant (widow), submitted that the impugned judgment and award suffers from serious illegality, in as much as, the income from the business of the deceased is calculated randomly at Rs.1 lakh per month and average of last 3 years IT returns could have been considered. He submitted that restricting the award only on the basis of managerial loss was a grave error. He submitted that in the facts and circumstances of this case the entire income of the deceased at the time of death, should have been taken as loss of income. He submitted that managerial loss can only be one of the heads but cannot be the only head of compensation. He submitted that if the Insurance Company has chosen not to challenge pay and recover part of the impugned award then it cannot be heard in the appeal at all, because Insurance Company is entitled to recover whatever amount is granted.

10. He however, has fairly conceded that he is not disputing the

entitlement of parents of the deceased and also not disputing the apportionment/ratio granted by the Tribunal. He also fairly conceded that, proper deduction would be 1/3rd towards personal expenses, considering overall situation of family of the deceased. He however contended that the loss of filial consortium to the parents of the deceased will also have to be given.

11. Inviting the Court's attention to the oral and documentary evidence, he submitted that Respondent No.1 claimant (widow) cannot be held as fully able to run the business herself. He submitted that the deceased was involved and contributing personally to run the business, making it possible to earn the income as reflected in the IT returns. He submitted that therefore, on the death of the deceased, the business cannot be taken to run to the extent it was running and fetching income as earlier. Therefore, he submitted that the whole of the income of the deceased, as reflecting in IT returns, should be taken as basis for loss of income. He submitted that no doubt the widow will now be required to employ managerial services to run the business and therefore, amount under the head of managerial loss should also be included in the compensation. He relied upon following caselaw in support of his submissions.

1. K. Ramya & Ors v/s. National Insurance Co. Ltd. And Anr.¹
2. Malarvizhi & Ors. v/s. United India Insurance Company Limited and Anr.²
3. National Insurance Co. Ltd. v/s. Birender and Others³
4. United India Insurance Co. Ltd. v/s. Sugra Riyaz Varawalla and Others⁴
5. Royal Sundaram Alliance Insurance Co. Ltd. v/s. Vinaya

1 Civil Appeal No. 7046 of 2022 Order dt. 30.09.22 : 2022 SCC OnLine SC 1338

2 Civil Appeal No. 9198-97 of 2019 Order dt. 9.12.19 : (2020) 4 SCC 228

3 Civil Appeal No. 242 & 243 of 2020 Order dt. 13.1.2020 : (2020) 11 SCC 356

4 First Appeal No. 302 of 2012 Order dt. 26.4.12 : 2012 SCC OnLine Bom 627

Udaybabu Shah and Ors.⁵

6. Smt. Anjali & Ors. v/s. Lokendra Rathod and Ors.⁶

12. In rebuttal, Mr. Kanojia, learned counsel for the Appellant Insurance Company submitted this is a case where the business of the deceased was pre-existing and no special skills are required for running the said business. He submitted that admittedly that existing employees in the business are continued and there is nothing on record to indicate that business of the deceased has either reduced or shut down. He submitted that in the teeth of such evidence, full amount as reflected in the income tax return cannot be basis of loss of income and he reiterated that this is case of only managerial loss.

REASONS AND CONCLUSIONS

13. I have considered the submissions and perused the record. The bone of contention in this matter revolves only around two aspects. First is whether income as reflected in the IT returns is entirely lost or partially lost and if so, how it should be taken as basis for loss of income. Secondly, how much managerial loss can be considered for grant of compensation under that head.

14. Perusal of record shows that Respondent No.1/widow has examined herself and the income tax consultant Mr. Shinde. The tax consultant has proved the IT returns of the deceased and considering that 3 years' returns are available before the Court, it is only just that the average amount should be calculated which in the present case would come to average of Rs.14,20,268/-, Rs. 12,52,669/- and Rs.12,31,789/- which will be Rs. 13,01,575/-. Though the widow has

⁵ First Appeal No. 1142 of 2014 Order dt. 7.3.22 : 2022 SCC OnLine Bom 454

⁶ 2022 LiveLaw (SC) 1012 : 2022 SCC OnLine SC 1683

stated that at present she is somehow managing the business of the deceased but an apprehension is expressed by her that in near future, there are chance of its closure. In the cross examination, she has clearly admitted that she is looking after the business, though 'in little'. It is further admitted that she is looking after the business from the same place from where the deceased looked after it. She has further admitted that in the business that she is looking after, there are 3 to 4 employees who are being paid the salary per month, and she is ready to produce the current year income tax return.

