RANI & ORS. A

v.

NATIONAL INSURANCE COMPANY LTD. & ORS.

(Civil Appeal Nos. 9078-9079 of 2017)

JULY 31, 2018 B

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND DR. D. Y. CHANDRACHUD, JJ.]

Motor Vehicles Act, 1988:

s.166 – Motor accident – Resulting in death of one and injury to another person – Two separate claims (one by legal representatives of deceased and another by the injured person) – Tribunal granted compensation of Rs.4,53,000/- to the legal representatives of the deceased and of Rs.1,72,700/- to the injured claimant – Insurance Company filed appeal – High Court enhanced the compensation amount in respect of the deceased and absolved the insurance company from paying the compensation amount fastening the liability on the owner of the offending vehicle – In appeal, claimants sought setting aside the order absolving the insurance company as well as sought enhancement of the compensation amount – Held: Claimants are not entitled to enhancement of compensation as the High Court has granted more than just compensation – However, Insurance Company is directed to pay the compensation amount to the respective claimants, with liberty to recover the same from the owner of the offending vehicle. C D E

Partly allowing the appeals, the Court F

HELD: 1.1 The legal representatives of the deceased did not file any appeal challenging the award passed by the Tribunal determining the compensation amount. It is Insurance Company who had challenged the award in favour of the claimants. Nevertheless, the High Court enhanced the compensation amount payable to them by invoking power under Order 41 Rule 33 of the Civil Procedure Code (C.P.C.). The Insurance Company has not challenged the said view taken by the High Court as it has already succeeded in getting a finding from the G

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A **High Court that the liability to pay compensation amount was restricted to that of the owner of the offending vehicle. [Para 11][371-D-F]**

1.2 The Tribunal had found that no evidence regarding the income of the deceased was produced by the claimants. That finding has not been over-turned by the High Court. The High Court, however, relied upon the driving licence and training certificate of the deceased and on that basis, determined the notional income of the deceased at the time of accident at Rs.10,000/- per month. Neither the driving licence nor the certificate could *per se* be made the basis to assume or infer that the deceased was gainfully employed at the relevant time and moreso was earning income of Rs.10,000/- per month. Thus, the reason assigned by the High Court for enhancing the notional income of the deceased from Rs. 3000/- to Rs.10,000/- per month is irrational and tenuous. No tangible logic has been assigned to discard the just finding recorded by the Tribunal in the backdrop of lack of evidence regarding the monthly income of the deceased. [Para 13][372-A-C]

1.3 The High Court has already granted more than just compensation amount to the legal representatives of the deceased. In that, even if the claim of the appellants regarding future prospects, additional medical expenses and additional interest amount was to be accepted, on the basis of the notional income of Rs.5000/- (Rupees five thousand) per month, the question of awarding additional or further compensation amount to the appellants in M.F.A. No.5874 of 2011 does not arise. The appeal, however, would succeed to the limited extent that the amount of compensation determined by the High Court shall be first paid by Insurance Company with liberty to recover the same from the owner of the offending vehicle. [Para 14] [372-D-F]

Singh Ram v. Nirmala and Ors. **(2018) 3 SCC 800 ;** *Pappu and Ors. v. Vinod Kumar Lamba and Anr.* **(2018) 3 SCC 208 : [2018] 1 SCR 195 – relied on.**

2. Even in respect of the appeal filed by the injured claimant, the Tribunal had found that he failed to produce any evidence regarding his monthly income and the permanent disability suffered by him had been determined as not exceeding

10% to the whole body and compensation had been awarded to him on that basis. Resultantly, in this appeal also, Insurance Company is directed to pay the compensation amount awarded to the claimant in the first place, with liberty to recover the same from the owner of the offending vehicle. [Para 15] [373-A-C]

Case Law Reference

(2018) 3 SCC 800	**relied on**	**Para 14**
[2018] 1 SCR 195	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9078-9079 of 2017.

From the Judgment and Order dated 12.02.2016 of the High Court of Karnataka at Bengaluru in M.F.A. No. 5874/2011(MV) C/W M.F.A. No.5876/2011(MV).

Anand Sanjay M. Nuli, Dharm Singh, Nanda Kumar K.B. (for M/s. Nuli & Nuli, Advs.) Advs. for the Appellants.

