
(2025) 01 BOM CK 1545

In the Bombay High Court, Nagpur Bench

Case No : First Appeal No. 250 Of 2022

Prashant S/O Babarao Bhongale (Deceased) Thr. Lrs.
Sadhana Wd/O Prashant Bhongale And Others

APPELLANT

Vs

Mohan S/O Anyaji Farfad And Another

RESPONDENT

Date of Decision : 02-01-2025

Acts Referred:

Citation : (2025) 01 BOM CK 1545

Hon'ble Judges : M. W. Chandwani, J

Bench : Single Bench

Advocate : M. P. Khajanchi, T. S. Deshpande

Final Decision : Dismissed

Judgement

M. W. Chandwani, J

1. Heard.

2. Correctness of the impugned award dated 26.04.2021 passed by the Motor Accident Claims Tribunal, Chandrapur (hereinafter referred to as "the Tribunal") has been challenged in the instant appeal, whereby the Tribunal awarded a compensation of Rs.32,68,427/- to the original petitioners towards loss of dependency on account of death of Prashant Babarao Bhongale, who died on 12.01.2019 in a vehicular accident that occurred on 20.02.2015.

3. Bare facts, which give rise to the present appeal, can be summarized as under :

On 20.02.2015, deceased Prashant Bhongale was proceeding towards Chandrapur on his motorcycle Honda Activa bearing No.MH-34-AR-5544. However, when he reached near Bapat Nagar Square, Chandrapur, a motorcycle Hero Passion Pro bearing No.MH-34-AG-0708 (hereinafter referred to as "the offending vehicle") driven by respondent No.2 came at a high speed and gave a dash from the rear end to Prashant's motorcycle wherein he fell down, sustained

severe head injury and became unconscious on the spot itself. Immediately, he was taken to the Government Hospital at Chandrapur and later shifted to Neuron Hospital at Nagpur. For better treatment, he was then hospitalized at Christ Hospital in Chandrapur and subsequently transferred back to Neuron Hospital at Nagpur but unfortunately, he remained unconscious and did not regain consciousness. Initially, appellant No.1, the wife of deceased Prashant, filed an injury claim petition as a next friend of the deceased. Pending the petition, deceased Prashant died on 12.01.2019 and the present appellants were substituted as legal representatives of Prashant. The appellants converted the injury claim petition into death claim for a compensation of Rs.94,10,000/-.

4. Respondent No.1 is the owner of the offending vehicle. At the time of the accident, respondent No.2 was driving the offending vehicle. Respondent No.3 is the owner of the motorcycle Honda Activa and respondent No.4 is the insurer of the said motorcycle. Respondent Nos.1 and 2 filed their written statements and resisted the claim. The Tribunal opined that Prashant died on 12.01.2019 due to a head injury sustained by him in the accident that occurred on 22.02.2015. The Tribunal partly allowed the petition directing respondent Nos.1 and 2 to pay the amount of Rs.32,68,427/- jointly and severally. Feeling aggrieved with the quantum of compensation awarded by the Tribunal, the petitioners filed the present appeal for enhancement of compensation.

5. Before I proceed to deal with the grounds raised in the appeal by the appellants for enhancement of compensation, it will be appropriate to deal with the objection raised by respondent No.1 - the registered owner of the offending vehicle regarding maintainability of the appeal. It is appropriate to mention here that, after passing of the impugned award by the Tribunal, the appellants filed proceedings before the Tribunal for execution of the impugned award claiming an amount of Rs.50,74,821/- including the interest and cost of the claim petition. During the pendency of the execution proceedings, the matter was referred to Lok Adalat, where the appellants and respondent No.2 - the driver of the offending vehicle settled the dispute for Rs.40,00,000/- (forty lacs only). In the compromise, it was agreed that the appellants will not be entitled to recover the remaining amount or enhanced amount of award, if any, by the High Court in this appeal from respondent No.2. The said responsibility i.e. payment of remaining amount or enhanced amount of the award, if any, shall be of respondent No.1 and it was specifically mentioned that the compromise will not affect the right of the appellants to recover the remaining amount of impugned award from respondent No.1. Needless to mention that, respondent No.2 paid the amount of Rs.40,00,000/- to the appellants. Consequently, the liability of respondent No.2 was extinguished and therefore, the appellants did not press the appeal against respondent No.2.

