

(2018) 01 BOM CK 0103
In the Bombay High Court
Case No : 3633 of 2016

Nisha w/o. Naresh Gajre

APPELLANT

Vs

Subhash S/o. Laxman More

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#), [Section 166](#), [Section 166](#) - Appeals - Application for compensation

Citation : (2018) 01 BOM CK 0103

Hon'ble Judges : K.K. Sonawane

Bench : Division Bench

Advocate : R.V. Gore, ?Ranjana D. Reddy

Final Decision : Disposed

Judgement

1. Heard. Admit. By consent of parties, taken up for final hearing at admission stage. The point of controversy in this appeal lies within the short compass relating to computation of quantum of compensation amount determined by the Tribunal in the application filed on behalf of appellant/original claimant under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act 1988").

2. The deceased Naresh Gajre r/o. Lasur Station, Taluka Gangapur, Dist. Aurangabad was the husband of appellant No.1 and father of the appellant Nos. 2 and 3 - original claimants. On the fateful day of the accident i.e. 13.10.2013, the deceased Naresh at about 10.45 a.m. was proceeding on foot from the road leading towards Deogaon town unaware of

his tragic end in the vehicular accident. Suddenly, the vehicle ST Bus bearing Registration No. MH-40/N-9645 arrived speedily from the backside and gave dash to the deceased Naresh. The driver of the ST bus was very negligent and rash while driving the vehicle. He did not pay attention to the pedestrians and traffic on the road. In the result, the deceased Naresh received fatal injuries. He was immediately escorted to the Government Hospital for medical treatment. The concerned Doctor made endeavour to resuscitate the victim Naresh but all efforts did not yield result.

3. Unfortunately, deceased Naresh succumbed to the injuries caused to him in the vehicular accident. The information about the accident was passed on to the concerned police. The police of Sillegaon police station registered the FIR bearing Crime No. I-142/2013 against the driver of the ST Bus involved in the accident. The police personnel arrived at the spot and drawn panchanama of scene of occurrence. Police also dealt with the mortal remains of deceased Naresh, drawn inquest panchanama. The dead body of deceased Naresh was referred for autopsy to ascertain the exact cause of death. The medical experts conducted post mortem on the dead body of deceased Naresh and opined that the deceased died due to injuries sustained to him in vehicular accident. The family members of deceased Naresh blamed the driver of ST bus for untimely death of earning hand of their family. Therefore, the widow and children of deceased Naresh rushed to the Motor Accidents Claim Tribunal and filed application for compensation under Section 166 of the Act 1988.

4. Pursuant to the claim notice, respondent MSRTC appeared in the proceeding before the Tribunal and denied the liability. The Tribunal considered the entire evidence adduced on record and partly allowed the petition. The Tribunal directed respondent MSRTC to pay compensation of Rs. 3,60,000/- with interest to the claimants on account of accidental death of their family member - deceased Naresh. Despite the same, claimants did not satisfy with the quantum of compensation amount, therefore, by invoking

remedy under Section 173 of the Act, 1988 the claimants/appellants preferred the present appeal.

5. The learned counsel for appellants vehemently submitted that the deceased Naresh was 35 years old person at the time of alleged accident. The police record also reflects 35 years age of the deceased Naresh. But, the Tribunal erroneously considered his age more than 40 years and applied the multiplier of 14 in this case. According to learned counsel, the deceased was 35 years old person at the time of accident. Therefore, the multiplier of 16 is essential to be applied for calculation of compensation amount. The learned counsel for appellants further harped on the circumstances that the trial court did not consider the amount of future prospects of self-employed deceased while determination of compensation amount. The learned counsel drawn attention towards the error occurred in the findings expressed by the Tribunal while ascertaining the income of deceased Naresh. He asserted that deceased Naresh was the skilled worker doing labour work as a painter. He was earning Rs. 9,000/- p.m. Therefore, his income atleast @ Rs.5,000/- was required to be considered by the Tribunal. The notional income @ Rs. 3,000/- p.m. determined by the Tribunal is erroneous, illegal and without any basis. The learned counsel further assailed that the Tribunal has awarded meager compensation amount towards the conventional head, comprising the amount towards funeral expenses, loss of estate, loss of consortium etc. In support of his claim, learned counsel kept reliance on the judicial pronouncements of Honourable Apex Court in the case of Sarla Verma (Smt) Vs. Delhi Transport Corporation and another, (2009)6 SCC 121, and National Insurance Company Ltd. vs. Pranay Sethi and others 2017 SCC Online SC 1270.