Parmanand Gaur, Ekansh Bansal, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. These appeals take exception to the common judgment and order dated 12th February, 2016 passed by the High Court of Karnataka at Bengaluru in M.F.A. No.5874 of 2011 (MV) and M.F.A. No.5876 of 2011 (MV). Both these appeals were filed by the respondent No.1 (National Insurance Co. Ltd.) questioning the correctness of the judgment and Award passed by the Motor Accident Claims Tribunal, Bangalore dated 3rd January, 2011 in MVC No.7055 of 2009 and 7056 of 2009, respectively.

2. The former claim petition MVC No.7055 of 2009 was filed by the legal representatives of Satish (the deceased) who had succumbed to the injuries suffered, in an accident which occurred on 17th March, 2009, while he was riding a motorcycle bearing Registration No.KA-05-EJ-4029 along with his friend, Anand, who was travelling with him as a pillion rider. Police complaint regarding the accident was lodged by Anand, appellant in Civil Appeal No.9079 of 2017. The accident was caused by a lorry bearing Registration No.MH-43-U-3365, which was being driven at a high speed in a rash and negligent manner.

A The said lorry came from behind and hit the motorcycle on which Satish and Anand were going from Bangalore towards Tumkur. Both of them fell down and suffered serious injuries. Satish, who was riding the motorcycle, succumbed to his injuries. The appellant Anand was hospitalized as an indoor patient and had to undergo surgeries for fracture of collies (left) and ACL tear with MCL tear, right knee with B hemarthrosis.

3. Resultantly, separate claim petitions were filed before the MACT at Bangalore by the legal representatives of the deceased (Satish) and by Anand. The claim petitions proceeded *ex parte* against the owner of the offending lorry. After analysing the relevant evidence, the C Tribunal found that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle. The Tribunal also noted that the respondents had not challenged the chargesheet materials and other documents to disprove the case of the claimants and as such, there was no material to suggest that it was a case of contributory D negligence.

4. Having said that, the Tribunal proceeded to determine the compensation amount to be paid to the claimants. While doing so, it has noted that the legal representatives of the deceased (Satish) did not produce any document to show his monthly income from mechanic work. E The Tribunal noted that the age of the deceased (Satish) was around 30 years at the relevant time when the accident occurred, and there were three dependents in his family namely, his wife, daughter and mother (claimants). In the absence of evidence regarding income of the deceased (Satish), the Tribunal took notional income at the rate of Rs.3,000/- per month and after providing deduction of 1/3rd amount F towards personal expenses and applying multiplier of 17, determined the loss of dependency at Rs.4,08,000/- (Four Lakh Eight Thousand only). In addition, the Tribunal granted Rs.5,000/- towards transportation of dead body from hospital to home, Rs.10,000/- under the head of loss of consortium, Rs.10,000/- under the head of loss of love and affection, G Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral and obsequies ceremonies. The total compensation amount payable to the legal representatives of the deceased (Satish) was determined at Rs.4,53,000/- (Four Lakh Fifty Three Thousand only) with interest at the rate of 6% per annum from the date of petition till the date of deposit by the respondents. The Tribunal issued further directions about the H disbursal and appropriation of the amount amongst the three claimants.

5. As regards the claim petition filed by Anand (claimant) in M.V.C. No.7056 of 2009, the Tribunal noted that he had suffered fracture of collies (left) and ACL tear with MCL tear, right knee with hemarthrosis and had undergone operation for his left hand with K-wire. He was an indoor patient in the hospital for 4 days and had spent huge amounts towards medicine, treatment, food, conveyance and other charges. After analysing the evidence of PW-2 and PW-3, the Tribunal found that the permanent disability suffered by Anand was not exceeding 10% of the whole body due to fracture of collies and right knee injury. The Tribunal further held that no evidence had been produced by him to prove his income and therefore, the Tribunal assessed his notional income at Rs.3,000/- per month. The Tribunal then proceeded to grant compensation amount payable to Anand towards pain and suffering at Rs.30,000/-, medical expenses at Rs.26,500/-, loss of earning during laid up period at Rs.15,000/-, loss of future earning on account of permanent disability at Rs.61,200/-, loss of amenities and future unhappiness at Rs.15,000/-, attendant charges, diet and travelling at Rs.10,000/- and future medical expenses at Rs.15,000/-. The total compensation amount was Rs.1,72,700/- (One Lakh Seventy Two Thousand and Seven Hundred Only) payable by the respondents with interest at the rate of 6% per annum from the date of petition till the date of deposit with the rider that the amount towards future medical expenses would not carry any interest. The operative order passed by the Tribunal reads thus:

"**O R D E R**

Both the petitions M.V.C. No.7055/2009 & 7056/2009 filed by U/Sec. 166 of MV Act by the petitioners are hereby partly allowed against the respondents with costs.

