

(2018) 08 BOM CK 0159

In the Bombay High Court

Case No : Civil Revision Application No. 15 Of 2015

New India Assurance Company Ltd

APPELLANT

Vs

Mr. Datta Vishwanath Kavlekar

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Citation : (2018) 08 BOM CK 0159

Hon'ble Judges : C. V. Bhadang, J

Bench : Single Bench

Advocate : E. Aonso, R. G. Ramani, P. Kakodkar

Final Decision : Partly Allowed

Judgement

1. The challenge in this petition at the instance of the petitioner (original respondent no.3) is to the judgment and award dated 5/9/2014 passed by the Motor Accident Claims Tribunal at

Panaji (Tribunal, for short) in Claims Petition no.93/2010. The challenge is limited to the quantum of compensation granted to the respondent nos.1 and 2 in respect of the death of their

daughter Sneha who met with an unfortunate death at the age of 22 years in a vehicular accident on 21/6/2010. Looking to the limited issue involved, it is not necessary to set out the

facts in details. Suffice it to mention that the deceased was the only daughter of the respondent nos.1 and 2 and had appeared for her final B.E. Examination when she met with an

accident resulting into her death. The result of the examination was declared some where in August 2010, wherein the deceased had cleared the examination in First Class with

distinction.

2. The respondent nos.1 and 2, filed a petition before the Tribunal seeking compensation of Rs.10.00 lakhs. The Tribunal reckoned a notional monthly income of Rs.5000/- per month that

is, at the rate of Rs.60,000/- per annum made an addition of 50% i.e. of Rs.30,000/- towards the future prospects. Thus the Tribunal reckoned the total income of the deceased at

Rs.90,000/per annum and deducted 50% towards personal and living expenses, looking to the fact that the deceased was unmarried. Thus the Tribunal took the annual income at

Rs.45,000/- per annum for the purpose of computation of the compensation on account of loss of dependency. The Tribunal applied a multiplier of 20 and thus arrived at a

compensation of Rs.9.00 lakhs. The Tribunal granted Rs.1.00 lakh towards loss of consortium and Rs.25,000/towards funeral expenses and thus granted a total compensation of

Rs.10,25,000/- along with interest at the rate of 6% per annum from the date of filing of the petition, till realization. Feeling aggrieved the applicant is before this Court.

2. I have heard Shri Afonso, the learned counsel for the petitioner and Shri Ramani, the learned counsel for the respondent nos.1 and 2, who are the contesting respondents.

3. Shri Afonso, the learned counsel for the petitioner has raised three contentions. Firstly, it is submitted that the addition towards future prospects could have been made only at 40% of

the income and not 50% as has been done by the Tribunal. For this purpose the learned counsel has placed reliance on the decision of the Supreme Court in the case of National

Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.

Secondly, it is submitted that the multiplier as per the decision in the case of Sarla Verma should have been 18 and not 20 as has been employed by the tribunal. Thirdly it is submitted

that the compensation on account of loss of consortium is admissible only where the claimant is the spouse of the deceased and the compensation under the said head was not

admissible to the parents of the deceased. Except this there are no other contentions raised.

4. Shri Ramani, the learned counsel for the respondent in all fairness did not dispute that the multiplier which can be applied in the present case would be 18.

He also did not dispute that

the compensation under the head of loss of consortium, would not be payable, in as much as the deceased was the daughter of the claimants. He, however, submits that

notwithstanding the aforesaid facts, this Court may not interfere in the quantum of compensation granted for the reason that the income of the deceased which is reckoned at Rs.5000/-

per month is grossly on a lower side. The learned counsel has placed reliance on the decision of the Supreme Court in the case of V. Mekala Vs. M. Malathi and anr. (2014 (3)

TAC 5), in order to submit that in similar circumstances, where the deceased was a brilliant student, the Supreme Court has reckoned the monthly notional income at Rs.6000/- per

month. It is submitted that the tribunal has not granted any compensation under the head of loss of estate. It is submitted that if the compensation is to be reworked on the basis of the

enhanced monthly income, a similar figure as granted by the tribunal would be arrived at. It is submitted that notwithstanding the fact that the award has not been challenged by the

respondents no.1 and 2, this Court can in appropriate case take into account a higher income than what is reckoned by the Tribunal inasmuch as the tribunals/court in a matter arising out

of a claim for compensation under the Motor Vehicles Act is required to determine the just compensation. In this regard the learned counsel has placed reliance on the decision of the

