

(2019) 07 BOM CK 0222

In the Bombay High Court

Case No : First Appeal No. 0631 Of 2019

CISF Regional Training Centre And Another

APPELLANT

Vs

Rani Ashok Kauthale And Others

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2019) 07 BOM CK 0222

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : Sanjeev B. Deshpande, Gautam J. Hiwrale

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1. Present appeal has been filed by the original opponents challenging the judgment and award passed by learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claims Petition No. 407 of 2012 dt. 31-03-2017, whereby the petition filed by the present respondents under Section 166 of Motor Vehicles Act, 1988 came to be allowed against them.

2. It is not in dispute that deceased Ashok Harakchand Kauthale, aged 30 years, was serving as Constable in CISF Regional Training Center, Suraksha Campus, Takkolam Arakkonamn, Taq and Dist. Vellore in Tamil Nadu at the time of accident.

3. Original claimants/present respondents had come with a case that Ashok was travelling in Lorry Benz bearing No. TN-23-Q-6374, owned by opponent No. 1, around 6.45 a.m. on 22-06-2011. The said vehicle was proceeding from Thiruttani to Tirupathi. One P.T. Yadav was driving the said Lorry. When the vehicle reached near Panpadi village, in order to avoid people who had suddenly appeared before the Lorry, the driver tried to take the vehicle towards left side by applying brakes; he lost control and then the Lorry turned turtle. Ashok had

sustained serious injuries and died on the way to hospital. It was contended that the said accident had taken place due to the sole negligence on the part of Lorry driver. Opponent No. 1 being the owner and opponent No. 2 being the employer are liable to pay compensation jointly and severally to the claimants. Claimants are the widow, mother and daughter of deceased. Deceased was earning Rs. 13,000/- p. m. Claimants had claimed compensation of Rs. 20,00,000/- with interest.

4. Both the opponents have filed common written statement. It has been stated that Ashok was travelling with more persons, out of them two had lost their lives and others received injuries. Widow of the deceased has received benefits and getting pension. They have offered her job, but she has not responded.

5. Taking into consideration the rival contentions, issues were framed. Only claimants have led oral as well as documentary evidence. After considering said evidence, learned Chairman has allowed the petition. It was held that since the accident was caused due to the negligence of driver of the vehicle owned by opponent No. 1, both the opponents are liable to pay compensation jointly and severally. Compensation of Rs. 21,56,680/- has been awarded inclusive of amount awarded under no-fault liability, together with interest @ 8% p.a. from the date of the petition till actual realization of entire amount. This award is under challenge in this appeal.

6. Heard learned Assistant Solicitor General of India Shri. Sanjeev Deshpande for appellants and learned Advocate Shri. G.J. Hiwrale for respondents.

7. It has been vehemently submitted on behalf of Asstt. Solicitor General that the appeal has been filed only to challenge the quantum awarded by the learned Tribunal. He fairly submitted that the negligence of driver of the vehicle owned by opponent No. 1 was proved by claimants. They are entitled to get compensation; however, learned Tribunal has not considered that widow and the family has received financial benefits. Amount has been given to the family under 7 different heads, which have been narrated in para 4 of the appeal memo. The receipt of these amounts is not denied by the claimants. Appellants have paid amount of Rs. 10,00,000/- to the claimants as ex-gratia payment under the rules. Therefore, that amount ought to have been deducted by the learned Tribunal from the compensation amount. Further the non-pecuniary damages have been granted on higher side.

8. Learned Asstt. Solicitor General has relied on the Office Memorandum regarding implementation of Government's decision on the recommendation of 6th Central Pay Commission - Revision of provisions regulating pension/gratuity/commutation of pension/family pension/disability pension/ex-gratia lump-sum compensation dt. 02-09-2008. It was submitted that the amount that has been given to claimants is as per these rules. Ex-gratia amount is provided for the families of Central Government Civilian employees, who die in the performance of their bona fide official duties under various circumstances. He also relied on

the decision in *Reliance General Insurance Company Limited v. Shashi Sharma* (2016) 9 SCC 627 : (2016) 9 SCC 627 : AIR 2016 SC 4465; wherein it has been observed that, "15. Be that as it may, the term compensation has not been defined in the Act of 1988. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicles Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the Act of 1988 makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means - fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. In para 7 of *State of Harayana v. Jasbir Kaur* (2003) 7 SCC 484, it has been held that expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of *Smt. Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, this Court has observed that the compensation "is not intended to be a bonanza, largesse or source of profit". That however may depend upon facts and circumstances of each case, as to what amount would be a just compensation". It has been submitted that when substantial amount has been given as ex-gratia amount to the claimants, then it can be a bonanza. Further in the said decision it has been observed, "The component of quantum of "loss of income", inter alia, can be "pay and wages" which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006 - to grant compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependents can still be permitted to claim the same amount as a possible or likely loss of income to be suffered by them to maintain a claim for compensation under the Act of 1988". Scheme of Rule of 2006 was noted by Apex Court and it was observed that, "The amount receivable by the dependants/claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the

deceased Government employee in the normal course". In this case, the Full Bench decision of Madhya Pradesh High Court in *Smt. Kashmiran Mathur v. Sardar Rajendrasingh* [AIR 1983 Madhya Pradesh 24] was upheld. It was submitted that the ex-gratia amount given to claimants herein is also on same footing and therefore, it ought to be excluded. Further reliance has been placed by the appellants on the decision of this Court at Principal Seat in *Steel Authority of India Ltd. v. Jijabai Vijay Sonone* [2017 SCC OnLine Bom 8177]; wherein based the decision in *Reliance General Insurance Co. (supra)* and the fact that employee there was also a Constable in C.I.S.F. to whose widow ex-gratia payment of Rs. 5,00,000/- was given under the same scheme, this Court has deducted the same amount from the amount of total compensation.

