



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

First Appeal No. 717 of 2010

(1) Shri Lasmayya Lasmayya Bandarkanti,
Aged about 52 years,
Occupation at present : Nil.

(2) Smt. Melakka Lasmayya Bandarkanti,
Aged about 40 years,
Occupation at present : Nil/Housewife,
Appellants 1 and 2 are Residents of
Pochampalli (Kota), Tahsil : Sironcha,
District Gadchiroli.

... Appellants

- Versus -

(1) Shri Ramesh S/o Shri Maroti Khonde,
Aged about 32 years, Occupation : Driver,
C/o Maharashtra State Road Transport
Corporation, Aheri Depot, Resident of
Aheri Depot, Tahsil Aheri,
District Gadchiroli.

(2) Divisional Controller, Maharashtra
State Road Transport Corporation,
Aheri Depot, Tahsil Aheri,
District Gadchiroli.

... Respondents

Mr. A. A. Naik with Mr. R. R. Deo, Advocates for the appellants
Mr. R. S. Charpe, Advocate for the respondent no. 2
None present for respondent no. 1

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 24-4-2024

Date of pronouncing judgment : 30-4-2024

JUDGMENT

The appellants - original claimants have filed present appeal under Section 173 of the Motor Vehicle Act, 1988 (for short “the Act of 1988”), being aggrieved by the judgment and award dated 27-7-2009 passed by the Motor Accident Claims Tribunal, Gadchiroli in M.A.C.P No. 51/2007.

2. Respondent no. 1 is the driver of the offending vehicle. Respondent no. 2 - Maharashtra State Road Transport Corporation is the owner. The appellants will be hereinafter referred to as the claimants, respondent no. 1 as the driver and respondent no. 2 as the owner.

3. Having heard both sides and having gone through the record placed before me, it appears that accident occurred on 4-3-2007. The Tribunal held that the deceased was 80% responsible for the accident. The evidence of claimant no. 1, the father of deceased indicates that some villagers were demanding money for Holi festival, called ‘*bojara*’ from the bus driver. He blamed the driver for rash and negligent driving. He has, however, not witnessed the accident. His evidence on the point of accident is hearsay and, thus, not admissible.

4. The Tribunal found from the FIR that bus was stopped at a distance of 30 Feet from the spot of incident. The deceased along with his friends attempted to stop the bus. They all came running towards the bus. The deceased in all probability dashed against the bus and suffered head injury. The bus was stopped at a distance from the bus stop. The body was found lying on the road in front of bus at a distance of 10 Feet.

5. The bus driver deposed before the Tribunal that he was proceeding from Sironcha to Renghuta. When he reached Village Kotara, he noticed the crowd on the road and accordingly reduced the speed. At that time 10-15 persons from the crowd rushed towards the bus to demand money for Holi festival, which is known as '*bojara*'. He applied emergency brake and stopped the bus. At that time, one person came running towards bus and dashed against it and fell down. He sustained head injury and died. This evidence has been tested in the cross-examination but nothing contrary has been brought on record to show that the bus driver is alone responsible for the accident. In the cross-examination, two suggestions were given. First is, he (the driver) lost the control when he reduced the speed and gave dash to the deceased. Second is, the accident occurred because of his negligent driving. Both the suggestions have been denied by the driver. However,

the case so put up indicates and in a way supports the evidence of driver that he reduced the speed because in first suggestion the owner put up a case of reducing speed. The claimants have not disputed the other evidence of the driver i.e. place was crowded and 10-15 persons out of the crowd rushed towards the bus and that the driver applied emergency brake and stopped the vehicle and further that the deceased came running towards bus and dashed against it.

6. Thus, it appears that in the zeal of contributing money, deceased along with his associates rushed towards the bus. The deceased dashed against the bus and sustained head injury. This theory appears to be more probable because if it is to be presumed that the bus driver started the vehicle and was proceeding further to avoid payment of '*bojara*' and if the speed of the bus was such that would give fatal dash to the deceased, the accident would have resulted into injuries to other persons gathered in front of bus. It is nobody's case that when the bus started, the other persons ran away and only deceased was standing on the road. In that sense, the conclusion drawn by the Tribunal that deceased was 80% responsible for the accident appears to be in tune with evidence and, therefore, there is no reason to take a different view in the matter.

7. Learned counsel for the appellants, however, is aggrieved by the inadequate compensation awarded by the Tribunal. The Tribunal considered monthly income of deceased at Rs. 2,000/-, despite his father stating on oath that deceased was working as Labour and earning Rs. 3,000/- per month. Accident has occurred in the year 2007. To my mind, the notional income for that period must be Rs. 3,000/- per month and, therefore, the view taken by the Tribunal on this point will have to be corrected.

