2024:BHC-NAG:7166

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

FIRST APPEAL NO.948 OF 2023

The New India Assurance Co. Limited,
Through its Authorized Manager,
Branch Gupta Building, Main Road,
Chandrapur, through its Regional
Manager, Regional Office, Dr. Ambedkar Bhavan
MECL, Premises, 4th Floor, High Land Drive,
Seminary Hills, Nagpur.
(Original Respondent No.2) ....**APPELLANT**

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

1. Vasantrao S/o Laxman Wanmali
Aged about 67 years, Occ: Nil,
(Original Petition No.1)

2. Smt. Rukhmabai W/o Vasantrao Wanmali
Aged about 57 years, Occ: Household,
(Original Petition No.2)

3. Ku. Sangeeta D/o Vasantrao Wanmali
Aged about 32 years, Occ: Nil,
(Original Petition No.3)

All R/o Subhash Wardh, Armori,
Tahsil Armori, Dist. Gadchiroli.

4. Gurunamsingh Chandansingh Dari
Aged – not known, Occ: Not known,
R/o Buddha Nagar Ward, Ballarpur,
Tahsil Ballarpur, District Chandrapur
(Owner of Truck No.MH-34/M-2386)
(Original Respondent No.4)

...RESPONDENTS

Shri M.B. Joshi, Advocate for Appellant.
Shri P.P. Pendke, Advocate for Respondent nos.1 to 3.
None for Respondent no.4.

CORAM:- M.W. CHANDWANI, J.
DATED : JUNE 28, 2024

ORAL JUDGMENT:

. Heard. **Admit**.

2. The present appeal is an exception to the judgment and award dated 18.07.2019 passed by the Member, Motor Accident Claim Tribunal, Gadchiroli (for short, "Tribunal") in Motor Accident Claim Petition No.21 of 2017.

A brief factual reference of the case can be given as under:

3. Deceased Akash Wanmali was the son of respondent nos.1 and 2 and brother of respondent no.3. Deceased Akash was working as a Taxi Driver on Taxi bearing registration No.MH-31/AP-8718. On 29.12.2016, while he was proceeding from Gadchiroli to Armori by taxi, the offending truck bearing registration No.MH-34/M-2386 came from the opposite direction and gave a dash to the taxi. As a result of the vehicular accident, Akash died on the spot. The said offending truck was insured with the appellant. Respondent nos.1 to 3 filed claim petition before the Tribunal. After hearing the petition on merit, the Tribunal passed an award by the impugned judgment and directed the appellant, respondent no.4 and driver of the offending vehicle to jointly and severally pay the compensation amount of Rs.21,14,400/- together with interest at the rate of 8% per annum from the date of accident till its actual realization, under following heads:

Sr. No.	Head	Compensation
1]	Income of deceased	Rs.9,000/- per month
2]	Deduction towards his personal expenditure	1/3rd of Rs.9,000/- i.e. Rs.3,000/-
3]	Loss of Income 6000 x 12 x 18	Rs.12,96,000/-
4]	Future prospects (12,96,000/- x 40 ÷100)	Rs.5,18,400/-
5]	Loss of Estate	Rs.15,000/-
6]	Loss of filial consortium (Rs.40,000/- payable to each respondent nos.1 to 3)	Rs.1,50,000/-
7]	Funeral Expenses	Rs.15,000/-
8]	Loss of Love & Affection (for respondent Nos.1 to 3 Rs.50,000/- each)	Rs.1,50,000/-
Total Compensation Payable		Rs.21,14,400/-

4. Mainly two grounds have been raised by the appellant in this appeal. Firstly, deceased Akash was a bachelor therefore, instead of deducting 50% of amount of income towards his personal expenditure, the Tribunal deduced only 1/3rd amount of income towards personal expenditure. Secondly, despite awarding loss of filial consortium the learned Tribunal has also granted compensation towards loss of love and affection.

5. Shri M.B. Joshi, learned counsel appearing on behalf of appellant, would submit that deceased died bachelor and respondent nos.1 and 3 are father and sister of deceased. According to him, in wake of the decision in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** [1], 50% amount of the income ought to have been deducted as personal and living expenses of deceased, but this aspect has been ignored by the Tribunal and the Tribunal deducted 1/3rd amount of the income of deceased, which resulted in enhanced amount of compensation. Therefore, the same needs to be corrected in the present appeal. According to him, by deducting 50% of the income of deceased, the income should have been calculated at the rate of Rs.4,500/- per month but the Tribunal erred in calculating the income after deduction at the rate of Rs.6,000/-.

