2024:BHC-NAG:11522

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.954 OF 2015

ICICI Lombard General Insurance Company Limited, 2nd Floor, Vimco Towers, Railway Station Road, Opposite Hotel Ramgiri, Amravati through its Branch Manager, 5th Floor, Land Mark Building, Plot No.56, Wardha Road, Ramdaspeth, Nagpur. **...APPELLANT**
(Orgi. Resp. No.6)
(On R.A.)

...V E R S U S...

1. Indubai Ramesh Balpande,
   Aged about 34 years, Occ: Household,

Age of respondent nos.2 and 3 corrected as per Court's order Dt.9.8.24

2. Pankaj Ramesh Balpande,
   Aged about 28 years, Occ: Education,

3. Vijay Ramesh Balpande,
   Aged about 19 years, Occ: Education

4. Smt. Leelabai Ramchandra Balpande,
   Aged about 55 years, Occ: Household,

   Respondent Nos.1 to 4 are residing at 135, Pandhurna, Meghnath Ward No.9, Tq. Pandhurna, Dist. Chindwada (M.P.)

(Resp Nos.1 to 4 Orig. claimants)

5. Nakib Aktar Nabiullahaq Ansari,
   Aged about 35 years, Occ: Truck Driver,
   Resident of Bhol Line, Kamptee,
   Dist. Nagpur.

(Orig. Res.No.1)

6. Mr. Babulal Meghraj Hiranwar,
   Aged about years, Occ: Truck Owner,
   Resident of Gurji Bazar, Kamptee,
   District Nagpur.

(Orig. Res.No.2)

7. National Insurance Company Ltd.
   Through its Divisional Manager,
   Jaisthamb Chowk, Samra Complex,
   1st Floor, Amravati, Tq. & Dist. Amravati.

(Orig. Res.No.3)

8. Mahendra Bhimrao Ghode,
   Aged about 40 years, Occ: Truck Driver,
   Resident of Takadi Ward, Pandhurna,
   District Chindwada.

(Orig. Res.No.4)

9. Mr. Surendra Bhimraoji Ghode,
   Aged about 45 years, Occ: Truck Driver
   cum Owner, Resident of Ram Nagar,
   Warud, Tq. Warud, Dist. Amravati.

(Orig. Res.No.5)

...RESPONDENTS

WITH

FIRST APPEAL NO.294 OF 2021

National Insurance Company
Limited, Amravati Divisional Office,
Through the Regional Manager,
Nagpur Regional Office,
2nd Floor, Mangalam Arcade North
Bazar Road, Dharampeth Extn. Nagpur. **...APPELLANT**

(Orgi. Resp. No.3)
(On R.A.)

...V E R S U S...

1. Indubai Ramesh Balpande,
   Aged about 45 years, Occ: Household,

Age of respondent nos.2 and 3 corrected as per Court's order Dt.9.8.24

2. Pankaj Ramesh Balpande,
   Aged about 28 years, Occ: Education,

3. Vijay Ramesh Balpande,
   Aged about 19 years, Occ: Education

4. Smt. Leelabai Ramchandra Balpande,
   Aged about 55 years, Occ: Household,

All residing at 135, Pandhurna,
Meghnath Ward No.9,
Tq. Pandhurna, Dist. Chindwada (M.P.)

(Orig. Petitioners)

5. Nakib Aktar Nabiullahaq Ansari,
Aged about 35 years, Occ: Truck Driver,
Resident of Bhol Line, Kamptee,
Dist. Nagpur.

(Orig. Res.No.1)

6. Mr. Babulal Meghraj Hiranwar,
Aged major, Occ: Truck Owner,
R/o Gol Bazar, Masjid, Gurji Bazar,
Kamptee, District Nagpur.

(Orig. Res.No.2)

..RESPONDENTS

Shri R.D. Bhuibhar, Advocate for appellant in FA No.954/2015 and for respondent no.9 in FA No.294/2021.
Shri D.N. Kukday, Advocate for appellant in FA No.294/2021 and for respondent no.7 in FA No.954/2015.
Shri M.R. Joharapurkar, Advocate for respondent nos.1 to 4 in both FAs.
Ms Rakhi Basawnathe, Adv. h/f Shri P.R. Agrawal, Advocate for respondent nos.8 and 9 in FA No.954/2015 and for respondent nos.7 and 8 in FA No.294/2021.

CORAM:- M.W. CHANDWANI, J.
DATE :- 09.10.2024.