Supreme Court in the case of Rajana Prakash and Others Vs. Divisional Manager and another (2011) 14 SCC 639 and Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC

54. He submits that the compensation as granted by the tribunal is just and proper and no inference is called for.

5. I have carefully considered the rival circumstances and the submissions made.

6. The present civil revision application has to be decided in the light of the law laid down by the Constitution Bench of the Supreme Court in the case of National Insurance Company

Limited Vs. Pranay Sethi and others AIR 2017 SC 5157. The Supreme Court in para 61 of the judgment has recorded its conclusions as under:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

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

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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. (Emphasis supplied)

It can thus be seen that in terms of para 61 (iv) of the judgment in the case of

Pranay Sethi (supra) where 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. In the present case, admittedly the deceased was in the final year of her Engineering

course and the income taken by the Tribunal was only a notional income at the rate of Rs.5000/- per month i.e Rs.60,000/- per annum. The Tribunal has noticed the judgment of the

Hon'ble Supreme Court in the case of V. Mekala Vs. M. Malathi and anr. (supra) where the Hon'ble Apex Court had considered the income of a 11 years old child at Rs.10,000/-

per month. It is true that the case of V. Mekala arose out of an injury claim and not a fatal one. However, that in my considered view would not be decisive. In that case an addition of

50% was made looking to the future prospects and after deducting the personal expenses the income which was reckoned for the purpose of calculation of the compensation was

Rs.6000/- per annum. In my considered view once having noticed the said case, there is no specific reason mentioned by the Tribunal in reckoning the notional income at Rs.5000/- per

month i.e. Rs.60,000/- per annum. Thus, I find that the income in the present case can be taken at Rs.6000/- per month i.e Rs.72,000/- per annum. The Tribunal has employed a multiplier

of 20 which is not correct and is not in accordance with the table as indicated in the case of Sharla Verma (supra). The appropriate multiplier would be 18. It is also not disputed on

behalf of the respondents no.1 and 2 that no compensation could have been awarded under the head of loss of consortium.

7. The Supreme Court in the case of Ranjana Prakash and others (supra) had an occasion to consider the scope and ambit of the powers available to this Court in an appeal arising out of

the award passed by the Tribunal. This is what is held in para 6 of the judgment.

We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground

that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased.

But the claimants were not aggrieved by Rs.23,134/being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an

appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation

awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as

compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30%

should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore

come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek

enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

It can this be seen that notwithstanding the fact that the claimants have not challenged the award, the claimants can nonetheless support the quantum of the compensation by claiming

that the income reckoned by the Tribunal is on the lower side. In para 8 of the judgment in the case of *Ranjana Prakash* (supra), the Hon'ble Supreme Court has held that where the

appeal is filed challenging the quantum of compensation, irrespective who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the

relevant principles, determine the just compensation.

8. Keeping in mind the law as laid down in my considered view it will be open for this Court to attempt to re-determine the just compensation payable to the respondents nos.1 and 2.

9. The compensation can be calculated thus:

(i) Notional annual income of the deceased at Rs.6000/- x 12 =

Rs.72,000/-

(ii) Add 40% towards future prospects

= Rs. 28,800/-

Total = 1,08,000/-

(iii) Less 50% towards personal and living expenses of the deceased.

(iv) Income to be reckoned for the purpose of computation of loss of dependency

(v) Compensation towards loss of dependency

= Rs. 50,400/-

(vi) $\times 18$

= 9,07,200/

(vi) Compensation towards loss of Estate...

= 15,000/-

(vii) Compensation towards funeral expenses

= 15,000/

Total

= Rs. 9,37,200/-

9. In the result, the following order is passed:

Order:

The Civil Revision application is partly allowed. The impugned award is hereby modified. The appellants and the respondent nos. 3 and 4 shall jointly and

severally be liable to pay an

amount of Rs.9,37,200/- to the respondent nos.1 and 2 together with interest at the rate of 6% per annum from the date of filing of the petition till realization.

In the circumstances there shall be no order as to costs.