6. Mr T. S. Deshpande, learned counsel appearing for respondent No.1 vehemently submits that since the appellants have already compromised and settled the matter with respondent No.2 for Rs.40,00,000/- towards full and final

settlement in Lok Adalat and since respondent No.2 has already paid the amount of Rs.40,00,000/- in satisfaction of the award passed in Lok Adalat, the appellants are not entitled to file an appeal for enhancement of compensation amount against respondent No.1 as well. According to him, no appeal shall lie against the award passed in Lok Adalat. Therefore, the appeal filed by the appellants is not maintainable at all. To buttress his submission, he seeks to rely on the case of *Sonba vs. Sunil*, 2017 SCC OnLine Bom 9889, wherein this Court in para 20 has observed as under :

"20. It is to be seen that the Award of learned Claims Tribunal was for the total compensation of Rs.2,20,500/-. The appellant-claimant after negotiation settled amicably the quantum of compensation to be recovered from respondent. He agreed and accepted the amount of Rs.1,92,500/- and relinquished the right to recover rest of the balance decretal amount of Rs.28,000/-from the respondent-owner of vehicle. These circumstances reflect that the settlement of dispute in Lok Adalat was not pertaining to mode and manner in which the decretal amount determined by the Claims Tribunal to be recovered. But, there was compromise for the full and final quantum of compensation to be recovered from the respondent in this case. Therefore, once he has finalized the quantum of compensation amount to be recovered from respondent-owner of offending vehicle, then he has no locus standi to seek further enhancement of compensation. In such peculiar circumstances, the prayer of appellant-original claimant for enhancement of compensation is not sustainable and considerable one. In case of any enhancement of compensation in this appeal, it would negate the very purpose and object of negotiation taken place in the Lok Adalat for amicable settlement of issue in controversy. It would also conjure up an image of mischief with the respondent while compromise in the Lok Adalat. Hence, claim of appellant for enhancement of compensation would not be amenable within the ambit of law for consideration in this appeal. Therefore, appeal deserves to be dismissed being devoid of merits."

7. Taking his argument further, Mr. Deshpande would submit that though the award was passed holding both the respondents jointly and severally liable but the release of one joint tortfeasor releases all the others because the cause of action is one and it is indivisible. In cases where the joint tortfeasors are sued in several actions; satisfaction by one would discharge the others. Though, the compromise between the appellants and respondent No.2 suggests that it is only respondent No.2 who has been discharged from his liability after the payment of Rs.40,00,000/- but, in view of the above legal position, the discharge of respondent No.2 from the liability imposed in the award by the Tribunal also discharges respondent No.1 and therefore, once the appellants agree for a particular amount in compromise with respondent No.2, the appeal against respondent No.1 for enhancement of compensation amount is not maintainable at all. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of *Khushro S. Gandhi and Ors. vs. N. A. Guzder and Ors.*, (1969) 1 SCC 358.

8. Conversely, learned counsel appearing for the appellants vehemently submitted that the award was passed against respondent Nos.1 and 2 who were held jointly and severally liable to pay the compensation amount by virtue of the impugned award. According to him, when a decree is passed against multiple persons holding them jointly and severally liable, it is the discretion of the decree holder to recover a portion of the amount from one, a portion from another or the entire amount from any of the judgment debtors. By settlement before the Lok Adalat, it was specifically agreed between the appellants and respondent No.2 that by the said compromise, only respondent No.2 will be discharged and the remaining amount under the award as well as enhanced compensation, if any, after judgment of the High Court will be recovered from respondent No.1. Having agreed so specifically in the settlement, the appellants are entitled not only to recover the remaining amount of the award from respondent No.1 but also the enhanced amount of compensation, if any, awarded by this Court in this appeal. It is also submitted that, in wake of the specific condition mentioned in the compromise agreement itself, the decision cited by respondent No.1 will not be applicable and consequently, the appeal is maintainable against respondent No.1.