ORAL JUDGMENT:

1. These two appeals are arising out of the same impugned judgment and award dated 11.09.2014 passed by the learned Motor Accident Claims Tribunal, Amravati (for short "Tribunal) in M.A.C.P. No.79/2009, therefore, they are being disposed of by this common judgment.

2. The appellants in both the appeals are insurers of the two vehicles which were involved in the accident that occurred on 03.02.2009, wherein, Ramesh Balpande, a trader of banana, died on the spot. The Tribunal awarded the compensation of Rs.32,77,500/- to the claimants for loss of dependency alongwith interest at the rate of 8% per annum. The Tribunal has also found that there is contributory negligence on the part of the driver of truck bearing registration No.MH27-X-1735, in which the deceased was traveling, and therefore, the Tribunal fastened the liability of compensation to the extent of 25% on the insurer of truck No.MH27-X-1735 i.e. appellant in FA No.954/2015. Whereas, remaining 75% of the liability fastened on the insurer of the truck bearing registration No.MH40-5863 i.e. the appellant in FA No.294/2021.

3. Feeling aggrieved with the award, the insurers of both the vehicles preferred these two appeals mainly on the ground of percentage of contributory negligence fixed by the Tribunal as well as on the ground of excessive compensation, particularly, under the head of consortium.

4. Mr. R.D. Bhuibhar, learned counsel for the appellant in FA No.954/2015 would submit that entire negligence is attributed to the offending vehicle truck No.MH40-5863, therefore, the Tribunal should not have held contributory negligence to the extent of 25% on the part of driver of the truck No.MH27-X-1735. The entire fault was on the part of the driver of the truck No.MH40-5863, but the Tribunal erroneously fastened the liability of 25% on the insurer of truck No.MH27-X-1735.

5. As against this, Mr. D.N. Kukday, learned counsel appearing on behalf of the appellant in FA No.294/2021, vehemently submits that the accident was a head-on collusion and therefore, the Tribunal ought to have considered this aspect and ought to have held contributory negligence of both the vehicles at 50% each. Therefore, the liability fastened on the appellant in FA No.294/2021 should be reduced from 75% to 50%. So far as compensation amount granted by the Tribunal is concerned, the appellant in FA No.294/2021 is also *ad idem* with what has been argued by the learned counsel for the appellant in FA No.954/2015.

6. It is common ground of the learned counsel for the appellants in both appeals that future prospects to the extent of 50% granted by the Tribunal in wake of the decision of the

Supreme Court in the case of *Rajesh Vs. Rajbir Singh* [1] is erroneous for the reason that the said decision has been overruled in the subsequent judgment of the Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others*[2] and it has been observed that future prospects assessed on the income of the deceased, whose age was below 45 years, shall be granted 40% of the assessed income of deceased instead of 50% as determined by the decision of *Rajbir* (supra). It is also submitted that consortium has also been excessively granted by ignoring the guidelines issued by the Supreme Court in the case of *Pranay Sethi* (supra).

7. Mr. M.R. Joharapurkar, learned counsel appearing on behalf of respondent Nos.1 to 4 (claimants), submitted that the award granted by the Tribunal is correct and does not require any interference. According to him, the compensation has also been rightly granted by the Tribunal. However, he conceded to the legal position enunciated in the decision of *Pranay Sethi* (supra) with regard to future prospects as well as consortium and left it to the Court to pass an appropriate order.

1 **(2013) 9 SCC 54**
2 **(2017) 16 SCC 680**

8. Perusal of impugned award reveals that the Tribunal while passing the impugned award has held that just because truck No.MH27-X-1735 dashed tree does not mean that the said truck driver was wholly responsible and also considered that because the dash was given by truck No.MH40-5863, the truck moved towards the tree and dashed the tree. The Tribunal further held that the driver of truck No.MH27-X-1735 should also have taken due care while crossing over the square and on that premise the contributory negligence of both vehicles to the extent of 25% and 75% was determined by the Tribunal.