6. In this appeal, the appellants are only concerned with the compensation amount quantified by the Tribunal. The first objection raised on behalf of appellants is in regard to income of deceased Naresh calculated by the Tribunal. The claimant Smt. Nisha wd/o. Naresh Gajre stepped into

the witness box and deposed before the Tribunal that her husband deceased Naresh was a skilled worker. He was doing the labour work as a painter. His income from the labour work was Rs. 9,000/- p.m. but due to sudden demise of the bread-winner, there was loss to the family. It is to be noted that except the bare version of claimant Smt. Nisha wd/o. Naresh, there were no corroborative evidence on record to buttress her version. It is true that the claim in the Motor Vehicle Act is a summary proceeding in nature and the evidence should not be scrutinized in a manner as is required in a civil or criminal cases. In civil cases, the rule is preponderance of probabilities and in criminal cases, proof beyond reasonable doubt is imperative. But, all these niceties are not essential in the matter of motor accident claim as law contemplates it as summary enquiry into the matter. Therefore, if there is some persuasive evidence available on record to arrive at some decision, itself is sufficient to determine just and reasonable compensation in the claim petition.

7. In the matter in hand, as referred supra, except the bare version of claimant Smt. Nisha no other sort of persuasive circumstances are available on record to conclude that the deceased Naresh was earning more than Rs.3000/- p.m. No doubt, the deceased Naresh was eking livelihood by doing skilled job as a painter. But, in absence of convincing evidence, it would be unjust and improper to draw inference that the earning of deceased Naresh was more than Rs. 3000/- p.m. In contrast, it would be justifiable to visualize that the notional income of deceased Naresh was Rs. 3000/- p.m. In such circumstances, there is no error detected in the findings expressed by the Tribunal on this material aspect of the appeal.

8. Learned counsel for appellant further assailed that the Tribunal ascertained the age of deceased Naresh more than 40 years of age for the purpose of calculation of compensation amount. The conclusions of the Tribunal in regard to more than 40 years age of deceased Naresh, was totally based on surmises and conjectures. In view of documents of police record,

the deceased Naresh was 35 years old person at the time of accident. The submissions advanced on behalf of appellants seems to be sustainable and appreciable one. The entire documents produced on record comprising FIR, spot panchanama, Post Mortem report etc. candidly reflects that the deceased was 35 years old person at the time of accident. All these documents were prepared at the earliest immediately after occurrence of the alleged vehicular accident. The concerned public servants are the authors of these documents, wherein, it has been categorically mentioned that the deceased Naresh was 35 years old person. In such peculiar circumstances, it is preposterous to cast doubt on the integrity of all these public servants - author of the documents. Therefore, it is fallacious to appreciate that the age of deceased at the time of accident was more than 40 years. The conclusion of the Tribunal that " at the time of accident his age is considered to be more than 40 years and, if age is above 40 years, the appropriate multiplier would be 14" appears to be rest on figment of imagination. The public documents of police record manifestly indicate that the deceased was 35 years old person at the time of accident. After considering the reasonable margin, it can be held that he was around 35/36 years old person. Therefore, there is no impediment to conclude that the deceased Naresh was the person from age group of 35 to 40 years. Hence, in view of guidelines delineated in the case of Sarla Verma (supra) multiplier of 15 prescribed for age group of deceased who was in between 36 to 40 years of age should be applied. Obviously, the findings of Tribunal on this score appear to be erroneous and imperfect. The Tribunal should have applied the multiplier of 15 instead of 14 in this case by considering the fact that the deceased Naresh was from the group in between 36 to 40 years age.