9. Per contra, the learned Advocate for respondents has supported the reasons given by learned Chairman. He has tried to place reliance on the Central Industrial Security Force Act, 1968, CISF Rules, 2001 and submitted that no provision is made for deduction of ex-gratia payment made. The learned Tribunal has calculated the compensation on the basis of various authorities of Apex Court and on the basis of evidence adduced by claimants. No evidence was led by appellants and therefore, they are estopped from challenging the computation of compensation.

10. The scope of the appeal is very limited. Whether the amount given by the opponents/appellants to the claimants as ex-gratia amount needs to be deducted from the total compensation amount to be awarded to claimants is one of the point. Another point is whether the non-pecuniary damages given under various heads are proper. As regards the first point, it can be seen that the claimants have not denied the fact that they had received the amount of Rs. 10,00,000/- as ex-gratia payment, after the death of Ashok in the said accident. They have not come with a case that the said amount has been given to them under some different rule than the one pointed out by opponents/appellants. Since Ashok was employed in CISF, the rules applicable to a Central Government employee are applicable to him. The said amount has been given to claimants under the above referred notification. Therefore, the observations in *Reliance General Insurance Co. (supra)* are very much applicable here. The purpose for which provision was made for exgratia payments is required to be considered. The intention is to help the family of the deceased to come out of the sudden crisis. They should not be put in any financial difficulty. Further, as regards the right of claimants to get compensation based on the pay and wages of the deceased is concerned it can not be said to be taken away. They would be getting compensation based on pay and wages of deceased; but at the same time, claimants (heirs of deceased) can not get double benefit or in other words it can not be a bonanza for claimants. Here, the learned Tribunal had calculated the amount of compensation based on the pay and wages of deceased Ashok. That is the amount of their entitlement, however, when part of the same has been already been received by claimants in the form of ex-gratia and therefore, the said amount ought to have been deducted by the learned Tribunal. Refusal of

deduction amounts to giving bonanza to claimants. This Court in Steel Authority of India Ltd. (supra) has also taken the same view. In that case, the deceased was also a Constable in CISF. Therefore, in this case also the amount of Rs. 10,00,000/- is required to be deducted from the total amount of compensation, which was received by the claimants as ex-gratia amount.

11. Now, turning towards another point in respect of non-pecuniary damages, it is to be noted that the learned Tribunal has awarded amount of Rs. 1,00,000/- under the head of consortium to each of the claimant and Rs. 25,000/- was awarded towards funeral expenses. This amount is awarded in view of decision in Rajesh v. Rajbir Singh [2013 ACJ 1403 (S.C.)]. However, in view of decision of Constitution Bench of Apex Court in National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 : (2017) 16 SCC 680 : AIR 2017 (SC) 5157, the said ratio or decision in Rajesh's case (supra) can not be followed. The non-pecuniary damages will have to be granted as per Pranay Sethi's decision. In all amount of Rs. 70,000/- can not be granted under the head of loss of estate, loss of consortium and funeral expenses. Thus the compensation granted in this case by the learned Chairman, M.A.C.T., Ahmednagar deserves to be reduced by an amount of Rs. 12,55,000/-. In other words, when claimants have been granted compensation of Rs. 18,31,680/- for loss of dependency, an amount of Rs. 10,00,000/-, which they have already received as ex-gratia deserves to be deducted. That amount comes to Rs. 8,31,680/-. Claimants are entitled to get amount of Rs. 70,000/- towards non-pecuniary damages. Hence, the total amount to which claimants are entitled to is Rs. 9,01,680/-. In view of reduction in the compensation amount, the further order of investment of part of the amount also deserves to be modified.

12. For the above-said reasons, following order is passed.

ORDER

Appeal is hereby allowed.

The judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claims Petition No. 407 of 2012 dt. 31-03-2017 is hereby set aside and modified as follows:

"Opponent Nos. 1 and 2 shall pay jointly and severally compensation of Rs. 9,01,680/- (Rupees Nine Lakh One Thousand Six Hundred and Eighty Only) (Inclusive of amount of Rs. 50,000/- towards no-fault liability) to the claimants, along with interest @ 8% p.a. from the date of the petition till actual realization of entire amount."

After the amount is deposited, an amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) be invested in the name of Claimant No. 2 by showing Claimant No. 1 as her guardian, in fixed deposit in any nationalized Bank of the choice of Claimant No. 1 till the attainment of majority by claimant No. 2.

Claimant No. 1 is allowed to take quarterly interest on the said fixed deposit.

After the attainment of majority by Claimant No. 2, the entire matured amount be given to her, without any orders from Court.

From rest of the amount deposited, an amount of Rs. 2,50,000/- be given to Claimant No. 3 towards her share, by account payee cheque.

From rest of the amount, amount of Rs. 1,00,000/- be kept in the fixed deposit in the name of Claimant No. 1, in the same Bank for a period of 3 years. After the said period, the entire matured amount be given to Claimant No. 1, without any further order from Court.

Rest of the amount deposited be given to Claimant No. 1 by account payee cheque.

Amount deposited by the appellants be adjusted towards this award and excess be refunded to appellants.

Under the circumstances, no order as to costs.