



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 1526 OF 2008

Smt. Chandrakala Pralhad Wawage,
Aged about 47 years, Occ.-Nil,
R/o. Ward No.18, Malkapur,
Tq. Malkapur, Dist. Buldhana

.... **APPELLANT**

// VERSUS //

1) Shri Metram Phusaram,
Aged Major, Occ.-Transporter,
R/o. Godu, Tq. Kolyat,
Dist. Bikaner (Rajasthan).

2) United India Insurance Company,
Branch at Khamgaon,
District Buldhana.

.... **RESPONDENTS**

Ms. V. B. Giri, Advocate holding for Mr. P. R. Puri, Advocate for
Appellant.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 17th DECEMBER, 2024.

ORAL JUDGMENT.

1. This Appeal is preferred against the judgment passed by Motor Accident Claims Tribunal, Buldhana, (for short "Tribunal) in the Motor Accident Claims Petition No.141/2001, dated 13.09.2006, thereby learned Tribunal allowed the application and granted Rs.1,03,000/- as compensation to the applicant No.2.

2. **FACTUAL MATRIX :**

(i) The applicants averred in their application that they are waives of deceased Pralhad Wawage. They contended that Pralhad was an Assistant Sub-Inspector in the Police Department and serving at Shivaji Nagar, Buldhana. At the time of accident, he was aged about 57 years old.

(ii) On 06.03.2001, at about 12.30 p.m., Pralhad was riding by the motorcycle viz. 'M-80'. When he reached at National High-way No.6, near "Agrawal Dhaba", located at by-pass road, a truck bearing No. RJ-07 G/1763, came from opposite directions and gave dash to the motorcycle of Pralhad. The truck was driving in rash and negligent manner. In the result, Pralhad died on the spot.

(iii) A Report was lodged against the driver of the truck. The Spot-panchnama was drawn up, inquest was also drawn up. Postmortem was conducted. The funeral was conducted. The applicants contended that, they both were depending upon the salary of deceased Pralhad and therefore, they prayed compensation of Rs.3,00,000/-.

(iv) During pendency of the claim application, the applicant No.1 – Shakuntala Pralhad Wawage died. This appeal is preferred by the one of wife of the deceased.

(v) The respondent No.1, owner of the offending truck remain absent. The respondent No.2, Insurance Company of the truck also remain absent. Therefore, the claim proceeded exparte against them.

(vi) Thereafter, respondent No.2 appeared and by filing written-statement, objected the claim of the applicants. It is contended that applicant No.1 is not legally wedded wife of deceased Pralhad and, therefore, she is not entitled for compensation. It is further contended that deceased Pralhad was riding his motorcycle in a rash and negligent manner, he contributed in the accident. The accident occurred, because of his own fault. Therefore, the applicants are not entitled for compensation and prayed to dismiss the application.

3. The learned Tribunal framed the following issues :

- (i) *Whether claimants prove that Pralhad Govind Wawage died out of Vehicular Accident dated 6.3.2001 within the limits of Shivaji Nagar, Khamgaon Police Station, as alleged?*
- (ii) *Whether the driver of Truck No. RJ-07 G/1763 was gross negligent/ If not to what extent?*
- (iii) *What is the just and reasonable amount of compensation?*
- (iv) *Who is liable to pay the compensation?*
- (v) *How should be the distribution of the Compensation amounts of the claimants?*

4. The learned Tribunal held that driver of the truck was gross negligent. The applicant No.2 was dependent upon the income of deceased Pralhad and the compensation of Rs.1,03,000/- was awarded. The respondent Nos.1 and 2 were directed to pay that amount jointly and severally.

5. Feeling aggrieved by the said judgment and award, this appeal is preferred by the claimant – wife of deceased Pralhad.

6. The learned Advocate for the appellant pointed out the ground of objections of this appeal that, meager amount of compensation is granted by the learned Tribunal. It failed to consider the age of the appellant/applicant No.2 and her dependency. The learned Tribunal also failed to apply the proper criteria for granting amount of compensation. It also failed to consider the evidence produced on record. Learned Advocate for the appellant lastly prayed to allow the appeal and grant enhanced amount of compensation.

7. The learned Advocate for the appellant has been relied on the precedential laws of *Smt. Sarla Warma and Ors. Vs. Delhi Transport Corporation and Anr.*, reported in *AIR 2009 SC 3104* and *National Insurance Company Limited Vs. Pranay Sethi and Ors.*, reported in *AIR 2017 SC 5157* and pointed out *ratio* in it.