9. Having heard the counsel for respective parties, now the first question that arises is, whether the settlement done by the appellants with respondent No.2 will absolve the liability of respondent No.1, in spite of the rider clause in the settlement.

10. Needless to mention that, where a decree is passed against multiple defendants holding them jointly and severally liable to pay a sum, then each defendant is jointly and severally liable to pay the entire amount of decree. It is the plaintiff's choice to recover the amount of decree from either any one or both of the defendants. Thus, the position of law that a decree holder has the right to proceed against all judgment debtors or against any one of them cannot be disputed. No right is vested with the judgment debtor to question such step taken by the decree holders. In a compromise, if a decree holder, by accepting a part of the decretal amount, relinquishes his right to recover the remaining part of the decretal amount against a particular judgment debtor, it will not absolve the remaining judgment debtors so far as the remaining unsatisfied part of decree is concerned. The effect of compromise with one of the joint tortfeasors is that, it does not amount to a covenant not to recover the unsatisfied part of decree from the remaining tortfeasors because this is not a full satisfaction for the tort alleged to have been committed by the other tortfeasors. This was an election on the part of the decree holder to pursue the several remedies against a particular joint tortfeasor. Thus the release of one joint tortfeasor from the decree will not release all the joint tortfeasors.

11. From the case of Sonba (*supra*) relied upon by the learned counsel for respondent, it can be deduced that the learned Single Judge of this Court has held that once the claimant has agreed to take the compensation amount

towards full and final settlement as per the award of Lok Adalat, then it will be final and binding on the parties and the appeal for enhancement of compensation will not be maintainable. However, in the present case, the full and final settlement was to the extent of absolving respondent No.2 only with a rider clause to recover the balance amount of award from the remaining respondent i.e. present respondent No.1. Therefore, the decision in the case of Sonba (supra) will not be applicable.

12. So far as the case of Khushro (supra) is concerned, in that case the plaintiffs had filed a suit for damages against six defendants alleging that they were jointly and severally liable. The sixth defendant rendered an apology which was accepted by the plaintiffs and a decree was passed in terms of the compromise with the sixth defendant. The Supreme Court held that the compromise with the sixth defendant will not operate as a bar to sue the remaining defendants. Relevant portion of the judgment has been reproduced as under:

"17. It seems to us, however, that the rule of common law prior to *Brown v. Mooton*, 80 HR 47 and the rule adopted by the United States Supreme Court is more in consonance with equity, justice and good conscience. In other words, the plaintiff must have received full satisfaction or which the law must consider as such from a tortfeasor before the other joint tortfeasors can rely on accord and satisfaction. This rule would recognise that the liability of tortfeasors is joint and several.

What is full satisfaction will depend on the facts and circumstances of the case. For example, the acceptance of Rs. 25 in the case of *Ram Kumar Singh v. Ali Hussain*, ILR (1909) 31 All 759 would not be a case of full satisfaction.

18. In this case an apology was received from the defendant Rabadi and accepted and embodied in a decree. This cannot be treated to be a full satisfaction for the tort alleged to have been committed by the appellants defendants. But this must be treated as an election on the part of the plaintiffs to pursue his several remedy against the defendant Rabadi."

13. Applying this ratio to the present case, it can be observed that the compromise clearly mentions that this settlement absolves respondent No.2 - the driver of the offending vehicle and the petitioner shall be free to recover the balance amount of the award as well as enhanced amount of compensation after the judgment of the High Court, if any from respondent no.1- the owner of the offending vehicle. The settlement with respondent No.2 cannot be termed to be full accord and satisfaction of the decree as mentioned in the case referred above on the ground that the petitioner accepted the part payment of the award in the form of Rs 40,00,000/- out of the total amount of 50,74,821/-. In these peculiar circumstances, it is not open to respondent No.1 to claim the benefit of settlement at par with respondent No.2 when the terms of the settlement clearly state otherwise. Therefore, the case of Khushro (supra) will also not be helpful to respondent No.1. Rather, it supports the contentions of the appellants.