9. The learned counsel for the appellants further claimed the amount of future prospects of the deceased. He submits that in view of judicial pronouncement in the case of National Insurance Company Vs. Pranay Sethi (supra) the addition of actual income of the deceased existing

at the time of his death towards future prospects is mandatory. The deceased Naresh was 35 years old person and in view of ratio laid down by the Honourable Apex Court addition of 40% amount of established income of the deceased is essential to be calculated while determining the compensation amount in this case. He also raised objection in regard to the inadequate amount awarded by the Tribunal towards non-pecuniary heads of damages. He urged to grant amount of Rs. 15,000/- each for loss of estate and towards funeral expenses as well as Rs. 40,000/- towards loss of consortium.

10. It is not in dispute that in view of law laid down in the aforesaid Sarla Varma's case, addition of amount towards future prospects, other than the exceptional cases involving special circumstances, was not permissible under law in cases, where the deceased was self-employed or was on a fixed salary. But, there was divergence of opinion, following decision in the case of Smt. Reshma Kumar Vs. Madan Mohan (2013) 9 SCC 65 as well as in the case of Rajesh Vs. Rajgurusingh (2013) 9 SCC 54, etc. The controversy in regard to the principle of addition of actual income towards future prospects was referred to the larger bench of the Hon'ble Apex Court, for authoritative pronouncement in the case of National Insurance Company vs. Pranay Sethi (2017) SCC online SC 1270. After appreciating the entire factual scenario, in the light of prescribed provisions of law, the Honourable Apex Court delineated the guidelines that in case the deceased was self-employed or on a fixed salary and he was below 40 years of age, there should be addition of 40 % of his established income towards future prospects and in case deceased was in between 40 to 50 years, addition of 25% of the established income would be reasonable. Eventually, in order to bring consistency and uniformity while computation of just compensation as envisaged under Section 168 of the Act of 1988, the Larger Bench of the Honourable Apex Court, in the aforementioned Pranay Sethi's case in para. 61 laid down the ratio as below :-

"61. In view of the aforesaid analysis, we proceed to record our

conclusions:-

(I) xxx xxx xxx xxx

(ii) xxx xxx xxx xxx

(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."

11. In the light of exposition of law in Pranay Sethi's case, it is

perceivable that the objection raised on behalf of appellant in regard to future prospects and compensation awarded under the non-pecuniary heads appears to be sustainable and acceptable one. As discussed above, the deceased Naresh was a skilled worker and eking livelihood by doing labour work as a painter. He was a self employed person. The police record reflects that at the time of accident, he was 35 years old person and in view of ratio laid down in Sarla Verma's case (supra) the multiplier of 15 is required to be applied in this case. Moreover, deceased Naresh was survived by the widow and two children i.e. appellants/original claimants . In the case of Serla Verma (supra), in para.30, Their Lordships of Honourable Apex Court, observed as under :-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

12. This court is not oblivious of the fact that, following authoritative pronouncement in Pranay Sethi's case, there were subsequent development in the mode and manner of computation of compensation amount. The endeavour was to bring uniformity and consistency in ascertaining the multiplicand for just and fair compensation payable to the claimant. The aforesaid Pranay Sethi's case was decided on 31 st October, 2017. In the instant case the tribunal dealt with the present matter in the year 2016 i.e. prior to decision of Pranay Sethi's case. However, in view of

social object of legislation, it would amenable to apply the principles laid down in Pranay Sethi's case, to the facts of the present matter for calculation of just and reasonable compensation payable to the claimant. It would sub-serve the social object of legislation. The legal guidelines delineated in Pranay Sethi's case were meant for ascertaining the multiplicand for just and reasonable compensation. In such circumstances, there is no impediment that the points of controversy in the present appeal can be dealt with by resorting to legal guidelines delineated in Pranay Sethi's case.