8. Learned Advocates Mr. Pritesh Bansod and Mr. P. D. Khedikar, who appears on behalf of respondent No.2 are absent. This Court by passing order dated 29.11.2024, kept the matter for final hearing. Today they remained absent.

9. The argument of learned Advocate for the appellant is heard on 09.12.2024, that day also, learned Advocates for the respondent No.2 are remain absent. On 13.12.2024, the learned Advocates for the respondent No.2 are also remain absent and the matter is scheduled for the argument of respondent No.2. The names of learned Advocates Mr. Pritesh Bansod and Mr. P. D. Khedikar, were displayed on the board of this Court since morning. Till 3.45 pm., none turn to the Court for argument on behalf of respondent No.2.

10. The learned Advocate for the appellant submitted that the appeal was filed in the year 2008 and completed 16 years. The appellant/claimant is now old aged senior citizen. It is therefore, prayed to decide this appeal as early as possible.

11. Perused the impugned judgment as well as record and proceedings of the Motor Accident Claims Petition No.141/2001.

12. The following point emerged for consideration :

Is the amount of compensation awarded by the Tribunal meager and therefore, impugned judgment requires interference?

13. The applicant Chandrakala Pralhad Wawage (AW-1), during her cross examination admitted that she did not see the accident, she denied that exorbitant amount of compensation is claimed.

14. The admitted facts are that, at the time of accident, deceased Pralhad was 57 years old. He was serving in the Police Department and in the normal course, he would have retired at the age of 58 years.

15. The pension order is produced at Exhibit-26, it shows that the applicant was getting pension of Rs.6,125/- after the death of her husband. The Tribunal deducted the pension amount of the applicant for the purpose of calculation of amount of compensation, which is not legal and correct.

16. The learned Tribunal considered the monthly income of Rs.1,000/- i.e. Rs.12,000/- per year. It was multiplied by 8, thus it comes to Rs.96,000/-, an amount of Rs.5,000/- was granted as loss of

consortium and amount of Rs.2,000/- granted for funeral expenses. The said amount is certainly meager amount of compensation, in view of the precedential law of **Sarla Warma** and **Pranay Sethi** supra.

17. The deceased Pralhad was getting salary of Rs.8618/- per month at the time of accident. The applicant is getting pension and that amount was deducted which law does not permit. Only 1/3rd amount is to be deducted i.e. Rs.2872/- for her husband's personal expenses. Loss of future prospectus was not granted to the applicant.

18. The multiplier is to be applied as per ages of the concerned as per *ratio* laid down in the case of **Smt. Sarla Warma**. Thus, multiplier of 8 is applicable to the remaining amount of monthly salary of Rs.5746/-. If the said amount is multiplied by 12 months, it comes to Rs.68,952/- and if it is multiplied with relevant multiplier of 8, then it comes to Rs.5,51,616/-. In addition to above, considering the age of the applicant she is entitled for compensation of Rs.30,000/- for loss of consortium, for expenses of funeral Rs.10,000/-, for loss of property Rs.2,000/-, Rs.30,000/- for pain and suffering and loss of guidance and mental support, and Rs.20,000/- for loss of future prospectus. Thus, the total amount of compensation is of Rs.6,43,616/- which would have granted by the Tribunal as just

and proper compensation. The learned Tribunal erred in this regard and awarded meager amount of compensation. Hence point formed for consideration is answered in the affirmative.

19. The impugned judgment deserves to be partly set aside and appeal deserves to be partly allowed as held above. The appellant is entitled for an amount of Rs.6,43,616/- with 9% interest thereon from the date of filing of the petition with deduction of amount of compensation. Hence, the following order :

- (i) The appeal is **partly allowed**.
- (ii) The impugned judgment and award passed by Tribunal is partly set aside and modified as under :

The respondents are directed to pay an amount of **Rs.6,43,616/-** (Rs. Six Lakh Forty Three Thousand Six Hundred and Sixteen only), jointly and severally, with **9% interest** thereon, from the date of filing of the petition, after deducting the amount of compensation already paid to the appellant/claimant.

- (iii) Record and Proceeding be sent back.

(SANJAY A. DESHMUKH, J.)