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**(2016) 06 BOM CK 0017**

**In the Bombay High Court**

**Case No :** First Appeal No. 1283 of 2014 along with Civil Application No. 3748 of 2014

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Sushila Harendra Bahadur Singh

RESPONDENT

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**Date of Decision :** 24-06-2016

**Acts Referred:**

**Citation :** (2016) AAC 1905 : (2016) 4 AIRBomR 782

**Hon'ble Judges :** R.M. Savant, J.

**Bench :** Single Bench

**Advocate :** Mr. D.S. Joshi, Advocate, for the Appellant; Mr. S.N. Sheth, Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R.M. Savant, J.(Oral)&mdash;Admit. With the consent of the Learned Counsel for the parties heard forthwith.

2. The above First Appeal challenges the judgment and order dated 19.09.2013 passed by the Learned Member of the Motor Accident Claims Tribunal, Mumbai ("MACT" for short), by which order, the application in question being Application No. 3534 of 2005 came to be allowed and the claimants were held entitled to compensation of Rs. 8,01,000/- which was directed to be paid jointly and severally by the owner of the vehicle and the Insurance Company i.e. Appellant herein.

3. The facts involved in the above First Appeal can in brief be stated thus :-

The Respondent Nos. 1 to 5 herein are the original claimants and are the widow of the deceased one Harendra Singh Lal Bahadur Singh, children of the deceased and the parents of the deceased. The said Harendra was driving a motorcycle bearing No. MH-04-T-7744 on 19.03.2000 from Mumbai towards Panvel. A motor truck bearing No. MH-04-H-1137 came from the Poynad side of the Panvel-Mumbra road and proceeding towards Virar in fast speed and in a rash and

negligent manner knocked down the said Harendra. As a result the said Harendra sustained serious injuries and was removed to the MGM, Kamane hospital but he succumbed to the injuries in the hospital. The accident was reported to the Taloja Police Station by PSI Yashwant Chawan and upon his report offence was registered at Taloja Police Station being C.R. No.32 of 2000 against the driver of the truck. The said offence was registered under Section 304-A, 279, 338 and 427 of the IPC. During the course of the investigation, the investigating officer drew spot panchanama, inquest panchanama and recorded statement of the witnesses. The doctor who conducted the autopsy of the deceased gave the reason of the death of the deceased as "Cardio respiratory failure due to head injury neurological shock due to vehicle accident". The Applicants thereafter filed instant Application No.3534 of 2005. After narrating the aforesaid incidents in the said application, it was the case of the Applicants that the deceased Harendra was 35 years of age and was doing business of crane hiring and earning Rs. 5000/- per month. It was further the case of the Applicants that due to the accidental death of the deceased, they have sustained heavy financial loss and mental agony. They therefore prayed that they be compensated in the sum of Rs. 7,00,000/- and that the insurer and the owner of the vehicle be held jointly and severally liable for the same.

4. In the proceedings before the Trial Court the owner of the vehicle who was the opposite party did not appear and therefore the claim was proceeded ex-parte against him.

5. On behalf of the Insurance Company a written statement came to be filed wherein the case of the Applicants was denied that the accident took place on account of the rash and negligent driving of the driver of the truck in question and it was sought to be contended that the deceased was driving the motorcycle No. MH-04-T-7744 in a rash and negligent manner. On the basis of the pleadings on record, the Trial Court framed two issues which were inter-alia to the following effect :-

"1. Whether the applicants prove that deceased had sustained severe injuries on 19.03.2000 at about 5.30 hrs at Village Dharna, on Panvel-Mumbra Road, Opposite Hotel Goodluck on account of rash and negligent driving by driver of offending vehicle bearing No. MH-04-H-1137 death of deceased was caused ?

2. Whether applicants are entitled to claim compensation as prayed for ? If yes, from whom and what order ?"

6. The claimants led their evidence in support of their assertions. The Applicant No.1 examined herself and produced certified copies of the FIR at Exh.21, spot panchanama at Exh.22, inquest panchanama at Exh.23, copy of insurance policy at Exh.24, cause of death certificate at Exh.25, original death certificate at Exh.26, Ration Card at Exh.27, certified copies of Income Tax Returns at Exh.28, character certificate at Exh.29, true copies of Adhar Cards of Applicant Nos. 1 to 3 at Exh.30.