15. There is nothing on record to indicate that the business of the deceased has completely closed down. At the same time, there is also no record to indicate the extent to which the business has suffered or reduced. The aforesaid admissions of the widow are sufficient indication of the fact that she is looking after the business which is running and that she can afford to retain 3 to 4 employees and pay them their salaries. It is true that she has expressed apprehension that the business may suffer due to absence of her husband. In such circumstances, the Court suffers from a handicap of not having concrete basis for reducing the business income and peg it at particular figure.

16. Learned counsel for the Insurance Company as well as Claimant widow, both have relied upon the judgment of the Supreme Court in the case of *K. Ramya and others v/s. National Insurance Co.*⁷. In the said Judgment, the Supreme Court was considering the reliability of IT returns to determine loss of income and how 'income from business ventures' as well as 'income from house property and agricultural land in the form of rent' should be treated. In the said judgment there was

⁷ 2022 SCC OnLine SC 1338

evidence to conclude that after death of deceased, his wife, who was trying to run the business had to sell its assets (buses utilized for transport business) and other export business of the deceased was required to be shut down because the deceased was no more to take the business forward. In such a situation, the Supreme Court has considered the full business income reflected in the IT returns, as loss of income. In the present case, however there is nothing to indicate that the business of the deceased has been shut down. In fact, since admittedly the widow is running the business from the same place and has retained the employees, paying their salaries, the business of the deceased is certainly not shut down. But this Court can not completely ignore that there is a possibility of reduction in business. Respondent No. 1 has expressed that fear on oath. After all, the claimant widow has lost her husband within 6 years of her marriage, but she is bravely facing the world, running her husband's business, in his absence. This certainly puts the claimant widow to disadvantage and the Court has to be alive to this aspect. The M.V. Act is a beneficial and welfare legislation, and the Court must keep in sight the guiding light provided by the Hon'ble Supreme Court in the said judgment of *K. Ramya (supra)* which is reproduced below.

“12. Furthermore, Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples lives in the future. Keeping the above mentioned principles in the backdrop, we now move on to the facts at hand.”

[emphasis supplied]

17. It is therefore, necessary to apply this law, in a forward looking manner where the compensation is intended for providing stability and continuity in the lives of the dependents, for their future. Therefore, I am of the considered view that in the present case, the benefit of possibility of the reduction in the business of the deceased, must be given to the Claimant widow. In absence of any foundational material for determining the extent, I am only guided by what the Hon'ble Supreme Court has so succinctly stated (shown above) as also my own good conscience.

18. Considering the two extreme arguments from two sides, viz. Claimant claiming full business income as loss of income and Insurance Company claiming that no amount from business income is lost, I am adopting the golden-mean-path and permitting 50% of the average business income of the deceased (as reflected in his IT returns) as basis. Therefore, annual loss of income will be $\frac{1}{2}$ of Rs. 13,01,575/- = Rs.6,50,787/- per annum.

19. So far as the case of managerial loss is concerned, following the rule of prudence indicated by the Supreme Court in paragraph 21 of the said judgment of *K. Ramya (supra)* as also considering similarity of facts and circumstances of that case and present case, I am permitting 15% of the average business income of Rs. 13,01,575/-, towards the managerial loss equal to Rs. 1,95,236/- per annum.

20. Following the settled position of law as laid down by the Supreme Court in the judgment of *National Insurance Company Ltd vs Pranay Sethi*⁸, future prospects of 40% will be applicable, considering that the

8 (2017) 16 SCC 680

age of self employed deceased was below 40 years. Applying the guidelines of the same judgment, the Respondent widow and Respondent parents will be entitled to loss of spousal and filial compensation of Rs.40,000/- per person, considering that impugned judgment and award is of the year 2018. Applying the principles of *Sarla Verma Vs. Delhi Transport Corporation*⁹ deceased being 39 years old at the time of accident, married having parents receiving pension amount, deduction of 1/3rd towards personal expenses will apply and multiplier of 15 will be applicable.