6. *Per contra*, Shri P.P. Pendke, learned counsel for respondent nos.1 to 3, vehemently submits that as per decision in

1 **2009 (5) MhLJ 775 : 2009 ACC 708**

the case of *Sarla Varma* (supra) when the number of dependent members is 2 to 3 then 1/3rd amount towards personal and living expenses of deceased is to be deducted and which has been done rightly. According to him, in the said case the Supreme Court has held that normally 50% is to be deducted as personal and living expenses however, the reason for the said observation was that father and sibling are presumed to have their own income and will not be considered as a dependent. The Supreme Court made this observation with a rider of "subject to evidence to the contrary". According to him, respondent nos.1 to 3 are dependent on deceased therefore, in those peculiar facts and circumstances, the Tribunal deducted 1/3rd of the income of deceased as his personal expenses. According to him, there is no fault in the finding of the Tribunal.

7. This takes me to the decision in the case of *Sarla Verma* (supra), wherein the Supreme Court in para 15 has observed as under:

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married*

in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.
Re :Question (iii) - selection of multiplier."

8. The Supreme Court has observed that in cases of bachelors 50% is to be deducted as personal and living expenses and one of the reasons for that has been elaborated that the father and the sibling are likely to have independent income or the sibling may be dependent on the father. However, this observation was prefixed by the words "in the absence of evidence to the contrary". In the same paragraph of the decision, the Supreme Court observed that where family of the bachelor is large and dependent on the income of the deceased bachelor, his personal and living expenses may be restricted to 1/3rd. Thus, if there is evidence on record that father or sibling of deceased are dependent on the deceased, deduction towards the personal expenses/living expenses will be 1/3rd of the income. In para 14 of the judgment, wherein the Supreme Court has fixed the deduction towards personal and living expenses of the deceased as under:

> *"14. .... one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."*

9. In present case, perusal of the cause title of the appellant's case goes to show that the age of respondent no.1, father of the deceased, is shown as "aged about 65 years old" and occupation is shown "Nil". Likewise, respondent no.3, who is the sister of deceased, is described to Ku. Sangeeta as a daughter of Vasantrao Wanmali (respondent no.1), Occupation-Nil. Even in the claim petition, they are shown as dependents. This has not been contradicted anywhere by the appellant–Insurance Company. Thus, the occupation of both the respondents is shown as 'Nil', the age of respondent no.1 is '65 years', who is senior citizen. As far as respondent no.3 is concerned, Kumari has been prefixed to her name coupled with the fact that she has been shown as daughter of respondent no.1, which *prima facie* shows that she was unmarried. Nothing contrary has been brought on record by the appellant either to show that they have separate income or that respondent no.3 is married daughter. Even in memo of appeal the appellant has shown the occupation of the respondent nos.1 and 3 as 'Nil'. Therefore, it cannot be said that they were not dependent on the deceased Akash.

10. Above material on record goes to suggest that there is evidence on record which suggests that father and sister were dependent on the deceased. Therefore, the learned Tribunal was right in holding that respondent nos.1 to 3 were dependent and rightly deducted $1/3^{rd}$ of income of the deceased towards his personal expenses.

11. Next grievance of the learned counsel for the appellant is that despite awarding consortium the Tribunal awarded compensation of Rs.1,50,000/- towards loss of love and affection.

12. It will be relevant here to refer the decision in the case of ***United India Insurance Company Limited Vs. Satinder Kaur alias Satwinder Kaur and others,***[1] wherein the Supreme Court in para 35 has observed as under::

> *"35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."*

13. In view of the law enunciated in the case of *Satinder Kaur* (supra), once compensation under the head of 'loss of filial consortium' is granted, no separate compensation shall be awarded towards 'loss of love and affection'. Therefore, I find substance in the argument of learned counsel for the appellant that the Tribunal was not correct in granting compensation of Rs.1,50,000/- towards loss of love and affection. To that extent appeal succeeds. Hence, the following order is passed:

<u>ORDER</u>

i. The appellant, respondent no.4 and Akshay Ravindra Gedam (Respondent No.3 before the Tribunal) are jointly and severally liable to pay sum of Rs.19,64,400/- (Rs. Nineteen Lakh Sixty Four Thousand and Four Hundred

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1 **(2021) 11 SCC 780**

only) together with interest at the rate of 8% per annum from the date of accident till actual realization.

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

iii. The appeal is partly allowed and disposed of in the aforestated terms with no order as to costs.

iv. Award be drawn accordingly.

JUDGE

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