The petitioners in M.V.C.No.7055/2009 and 7056/2009 are awarded with total compensation amount of Rs.4,53,000/- (Rupees four lakhs fifty three thousand only) and Rs.1,72,700/- (Rupees one lakh seventy two thousand seven hundred only), respectively in both the cases, with 6% interest p.a. from date of petitions till date of deposit. Future medical expenses does not carry any interest in M.V.C. No.7056/2009.

Both the respondents are jointly and severally liable to pay above said compensation amount with costs and interest to the petitioners. However, it is directed to 1st respondent to deposit

A above compensation amounts within 30 days from date of this order, after deducting any amount paid as interim compensation being insurer of offending vehicle.

After depositing of compensation amount awarded in M.V.C. No.7055/2009, a sum of Rs.1,15,000/- and Rs.60,000/-, in names
B of first and third petitioners respectively shall be deposited as FD in any nationalized or scheduled Bank of their choice for a period of 5 years. No loan on said FD is permitted without permission of this tribunal.

Remaining amount with occurred interest shall be released in
C the names of first and third petitioner through account payee cheques on proper identification respectively and separately.

Entire amount ordered in the name of minor second petitioner represented by her natural guardian and mother/first petitioner in M.V.C. No.7055/2009 shall be kept as FD in her name in any
D Nationalized or scheduled Bank of her choice for a period of 5 years or till she attain the age of majority, whichever is later. No loan on FD is permitted without permission of this tribunal. First petitioner is entitled to receive periodical interest on said FD amount for maintenance of petitioner No.2.

E After deposit of compensation amount in M.V.C. No.7056/2009, a sum of Rs.85,000/- shall be kept as FD in the name of petitioner in any Nationalized or scheduled Bank of his choice for a period of 5 years. No loan on FD is permitted without permission of this tribunal.

F Remaining amount together with accrued interest shall be released in the name of petitioner in M.V.C. No.7056/2009 through account payee cheque on proper identification.

Advocate's fees is fixed at Rs.500/- in each case.

Draw award accordingly."

G 6. Against this common award passed by the Tribunal, the respondent No.1 Insurance Company carried the matter in appeal before the High Court being M.F.A. No.5874 of 2011 (MV) and M.F.A. No.5876 of 2011 (MV), respectively. The principal issue raised by the Insurance Company was that the Tribunal could not have fastened the

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liability on the insurer as the offending vehicle did not possess a valid permit to operate in the State of Karnataka in view of Section 149(2)(a)(i)(a) of the Motor Vehicles Act, 1988. For, the permit was limited to the State of Maharashtra.

7. The appellants did not file substantive appeals but filed cross objections in the appeals filed by the insurer bearing M.F.A. Crob. Nos.187 and 188 of 2013. The said cross objections, however, came to be dismissed for non compliance of office objections. Nevertheless, in the appeal filed by the Insurance Company against compensation amount awarded to the deceased (Satish), the High Court chose to enhance the compensation amount payable to the legal heirs of the deceased (Satish) by taking into account his notional income as Rs.10,000/- per month. This was done by the High Court without overturning the finding recorded by the Tribunal that no evidence was produced by the claimants to substantiate the monthly income of the deceased (Satish) at the relevant time. What the High Court instead did was to rely upon the driving licence of the deceased and a training certificate of the deceased issued by Bajaj Auto limited, mentioning that Satish had attended the training. As aforementioned, the High Court redetermined the compensation amount payable to the legal representatives of the deceased (Satish) on a higher notional income of the deceased at the rate of Rs.10,000/- per month and arrived at the following calculation on the basis of which the appeal was disposed of in the following words:

> "9. The total compensation payable in M.F.A. No.5874/2011 comes to Rs.16,00,068/-, which is rounded off to Rs.16,00,000/- and the break up is as follows:-
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> | | | |
> |---|---|---|
> | (i) Towards loss of dependency | : | Rs.13,60,068/- |
> | (ii) Towards loss of consortium to R1 | : | Rs. 1,00,000/- |
> | (iii) Towards loss of love and affection to R2 | : | Rs. 1,00,000/- |
> | (iv) Conventional heads | : | Rs. 40,000/- |
> | Total | | Rs.16,00,068/- |

A 10. Accordingly, M.F.A.No.5874/2011 is allowed and the impugned judgment and award passed by the Tribunal in M.V.C. No.7055/2009 stands modified granting a compensation of Rs.16,00,000/- instead of Rs.4,53,000/- (enhanced compensation comes to Rs.11,47,000/-). The enhanced compensation shall carry interest at 6% p.a., from the date of petition till its deposit. The B Secretary, Legal Services Committee is directed to communicate the order to the owner of the offending vehicle and also intimate him to deposit the amount within a period of three months. In case of failure to deposit the amount by the owner of the offending vehicle, the Legal Services Committee to take action C as per law."

