



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

FIRST APPEAL NO.1249 OF 2009

- 1) Surendra Kaur wd/o Satwindrasingh Ghotra,
Aged about 43 years, Occ : Household.
- 2) Ramendrapalsingh s/o Satwindrasingh Ghotra,
Aged about 22 years, Occ : Student.
- 3) Ratendrapalsingh s/o Satwindrasingh Ghotra,
Aged about 22 years, Occ : Student.
- 4) Sarpitsingh s/o Satwindrasingh Ghotra,
Aged about 18 years, Occ : Student.
- 5) Suratsingh s/o Bhagatsingh Ghotra,
Aged about 62 years, Occ : Nil.
- 6) Surjeetkaur w/o Suratsingh Ghotra,
Aged about 62 years, Occ : Nil.

All r/o 352, Gurunanakpura,
Tah & Distt. Nagpur.

..... **APPELLANTS**

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

- 1) Laxmi Gulabrao Atrathe,
Aged about Major, Occ : Owner,
R/o Nari Road, Awale Nagar,
Plot No. 22, Nagpur.
- 2) The Branch Manager,
The National Insurance Co. Ltd.,
Ajni Chowk, Wardha Road, Nagpur. **RESPONDENTS**

Mr. S. D. Chopde, Advocate for Appellants.
None for Respondent No.1.
Mr. B. P. Bhatt, Advocate for Respondent No.2.

CORAM: **ROHIT W. JOSHI, J.**
DATE: **30th JANUARY, 2025.**

ORAL JUDGMENT:

1. The appellants in the present appeal are original petitioners in the Motor Accident Claim Petition No.15/2001. The said claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Satwindersingh s/o Suratsingh Ghotra. The appellants are related to the deceased as under:

- [i] Appellant no.1 widow,
- [ii] Appellant no.2 son,
- [iii] Appellant no.3 son,
- [iv] Appellant no.4 son
- [v] Appellant no.5 father,
- [vi] Appellant no.6 mother.

The deceased had met with a road accident on 11.11.2000. The respondent no.1 is the owner of the truck with which the deceased has met with road accident. The respondent no.2 is the Insurance Company with which the vehicle was insured at the relevant time.

2. The respondent no.1/owner did not file written statement in the matter. She did not cross-examine the witnesses examined by the appellants and also did not lead her evidence. The respondent no.2/Insurance Company opposed the claim by filing written statement and conducted cross-examination of witnesses examined by the appellants. However, the respondent no.2 did not lead evidence. After recording evidence and hearing respective submissions the learned Motor Accident Claims Tribunal, Nagpur was pleased to allow the claim petition awarding compensation of Rs.7,69,500/- inclusive of no fault liability to the appellants along with interest at the rate of 7.5% per annum from 25.03.2003 till satisfaction of the award.

3. The original petitioners are aggrieved by the quantum of compensation awarded and have therefore, challenged the award seeking enhanced the compensation. I have heard Mr. Sandeep Chopde, the learned counsel for the appellants and Mr. B. P. Bhatt, the learned counsel for the respondent no.2. The respondent no.1 has not appeared though served.

4. The learned counsel for the appellants did not dispute the annual income of the deceased which is quantified at

Rs.95,000/- by the learned Tribunal. The following points have been canvassed by Mr. Chopde, the learned counsel for the appellants.

- (i) Future prospects have not been awarded,
- (ii) 1/3rd deduction is made towards personal expenses instead of 1/4th since the deceased was survived by six dependents,
- (iii) Multiplier of 12 is applied by the learned Tribunal instead of 15; and
- (iv) Lastly amount of consortium is not awarded to the children and parents in terms of judgment of the Hon'ble Supreme Court in the matter of ***Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors.*** reported in ***2018 ALL SCR 2001***.

Per contra, Mr. B. P. Bhatt, the learned counsel representing respondent no.2 submits that the learned Tribunal has computed the amount of compensation correctly in the light of various judgments delivered by the Hon'ble Supreme Court from time to time. He vehemently opposes the contention of Mr. Chopde that each dependent is entitled for amount of consortium individually. He places strong reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Shriram General Ins. Co. Ltd. v. Bhagat Singh Rawat and others*** reported in ***2023 ACJ 2330*** to further his

submission. Having heard the rival submissions and on perusal of record with the assistance of the learned Advocate following points arise for my consideration.

- [i] Should component of future prospects be added to the annual income of the deceased and at what percentage?
- [ii] What will be the correct multiplier to be applied?
- [iii] What will be the deduction towards personal expenses of the deceased?
- [iv] Whether consortium is to be awarded to each dependent?

5. Point Nos.(i) to (iii): It is undisputed that the learned Tribunal has recorded a finding that the annual income of the deceased was Rs.95,000/- which finding is not assailed by the appellants. They have proceeded with the case further taking the annual income at the rate of Rs.95,000/-. The deceased was a self-employed individual. He was 37 years old at the time of his demise. Since, he was less than 40 years of age at the time of his demise and was self-employed in accordance with paragraph 59.4 of the judgment of the Hon'ble Supreme Court in the matter of ***National Insurance Company Limited v. Pranay Sethi and others***

reported in **(2017) 16 SCC 680**, component of 40% is required to be added to the annual income of the deceased. The annual financial loss due to demise of the deceased will thus be Rs.1,33,000/- (Rs.95,000 + Rs.38,000) for the purpose of computation of compensation.