21. So far as argument of the Claimant that the Appellant Insurance Company has not challenged the 'pay and recover' order is concerned, it has no merit, because perusal of appeal memo as well as argument of learned Counsel of the Insurance Company shows that the entire judgment and award is challenged. Record further shows that under Order dated 23.08.2024, this Court closed the grievance of the learned counsel for the claimant about alleged absence of application under Section 170, because its copy was produced. Therefore the challenge of the Insurance company to quantum is maintainable.

22. Before parting, I must deal with the remaining caselaw relied upon by the Claimant.

I am in respectful agreement with Hon'ble Supreme Court in the matter of *Malarvizhi Vs. United India Insurance (supra)* and *Anjali Vs. Lokendra (supra)*, where the Hon'ble Supreme Court has held that determination of loss of income must proceed on IT returns when available, as IT returns are statutory documents and that the award has to be just and fair. I have taken IT returns as basis and arrived as just

⁹ (2009) 6 SCC 121

and fair compensation.

The caselaw of *National Insurance Vs. Birender and Ors (supra)* had totally different set of facts, in as much as in that case, claim of legal heirs of 'deceased government servant' was under consideration. The Hon'ble Supreme Court was considering whether family pension received by the deceased in addition to salary can be included in loss of income. In the case at hand, the deceased is not a government servant and issue of his family pension is not even remotely involved. Hence this caselaw will not advance the case of the Claimant.

I am in agreement with this Court's view in *United India Vs. Sugra Riyaz (supra)*, where this Court has held that earnings of widow of deceased, in her own right as partner in the firm, can not be reduced. So also it is held that insurance amounts received by widow from LIC and Credit Card Company on account of her husband's accidental death also can not be reduced from amount of compensation payable under the M.V.Act. No such deductions are made in this case.

I am also in agreement with this Court's view in *Royal Sundaram Vs. Vinaya (supra)*, wherein this Court has held that when deceased was partner in the firm alongwith his parents, the parents are not only entitled to managerial loss but also entitled to actual loss of income. In the case at hand, both losses are considered.

23. No other argument was advanced.

24. In view of the aforesaid facts and circumstances, the amount of just and fair compensation works out as given below.

Heads	Action	Amount in Rs.
Annual loss of income		6,50,787/-
Annual managerial loss	(+)	1,95,236/-

	(=)	8,46,023/-
Future prospects of 40%	(+)	3,38,409/-
Total loss of income	(=)	11,84,432/-
1/3rd deduction towards personal expenses	(-)	3,94,810/-
	(=)	7,89,622/-
Multiplier of 15	(x)	1,18,44,330/-
Loss of filial and spousal consortium for 3 persons	(+)	1,20,000/-
Loss of estate and funeral expenses	(+)	36,000/-
Total Compensation	(=)	1,20,00,330/-

25. The appeal and cross objections are accordingly partly allowed.

26. The Respondent Nos. 1, 3 & 4 are entitled to Rs. 1,20,00,330/- (Rupees One Crore, Twenty Lakh, Three Hundred and Thirty Only) with interest @7.5 % p.a. from the date of claim application till actual realization from the Appellant Insurance Company. The amount under no fault liability, if already received, shall be adjusted.

27. Respondent No. 1 – widow of the deceased will be entitled to 60% of the amount, of which half amount may be disbursed to her and remaining half be invested in fixed deposit in any nationalized bank for a period of 5 years and she will be entitled to withdraw the quarterly interest from such investment.

28. Respondent Nos. 3 & 4 – parents of the deceased will be jointly entitled to 40% of the amount, of which half amount may be disbursed to them and remaining half be invested in joint fixed deposit in any nationalized bank for a period of 5 years and they will be entitled to withdraw the quarterly interest from such investment.

29. It is directed that the concerned Tribunal shall ensure that the applicable additional court fees for enhancement granted above, are paid by the Claimant before the disbursal is permitted.

30. In view of disposal of the appeal and cross objections, pending interim application is also disposed of.

31. No order as to costs.

32. Appellant Insurance Company is directed to deposit the additional amount payable, as per above order, in the concerned Tribunal within a period of 6 weeks from today.

33. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)