



IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

FIRST APPEAL NO. 770 / 2007

APPELLANT:

The New India Assurance Company Limited, having its Branch at Dhantoli, Nagpur, through the Regional Manager, The Regional Office, Dr. Babasaheb Ambedkar Bhawan, Seminary Hills, Nagpur 440 006.

VERSUS

RESPONDENTS:

- 1] Smt. Sunita wd/o Satyagrah Patil, aged about 40 years, occupation : household
- 2] Mayur s/o Satyagrah Patil, aged about 23 years, occupation : Not known
- 3] Badal s/o Satyagrah Patil, aged about 20 years, occ : Education / Student
- 4] Akash s/o Satyagrah Patil, aged about 16 years, occupation : Education / Student.
The respondent no.4 being minor through his natural guardian – Mother – Respondent No.1 Smt. Sunita Satyagrah Patil
- 5] Ziblabai wd/o Nagoraoji Patil, aged about 65 years, occ : Household work
The respondent no.1 to 5 all r/o Surendranagar, r/o Wani, District: Yeotmal
- 6] Gurva s/o Nirjan Singh aged major, occ : driver, r/o Near Panchpawali Post Office, Nagpur District : Nagpur [deleted by order dated 7.10.2008
- 7] Inderpreet Daljeet Singh Tuli, r/o G.E. Road, Tatibandh, Raipur at and post Taluka and district : Raipur [M.P. - Chattisgarh]

Mr. A.J. Pophaly, advocate for appellant
Mr. Bharat Vora, advocate for respondent no.1 to 5.

CORAM: M.N. GILANI, J.

DATE: 30/10/2012.

ORAL JUDGMENT:

This appeal arises from the judgment and award dated 7.6.2007 passed by the Motor Accident Claims Tribunal, Yavatmal in Claim Petition No.229/2000 whereby the claimants were awarded compensation of Rs.20,40,000/- on account of death of Satyagrah Patil which occurred on 25.12.1994 in a motor vehicular accident involving motor cycle MH-29E-7168 and the truck bearing no MO- 23D/9241.

2] On the fateful day the deceased was riding pillion on the motorcycle which was being driven by one Ghanshyam. When the motorcycle reached near M.I.D.C. Lohara on Yavatmal - Darvha Road, a truck coming from opposite direction dashed against it. Driver – Ghanshyam survived, but the deceased Satyagrah came under the wheels of the truck and died. At the time of death the deceased was serving as a welder with the Western Coalfields Limited. Having regard to his age and the salary drawn by him, the learned Tribunal considered the loss of

dependency at Rs.120,000/- p.a. and by applying multiplier of 17 awarded compensation as stated above.

3] The New India Assurance Company Limited – appellant herein has assailed the award mainly on two grounds. Firstly, it is contended that deceased also contributed in causing accident and therefore, the liability ought to have been apportioned between the owner of the truck and the motorcycle. The second contention is that the learned Tribunal committed error in arriving at the figure of loss of dependency which according to the learned counsel for the appellant is inconsistent with the evidence on the record and there is further error in choosing multiplier of 17.

4] Mr. Vora, learned counsel appearing for the respondents/ original claimants, supported the judgment and award.

5] The points that arise for my consideration are :

- A] Whether the driver of the motorcycle contributed in causing the accident, if yes, to what extent?
- B] Whether the quantum of compensation awarded by the Tribunal is exorbitant and de-hors the evidence on record?

6] Ghanshyam the driver of the motorcycle has been

examined by the claimants. He deposed that on 25.12.1999 he and deceased were proceeding on the motorcycle from Yavatmal to village Umarda. It was 3.30 p.m. When the motor vehicle reached near M.I.D.C. Lohara, he saw offending vehicle i.e. truck coming from the opposite direction in high speed. Although he was keeping left the truck dashed against the motorcycle. After the dash the deceased fell on the right side and came under the wheels of the truck. Death occurred instantaneously. In his cross examination, suggestions were given to point out that at the spot there was a turning and it was not possible for him to notice the truck coming from the opposite direction. In further part of his cross examination he stated that he was keeping left and because of the negligence of the driver of the truck, accident occurred. The police after investigation registered offence against the driver of the truck which is evident from the copy of the First Information Report Exhibit 40. In the spot panchnama Exhibit 41, there is no mention of the fact that on the spot the road was curved. The panchnama being so cryptic, nothing can be gathered about as to who was at fault. Thus there remains evidence of Ghanshyam which is corroborated by his previous statement at exhibit 43. In that view of the matter, the learned Tribunal was justified in holding that the accident occurred due to rash and negligent driving of the truck.