14. In wake of the above said discussion, I do not find substance in the objection raised by respondent No.1, hence, the objection is overruled.

15. Now, let me consider the appeal on merits. The main contention in this appeal is that the Tribunal erred in not considering the deceased's income mentioned in the income tax return for the year 2015-16 at Exh-83, which was filed after the death of the deceased and this omission led to an incorrect assessment of the deceased's income and consequently, an improper award was passed by the Tribunal.

16. Perusal of the impugned award goes to show that the Tribunal, in para 28 of its judgment considered the income of the deceased as Rs.2,03,300/- for the year 2013-14 and Rs.2,27,600 for the year 2014-15. However, the Tribunal refused to take into consideration the income of the deceased for the year 2015-16 mentioned in the income tax return i.e. Rs.4,32,000/- on the ground that it is not a reliable document. The Tribunal, by taking into account the growth in income of the earlier year, assessed the income of the deceased for the year 2015-16 and on the basis of projection, added the amount of Rs.24,300/- in income for the year 2014-15.

17. The contention of the learned counsel for the appellants is that, just because the income tax return for the year 2015-16 was filed after the death of the deceased, it cannot be ignored. To buttress his submission, he seeks to rely on the case of Meena Pawaia and Ors. vs. Ashraf Ali and Ors., (2021) 17 SCC 148, wherein the income tax return filed after the death of the deceased was considered while assessing the income of deceased. The appellants also placed reliance on the case of Malarvizhi and Ors. vs. United India Insurance Company Limited and Anr., (2020) 4 SCC 228.

18. As against this, the learned counsel for the respondent seeks to rely on the decision of the Hon'ble Supreme Court in the case of V. Subbulakshmi and Ors. vs. S. Lakshmi and Anr., (2008) 4 SCC 224, wherein the income tax return filed after the death of the deceased was not considered.

19. I have gone through the decisions of the Supreme Court relied upon by the parties. In Meena Pawaia (supra) and Malarvizhi (supra), the income tax return filed after the death of the deceased came to be relied upon, whereas in the case of V. Subbulakshmi (supra), the same has not been considered. However, none of these Authorities laid down any ratio that an income tax return filed after the death of the deceased must be considered by the Court. Thus, the consideration of income shown in the income tax return submitted before the Income Tax Authority after the death of the assessee will depend upon the facts and circumstances of each case. The tribunal has to take into consideration the surrounding circumstances.

20. In the present case, the appellants have produced income tax return of the deceased for the years 2013-14, 2014-15 and 2015-16. The difference of income between the years 2013-14 and 2014-15 was Rs.24,300/-. The income of the

deceased was increased by this figure in the year 2014-15. However, the income tax return for the year 2015-16, which is admittedly filed after the death of the deceased as well as after filing of the petition shows a surge in the income from Rs.2,27,600/- for 2014-15 to Rs.4,34,000/- for 2015-16, which is almost double the income for the year 2014-15. That too, in spite of the fact that the deceased was bedridden and in an unconscious state from the date of the accident i.e. from 20.02.2015 till the time of his death and even thereafter, no explanation has been given with respect to the steep surge in the income of the deceased, particularly in those ten months of the year 2015-16. Therefore, I do not see any discrepancy in the findings of the Tribunal in rejecting the income of deceased shown in the income tax returns for 2015-16. Hence, no interference is required in the findings of the Tribunal. Rather, the assessment of loss of dependency has been done on the basis of the best judgment of the Tribunal; therefore, I do not find merit in the submission of the learned counsel for the appellants and it is liable to be dismissed. Accordingly, the appeal is dismissed.