13. Pursuant to the aforesaid authoritative pronouncement of Honourable Apex Court, in the instant case, the number of dependent family members of deceased Naresh was 3 and, therefore, one-fourth deduction towards personal and living expenses of the deceased is essential to be taken into consideration instead of one-third deduction, as calculated by the Tribunal. Moreover, as mentioned in clause No. VIII of para.61 of the Pranay Sethi's case referred supra, the Honourable Apex Court has issued directions to take into consideration amount of Rs.15,000/- each for funeral expenses as well as loss of estate and Rs. 40,000/- for loss of consortium, while determination of compensation under the conventional heads. The Tribunal awarded Rs.10,000/- each for loss of estate and consortium and Rs. 4,000/- towards funeral expenses. The calculation of compensation amount towards non-pecuniary heads appears to be against the well-settled principles of law as laid down in Pranay Sethi's case (supra). Therefore, it should be considered that the appellants/claimants are entitled for further enhancement of compensation by applying multiplier of 15, as well as addition of amount towards future prospects and requisite amount of compensation towards non-pecuniary heads.

14. In view of aforesaid discussions, it would be apposite to appreciate the following mathematical calculation in the tabular form to facilitate for ascertaining the multiplicand to determine the amount of just

compensation payable to the appellants/original claimants. The Tribunal held the notional income of deceased Naresh @ Rs. 3,000/0 p.m. which came to be approved by this court as held above and the respondent MSRTC also did not agitate the same in any appellate forum.

No. Particulars Amount (in Rs)

A Total income per year $3000 \times 12 = 36,000/-$

B 40% to be added in total income per year towards future prospects. $36,000 + 14,400 = 50,400/-$

C 1/4th deductions towards personal and living expenses $50,400 - 12,600 = 37,800/-$

D Pecuniary loss after applying multiplier of "15" as deceased was between 35 to 40 years age group $37,800 \times 15 = 5,67,000/-$

Total compensation payable to claimants Add : Funeral expenses

Add : Loss of Estate

Add : Loss of Consortium

$5,67,000/-$ $15,000/-$

$15,000/-$

$40,000/-$

Total Sum payable to claimants Less:

Amount awarded by Tribunal Amount to be enhanced

$6,37,000/-$ $3,60,000/-$

$2,77,000/-$

15. In the above premise, it is to be concluded that the appellants/original claimants are entitled to get compensation @ Rs. 6,37,000/- for the loss caused to them following untimely accidental death of deceased Naresh, bread-winner of their family. The Tribunal calculated the sum payable to claimants @ Rs. 3,60,000/-. Therefore, it is imperative to allow the appellants/claimants to get enhanced compensation to the tune of Rs.2,77,000/- (i.e. $6,37,000 - 3,60,000 = 2,77,000$) for the loss caused to them. The entire compensation amount of Rs. 6,37,000/- shall carry interest @ 9% p.a. from the petition till its realization. The total sum

of Rs. 1,70,000/-from the enhanced compensation amount of Rs.2,77,000/- be invested in the name of appellant Nos. 2 and 3 (i.e. Rs. 85,000/- each) accompanied with the earlier amount of Rs.90,000/- ordered to be deposited in Fixed Deposit Receipt in the name of appellant Nos. 2 and 3, by the tribunal under award dated 8/7/2016 till attaining their age of majority. The balance amount of Rs.1,07,000/- from enhanced compensation be disbursed in favour of appellant No.1 - Nisha wd/o. Naresh Gajre. Rest of the award is hereby made confirmed and absolute.

16. In sequel, the appeal stands partly allowed. The impugned judgment and award of the Tribunal be modified in above terms. Appeal is disposed of accordingly. No orders as to costs.