7] D.W. 3 – D. Manogaran has been examined to prove the details of service and salary drawn by the deceased while he was alive. According to this witness the deceased was appointed as helper on 11.8.1988. Since the year 1992 he started serving as welder. He was permanent employee of the department. His date of birth was 22.1.1966. On record the salary slips under exhibit 55 have been placed. However, these salary slips are upto March 1998. There is a statement at exhibit 58 which indicates the future salary of the deceased. Salary for the month of January i.e. for next month of the death of the deceased, was Rs.7,457/- which includes basic and dearness allowance. Instead of considering quantum of his salary, the learned Tribunal assumed the salary of the deceased at Rs.27,000/-, mainly on the basis of the future increase. The correct approach would be to assume income of the deceased at Rs.7000/- per month.

8] Mr. Vora, learned counsel relied upon the case Santosh Devi ..vs.. National Insurance Company Ltd & ors reported in II(2012)ACC 377(SC), to support his contention that considering the age of the deceased and long spell of remaining service tenure 30% increase will have to be added. Thus, $7000 \times 12 = 84,000$ +30% increase i.e. 25200/-, that means the total annual income which will have to be assumed for fixing the amount of compensation approximately comes to Rs.1,09,000/-. The Tribunal

deducted 1/3 of the amount towards personal and living expenses of the deceased had he been alive. As laid down in case of Sarla Verma (Smt) And Others ..vs.. Delhi Transport Corporation & Another reported in (2009) 6 SCC 121, if the number of dependents are 4 to 6, the deduction has to be 1/4. Adjusting the amount of deduction the total amount of loss of dependency approximately can be worked out at Rs.83,000/-. The learned Tribunal applied multiplier of 17. However, in case of Sarla Verma [supra] the multiplier for the age group of 31-35 years is 16. After applying this multiplier the compensation to which the claimant would be entitled under all the heads is as follows:

Rs.83,000 X 16 = 13,28,000 + 10,000 loss of consortium, +5000 towards loss of funeral expenses + 10,000 towards loss of love and affection. The total comes to Rs.13,53,000/-, rounded at Rs.13,55,000/-. To this extent the judgment and award impugned will have to be modified.

9] The appeal succeeds partly. The judgment and award passed by the learned Tribunal is modified as under:

A] Claimants would be entitled to the total amount of Rs.13,55,000/- inclusive of no-fault liability amount, with interest @ 7.5% from the date of filing of the application [From 31/1/2000] till the date of its realisation /deposit.

B] Till date an amount of Rs.7,50,000/- has been

withdrawn by the claimants. In that view of the matter, the apportionment of the compensation shall be as under:

C] The amount of Rs.6,00,000/-[Rs. Six lakh] be invested in the name of the claimant/ respondent no.1 Sunita wd/o Satyagrah Patil for a period of five years or more with an arrangement that she shall receive the interest accrued thereon monthly or quarterly and on maturity, she shall receive the entire amount without reference to this court.

D] The amount of Rs.1,00,000/-[Rs. One lakh] be invested in the name of Ziblabai Patil for a period of 2 to 3 year, with an arrangement that she shall receive the interest accrued thereon monthly or quarterly and on maturity she shall receive entire amount without reference to this Court.

E] The amount of Rs.1,00,000/- [Rs. One lakh] each be deposited in the name of the respondents /applicant no.2,3,4 for a period of 2-3 years with a direction to receive the amount on maturity without reference to this court. Balance amount be paid by cross cheque to respondent no.1.

F] No order as to costs.

JUDGE

SMP.