9. I have gone through the spot panchanama. Perusal of spot panchanama reveals that truck No.MH27-X-1735 was dashed from its right side. As per the spot map drawn by the investigating officer, though the accident occurred on Achalpur – Chandurbazar road but the truck No.MH27-X-1735 was found near a tree on Paratwada – Amravati road. The spot panchanama itself goes to show that due to the dash, the truck No.MH27-X-1735 lost control and due to the force of dash the said truck moved towards Paratwada – Amravati Road and gave a dash to the tree. The impact of the dash given by truck No.MH40-5863 was huge, as a result of which, the direction of the truck No.MH27-X-1735 changed. This itself goes to show that truck MH40-5863 was in very high speed as compared to truck No.MH27-X-1735. It has also come on record that the driver of truck No.MH27-X-1735 ought to have been more vigilant, since he had to cross a square, therefore, in my view, the Tribunal has rightly held that the drivers of both the vehicles are negligent. Considering the fact that, as a result of the dash given by truck No.MH40-5863 not only the direction of the truck No.MH27-X-1735 got diverted from Achalpur – Chandurbazar road to Amravati – Paratwada road but also resulted in truck No.MH27-X-1735 giving dash to the tree. I do not see any reason to interfere with this finding of the Tribunal.

10. This takes me to the submission of the counsel for the appellants regarding compensation granted by the Tribunal on account of future prospects and consortium. The Supreme Court in the decision of *Pranay Sethi* (supra) while answering to the reference in para 59 has held as under:

> *"59. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot*

take a contrary view than what has been held by another coordinate Bench.

59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000."

11. Thus, the Supreme Court has observed that *Rajesh (supra)* is not binding a precedent and observed that in case of a self-employed deceased, addition of 40% of assessed income must be done, if the deceased was below the age of 40 years. In the present case, the Tribunal relied on the decision of *Rajesh (supra)* and has granted 50% of the assessed income towards future prospects. In wake of the observations made by the Supreme Court in the case of *Pranay Sethi* (supra), this is required to be corrected.

12. One more aspect considered by the Supreme Court in the case of *Pranay Sethi* (supra) that is of consortium, wherein, it has been held that the spouse shall be entitled for a fixed amount of Rs.40,000/- under the head of consortium. Once the compensation under the head of consortium is granted, there is no question of granting compensation under the head of love and affection. Therefore, the Tribunal erroneously granted Rs.1,00,000/- to respondent nos.2 and 3 each, towards love and affection and Rs.50,000/- to respondent no.1 and 2 respectively and Rs.25,000/- to respondent no.4 towards consortium is erroneous. Therefore, this finding is required to be set aside. Respondent nos.1 to 4 shall be entitled to the compensation

Rs.40,000/- each towards spousal, parental and filial consortium, respectively. To that extent the impugned award is modified.

13. It has been pointed by the learned counsel for the respondent nos.1 to 4/claimants that loss of estate has not been granted by the Tribunal. Therefore, respondent nos.1 to 4 are also entitled to the amount of Rs.15,000/- towards loss of estate. The appeal is partly allowed.

14. Put all together respondent nos.1 to 4 are entitled to the following compensation:

1.	Monthly notional income of the deceased fixed by the Tribunal	Rs.	15,000/-
2.	Annual income of the deceased (Rs.15,000/- x 12)	Rs.	1,80,000/-
3.	Since the deceased was below the age of 40 years at the time of his death. **Add** – 40% future prospects as per the judgment of National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680	(+) Rs.	72,000/-
		Rs.	2,52,000/-
4.	**Less** – 1/4th deduction as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121	(-) Rs.	63,000/-
5.	Income for multiplier	Rs.	1,89,000/-
6.	**Multiplier** of 15 as per the judgment of Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121, applicable for the age groups of 31 to 35 years (Rs.1,89,000 x 15)	(x) Rs.	28,35,000/-

7.	**Add** : Loss of Consortium : Rs.40,000/- for each claimant as per the judgment of Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130 followed in United India Insurance Co. Ltd. vs. Satinder Kaur – AIR 2020 (SC) 3076 (40,000/- X 4)	(+) Rs.	1,60,000/-
8.	**Add** : Loss of Estate	(+) Rs.	15,000/-
9.	**Add** : Funeral Expenses	(+) Rs.	15,000/-
10.	**Total compensation payable to the claimants**	**Rs.**	**30,25,000/-**

15. Respondent nos.1 to 4/claimants are entitled to withdraw the amount alongwith accrued interest, if any, which they are entitled on this modified award.

16. The excess amount, if any, deposited by the appellants, respectively, shall be refunded.

17. Rest of the impugned judgment and award of the Tribunal shall remain intact.

18. Both the appeals are accordingly disposed of in the above said terms with no order as to costs.

19. Award be drawn accordingly.

JUDGE

Wagh