7. The MACT on the basis of the material on record came to a conclusion that the accident had occurred on account of the rash and negligent driving of the driver of the truck and thereafter held that the Applicants would be entitled to compensation of Rs. 8,01,000/-. In so far as whether the accident had occurred on account of the rash and negligent driving of the driver of the truck is concerned, the MACT relied upon the judgment of the Apex Court reported in (2009) II ACC page 444 (SC) in the matter of Vimala Devi and others v. H.P.S.R.T.C. And others, wherein the Apex Court has held that strict proof of accident caused by BGP. 5 of 13 (901)-FA-1283-14.doc particular bus in particular manner may not be possible to be done by claimant but the claimants are merely to establish their case on touchstone of preponderance of probabilities.

8. In the instant case, the MACT held that the circumstantial evidence which was brought on record by way of FIR, spot panchanama and other police papers coupled with the fact that the said fact was not denied or disputed by the owner of the vehicle as he has failed to appear in the proceedings and filed his say, the MACT therefore held that the said issue was proved against driver of the vehicle. In so far as to whose liability would be to pay the compensation is concerned, the MACT held that since the truck was admittedly insured with the Insurance Company, the owner of the offending truck as well as the Insurance Company would be jointly and severally liable to pay compensation. The MACT thereafter proceeded to determine just compensation that would be payable to the claimants. The MACT observed that on the basis of the material on record it could be taken that the deceased was 35 years of age at the time of his death. In so far as the earning capacity of the deceased was concerned, the MACT adverted to the Income Tax Returns for the assessment year 1997-98 and 1998-99 of the deceased. In so far as the assessment year 1997-98 is concerned, the taxable income was Rs. 38,950/- and for the subsequent assessment year 1998-99, the taxable income shown was Rs. 42,560/-. doc the said basis, the MACT observed that the deceased was earning approximately Rs. 3000/- per month by carrying out the business of Crane Hiring under the name and style of Kaushal Crane Hiring which was his proprietorship concern. In so far as the future prospects are concerned, the MACT relied upon the judgment of the Apex Court reported in (2012) II ACC 377 (SC) in the matter of Santosh Devi v. National Ins. Co. Ltd. and others, wherein the Apex Court has held that in respect of self employment, it would be reasonable to say that a person would get a 30% increase in his total income over a period of time. The MACT on the said basis observed Rs. 900/- would have to be added to Rs. 3000/- which makes the figure of Rs. 3900/- per month and rounded it up to Rs. 4000/- and by deducting 7th amount for the personal expenses held that the monthly contribution to the family would come to Rs. 3000/- and therefore the yearly dependency would be in the sum of Rs. 36,000/- then applying the multiplier of 16, the MACT came to a conclusion that the total dependency would be in the sum of Rs. 5,76,000/- for which the Applicants would be entitled to. The MACT

also granted Rs. 1,00,000/- for the loss of consortium and Rs. 1,00,000/- for loss of love and affection and Rs. 25,000/- for funeral expenses. The MACT therefore as indicated above granted compensation of Rs. 8,01,000/- to the claimants. As indicated above, it is the said Award dated 19.09.2013 passed by the Learned Member of the MACT, Mumbai which is taken exception to by way of the above Petition.

9. Heard the Learned Counsel for the parties.

10. The Learned Counsel appearing for the Appellant/Insurance Company Mr. D.S. Joshi would contend that though the accident took place on 19.03.2000, the instant claim Petition was filed only in the year 2005 and therefore was barred by limitation. It was next contended that the MACT had erred in Awarding compensation that it had Awarded without considering the fact that there was contributory negligence on the part of the deceased. It was also contended that the MACT had erred in computing the income as well as future prospects without there being any evidence on record and that the same was also on the higher rate and that the MACT had erred in granting Rs. 1,00,000/- for loss of consortium and also for loss of love and affection.

11. Per contra, the Learned Counsel appearing on behalf of the Respondent Nos. 1 to 3 herein Mr. S.N. Sheth would support the impugned Award. The Learned Counsel would draw this Court's attention to the fact that the owner of the vehicle has not even participated in the proceedings and Appellant Insurance Company has not led any evidence. It was the submission of Mr. S.N. Sheth that in so far as the issue of limitation which is sought to be raised by the Learned Counsel appearing for the Appellant, the said issue is no more res-integra being covered by the judgment of the Apex Court reported in 1996 ACJ 1013 (SC) in the matter of Dhannamal v. D.P. Vijayvargiya and others. The Learned Counsel would next contend that in so far as future prospects are concerned, it is well settled by the judgment in Santosh Devi's case (supra) that even in cases of self employment 30% increase is reasonable. In so far as the last submission of Mr. D.S. Joshi is concerned, the Learned Counsel Mr. S.N. Sheth relied upon the judgment of the Apex Court reported in 2013 ACJ 1403 (SC) in the matter of Rajesh and others v. Rajbir Singh and others, wherein the Apex Court has deemed it appropriate to grant Rs. 1,00,000/- for loss of consortium and also for loss of love and affection. It was therefore the submission of the Learned Counsel Mr. S.N. Sheth that the amount awarded is reasonable and therefore does not require any interference from this Court in its Appellate Jurisdiction.

12. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The first issue that is required to be addressed is the issue of limitation which is sought to be raised by the Learned Counsel for the Appellant Mr. D.S. Joshi. No doubt, in the instant case, the accident took place on 19.03.2000 and the claim Petition was filed in the year 2005. In so far as the claim Petitions are concerned, the limitation was prescribed by Section 166(3) of the said Act. In so far as Section 166(3) is concerned, a limitation of one year

was provided in the said provision as it stood till the year 1994. In the year 1994, an amendment took place to the said provision. By virtue of which the limitation was removed. The issue of limitation in so far as the filing of claim Petition is concerned was subject matter before the Apex Court in Dhannamal's case (supra). The Apex Court having regard to the amendment which came into force on 14.11.1994 held that from the said date there is no limitation for filing claims before the Tribunal in respect of any accident. The Apex Court observed that the period of limitation was removed in view of the fact that the Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on the ground of limitation. Hence, in so far as the said issue is concerned, the same has been concluded by the judgment of the Apex Court in Dhannamal's case (supra) and therefore the contention urged by Mr. D.S. Joshi is required to be rejected.

13. The next contention is of the contributory negligence of the deceased. However, though the said case was sought to be set up by the Insurance Company in the Tribunal neither the Insurance Company led any evidence nor the owner participated in the proceeding before the MACT. Hence, in the absence of any evidence being led by the Insurance Company, the MACT was right in relying upon the FIR, spot panchanama and other police papers to come to a conclusion that accident had occurred on account of the rash and negligent driving of the driver of the truck. Considering the nature of the proceedings involved, the MACT was also right in holding that the manner as to how the accident has occurred can be concluded on the basis of preponderance of probabilities. Hence, the finding of the MACT on account of the rash and negligent driving of the driver of the truck cannot be taken exception to.

14. Now coming to the third contention urged on behalf of the Appellant Insurance Company as regards computation of income and future prospects. In the said context, it is required to be noted that there is evidence on record to show that the deceased was doing business of Crane Hiring. The Income Tax Returns for the assessment year 1997-98 and 1998-99 were placed on record. The said Income Tax Returns disclose the taxable income of the deceased. The MACT on the said basis has come to a conclusion that the monthly income of the deceased was in the region of Rs. 3000/- per month from the said business. In so far as future prospects are concerned, though a contention was sought to be raised that in respect of self employment, there cannot be any future prospects. The MACT having regard to the judgment in Santosh Devi's case (supra) held that even in respect of self employment, it would be reasonable to hold that there would be 30% increase in income. The MACT on the said basis held that Rs. 900/- would have to be added to the monthly income of Rs. 3000/- making the total of Rs. 3900/- and rounded up the same to Rs. 4000/-. The MACT thereafter deducting 7th amount for personal expenses held that the monthly dependency would be Rs. 3000/- per month and Rs. 36,000/- per year and considering age of the deceased which was 35 years applied the multiplier by 16

and held that the dependency would be the sum of Rs. 5,76,000/-.

15. In my view, having regard to the fact that there was evidence by way of Income Tax Returns which was filed on behalf of the claimants as well as considering the law laid down by the Apex Court in Santosh Devi's case (supra), the amount arrived at by the MACT on account of total dependency can be said to be just and reasonable. In so far as the last contention of the Learned Counsel Mr. D.S. Joshi that Awarding Rs. 1,00,000/- each for loss of consortium and also loss of love and affection, in my view, the said contention cannot be accepted in the light of the judgment of the Apex Court in Rajesh's case (supra). In the said case also the deceased were in the age group of 30 to 35 and the Apex Court therefore deemed it appropriate to grant Rs. 1,00,000/- on account of loss of consortium as also for the loss of love and affection . The award of the said amounts therefore cannot be said to be exorbitant or excessive. Hence, taking an overall view of the matter and considering the fact that the deceased was 35 years old, the amount Awarded by the MACT aggregating to Rs. 8,01,000/- can be said to be just compensation. In that view of the matter, no case for interference is made out. The First Appeal is accordingly dismissed.

16. In view of the dismissal of the First Appeal, the Civil Application does not survive and to accordingly stand disposed of as such.