8. The deceased was 30 years old. He was widower. The Tribunal applied multiplier of 17 which appears to be in tune with IIInd Schedule of the Act of 1988. The Tribunal, however, has not awarded compensation in any other head except Rs. 2,000/- towards funeral expenses and Rs. 2500/- towards loss of estate. Even this amount, according to the claimants, is inadequate. Learned counsel for the appellants has placed reliance upon following judgments of Hon'ble Supreme Court to substantiate their plea of enhancement in compensation.

(1) *National Insurance Co. Ltd. Vs. Pranay Sethi [(2017) 16 SCC 680]*

(2) *Magma General Insurance Co. Ltd. Vs. Nanu Ram [2018(18) SCC 130].*

9. In ***Pranay Sethi's*** case, the Supreme Court analyzed the views taken in previous judgments and proceeded to summarize the law in following terms.

“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/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”*

10. In the case of ***Magma General Insurance***, the Supreme Court has considered the judgment in ***Pranay Sethi***'s case and in a way clarified that in appropriate cases, filial consortium to the tune of Rs. 40,000/- each to parents ought to be granted.

11. The deceased here was 30 years old and had a reasonable long period to live with the company of parents. I therefore, do not find any reason why should parents of the deceased be not awarded filial consortium of Rs. 40,000/- each. Similarly, the parents will be entitled for the compensation under conventional heads as mentioned in ***Pranay Sethi***'s case.

12. Learned counsel for the appellants submits that ***Pranay Sethi's*** case was delivered in the year 2017. The Court laid down the principle that there should be enhancement at the rate of 10% for every three years while granting compensation under conventional heads. In that sense, he submits that claimants here would be entitled for 20% enhancement under conventional heads.

13. Learned counsel for respondent no. 2 has vehemently opposed the prayer. He submits that the enhancement will not be permissible, in as much as the accident in the present case has occurred in the year 2007 i.e. prior to the ***Pranay Sethi's*** judgment which was delivered in the year 2017. He submits that the compensation under conventional heads for all the accident prior to 2017 would be, at the most, in accordance with the judgment delivered in ***Pranay Sethi's*** case. The increase of 10% under conventional heads will be permissible only in the cases where accident occurred after three years, six years and so on of passing judgment in ***Pranay Sethi's*** case.

14. The argument is appealing, however, the Supreme Court in the case of ***Anjali and other (Smt.) Vs. Lokendra Rathod and others [2023 AIR(SC)44]*** has while dealing with the compensation for loss suffered in an accident that occurred on 15-8-2010, held that though High Court has correctly placed reliance upon ***Pranay Sethi's*** case, it

committed error in not granting increment of 10% on the conventional heads in every three years as directed in the ***Pranay Sethi's*** case. The Supreme Court accordingly awarded enhanced compensation.

15. Similar course will have to be adopted here. The award passed by the Tribunal would, therefore, require modification in the light of the aforesaid decisions. Since the deceased is widower and had no issues, his case will have to be treated as that of bachelor. The modified amount of compensation is tabulated below.

Sr. No.	Particulars	Amount
1.	Monthly income of deceased	Rs. 3,000/-
2.	Addition of income in view of future prospects 40% of Rs. 3,000/- to be added considering the age of deceased – 30 years	Rs. 4,200/- (3000 + 1200)
3.	Annual Income	Rs. 50,400/- (4200 x12)
4.	Deductions towards personal and living expenses (1/2)	Rs. 25,200/- (50400/2)
5.	Multiplier Age of deceased was 30 years	17
6.	Loss of dependency or earnings	Rs. 4,28,400/- (25,200x17)
7.	Loss of estate	Rs. 18,000/- (Rs. 15,000/- to be enhanced at the rate of 10% in every 3 years in terms of <i>Pranay Sethi's</i> case. Thus increase will be 20%)

8.	Funeral expenses	Rs. 18,000/- (Rs. 15,000/- to be enhanced at the rate of 10% in every 3 years in terms of <i>Pranay Sethi's</i> case. Thus increase will be 20%)
9.	Filial consortium to both the parents Rs. 40,000/- each	Rs. 80,000/- (in terms of <i>Magma's</i> case)
10.	Total amount of compensation (6) + (7) + (8) + (9)	Rs. 5,44,400/-
11.	Compensation payable to the appellants (20% attributable to the respondents)	Rs. 1,08,880/-
12.	Rs. 50,000/- is already awarded.	Rs. 58,880/- is payable (1,08,880-50000)

Hence, following order.

ORDER

The judgment and award passed by Motor Accident Claims Tribunal, Gadchrioli in M.A.C.P No. 51/2007 is modified as follows.

- (i) The respondents viz. driver and owner of the bus shall jointly and severally pay the amount of Rs. 58,880/- to the claimants/appellants.
- (ii) Rest of the award shall stand intact.

(Anil L. Pansare, J.)