6. It is not in dispute that the deceased is survived by six dependents. The Hon'ble Supreme Court has in the matter of ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*** reported in **2009(4) ALL MR 429** held that in case, where a deceased leaves behind four to six dependents, deduction of 25% should be made from his income towards the personal expenses. The learned Tribunal has wrongly made 1/3rd deduction from the annual income. The deduction should be of Rs.33,250/- being 1/4th of the annual income and future prospects component (Rs.1,33,000 ÷ 4). Accordingly, the annual dependence of the appellants is computed at Rs.99,750/-.

7. The learned Tribunal has applied multiplier of 12 since the deceased was 37 years old on the date of his demise. The correct multiplier will be 15 in terms of judgment of the Hon'ble Supreme Court in the matter of ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*** which is confirmed by the

Constitution Bench judgment in the matter of *National Insurance Company Limited v. Pranay Sethi and others* (2017) 16 SCC 680. Accordingly, the computation is required to be computed by applying multiplier of 15.

8. Point No.(iv): As regards the issue of consortium the Hon'ble Supreme Court has in the matter of *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors.* 2018 ALL SCR 2001 held that consortium encompasses within its realm spousal consortium for wife, parental consortium for children and filial consortium for parents. This judgment in the matter of *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors.* has been followed regularly by the Hon'ble Supreme Court as also by this Court and it is held a catena of decision that apart from the wife the parents and children will also be individually entitled to receive compensation under the head of filial or as the case may be parental consortium. The Hon'ble Supreme Court has in the matter of *United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur and Ors.* *Satinder Kaur alias Satwinder Kaur and Ors. v. United India Insurance Co. Ltd.* reported in *AIR 2020 SC 3076 (Three Judges Bench)*, considered the aforesaid judgment of *Magma General Insurance Co. Ltd. v. Nanu Ram @*

Chuhru Ram & Ors. and awarded spousal consortium to the wife and filial consortium to the parents of the deceased in the said case. This judgment of the Hon'ble Supreme Court in the matter of *Satinder Kaur alias Satwinder Kaur and Ors. v. United India Insurance Co. Ltd.* is again followed in *N. Jayasree and Ors. v. Choramandalam Ms General Insurance Company Ltd.* reported in *AIR 2021 SC 5218* and *New India Assurance Company Limited v. Smt. Somwati and Ors.* reported in *AIR Online 2020 SC 717*. As against this the judgment in the matter of *Shriram General Ins. Co. Ltd. v. Bhagat Singh Rawat and others 2023 ACJ 2330* relied upon by the learned counsel for the respondent no.2. The Hon'ble Supreme Court has held that the term consortium is a compendious term and therefore, all the dependents be they spouse, parents or children of the deceased will be entitled to receive a consolidated amount of Rs.40,000/- only towards the consortium and not Rs.40,000/- each. Although the judgment in the matter of *Shriram General Ins. Co. Ltd. v. Bhagat Singh Rawat and others* refers to *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors.*, it does not consider the aforesaid three judgments in the matter of *Satinder Kaur alias Satwinder Kaur and Ors. v. United India Insurance Co. Ltd.*, *New India Assurance Company Limited v. Smt. Somwati and Ors.* and *N.*

Jayasree and Ors. v. Cholamandalam Ms General Insurance Company Ltd. It will also be pertinent to mention that the judgment in the matter of *Satinder Kaur alias Satwinder Kaur and Ors. v. United India Insurance Co. Ltd.* is by Bench of Three Hon'ble Judges, whereas the judgment in the matter of *Shriram General Ins. Co. Ltd. v. Bhagat Singh Rawat and others* is by Bench of Two Hon'ble Judges. The consistent view of the Hon'ble Supreme Court is thus to grant consortium to each dependent at the rate of Rs.40,000/-. Undisputedly there are six dependents who has survived the deceased viz. the widow, parents and three children each of them is entitled to consortium at the rate of Rs.40,000/- each, therefore, the appellants are entitled to receive a sum of Rs.2,40,000/- towards the consortium.

9. In view of the aforesaid, the total amount of compensation payable to the appellant is worked out as under:

Loss of financial dependence Rs.99,750 x 15 = Rs.14,96,250/-

Consortium Rs.40,000 x 6 = Rs.2,40,000/-

Loss of estate = Rs.15,000/-

Funeral expenses = Rs.15,000/-

Total Rs.17,66,250/-

The learned Tribunal has awarded compensation of Rs.-7,69,500/-.

Thus, the compensation is enhanced by Rs.9,96,750/-.

10. The parties have not assailed the rate of interest of 7.5% per annum as awarded by the learned Tribunal. In view of the aforesaid, the appeal is partly allowed in the following terms:

[A] The compensation awarded by the learned Motor Accident Claims Tribunal, Nagpur in Motor Accident Claim Petition No.15/2001 is enhanced to Rs.17,56,250/-.

[B] The appellant is entitled to additional compensation of Rs.9,96,750/- over and above compensation of Rs.7,69,500/- awarded by learned Motor Accident Claims Tribunal with simple interest at the rate of 7.5% per annum from 25.03.2023 till the date of realization.

[C] The respondent nos.1 and 2 are jointly and severally liable to pay the amount of compensation along with interest.

[D] The respondent no.2 is directed to deposit the entire amount of compensation of

Rs.17,56,250/- with the accrued interest after adjusting the amount which is already deposited or paid, within a period of three months from today i.e. on or before 30.04.2025 with this Court.

[E] Parties to bear their own costs.

(ROHIT W. JOSHI, J.)