As regards the appeal preferred by the insurer against the Award passed in favour of Anand, appellant in Civil Appeal No.9079 of 2017, the same was disposed of on the following terms:

D "11. In M.F.A. No.5876/2011 the contention is liability cannot be fastened on the insurer as there is violation of permit by admittedly plying the vehicle in Karnataka. Therefore, liability is to be fastened on the owner.

12. M.F.A. No.5876/2011 is disposed of. The owner is directed to E satisfy the award. The amount in deposit is directed to be refunded to the insurer-appellant."

8. The insurer succeeded before the High Court, as the liability to pay compensation amount has been restricted to that of the owner of the offending vehicle. Therefore, the insurer did not file appeal against F the enhancement of compensation amount payable to the legal representatives of the deceased (Satish). The present appeal (Civil Appeal No.9078 of 2017), however, has been filed by the widow and daughter of the deceased (Satish). They have challenged not only the correctness of the view taken by the High Court absolving the insurer from the liability to pay compensation but also for further enhancement G of compensation amount. Similarly, Anand, the injured pillion rider, has also filed a separate appeal challenging the decision of the High Court in restricting the liability to pay compensation amount to that of the owner of the offending vehicle but also on the quantum of compensation amount. In both the appeals, it is alternatively urged that the compensation amount

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payable to the respective claimants should be first paid by the Insurance Company with liberty to recover the same from the owner of the offending vehicle, respondent No.2 herein.

9. The respondent No.1 Insurance Company, on the other hand, submits that by virtue of statutory provisions, it cannot be made liable to pay the compensation amount as the offending vehicle did not have a valid permit for being operated in the State of Karnataka. It is also contended that no direction be issued against the Insurance Company to pay and recover as it may be difficult for the Insurance Company to trace the owner of the offending vehicle. For, the owner of the offending lorry has not chosen to appear even before this Court.

10. We have heard Mr. Anand Sanjay M. Nuli, learned counsel appearing for the appellants and Mr. Parmanand Gaur, learned counsel for the respondents.

11. Taking the appeal filed by the legal representatives of the deceased (Satish) first, as mentioned earlier, they did not file any appeal challenging the award passed by the Tribunal determining the compensation amount payable to them at Rs.4,53,000/- (Four Lakh Fifty Three Thousand only) with interest at the rate of 6% per annum from the date of petition till the date of deposit. It is respondent No.1 Insurance Company who had challenged the award in favour of the claimants and in those appeals, the claimants (including appellants in Civil Appeal No.9078 of 2017) filed cross objections which, however, came to be dismissed for non- removal of office objections. Nevertheless, the High Court enhanced the compensation amount payable to them by invoking power under Order 41 Rule 33 of the Civil Procedure Code (C.P.C.). The Insurance Company has not challenged the said view taken by the High Court as it has already succeeded in getting a finding from the High Court that the liability to pay compensation amount was restricted to that of the owner of the offending vehicle, namely respondent No.2 herein.

12. Assuming that the legal representatives of the deceased (Satish) (appellant in Civil Appeal No.9078 of 2017) could ask for enhancement of the compensation amount in the present appeal whilst challenging the finding of the High Court to absolve the Insurance Company of its liability to pay the compensation amount, the question is whether the appellants are justified in claiming further enhanced compensation amount.

A 13. The Tribunal has found that no evidence regarding the income of the deceased (Satish) was produced by the claimants. That finding has not been over turned by the High Court. The High Court, however, relied upon the driving licence of the deceased and training certificate of the deceased issued by Bajaj Auto Limited and on that basis, determined the notional income of Satish (Deceased) at the time of accident at B Rs.10,000/- per month. Neither the driving licence nor the certificate could *per se* be made the basis to assume or infer that the deceased (Satish) was gainfully employed at the relevant time and moreso was earning income of Rs.10,000/- per month. In other words, the reason assigned by the High Court for enhancing the notional income of the C deceased (Satish) from Rs. 3000/- to Rs.10,000/- per month is irrational and tenuous. No tangible logic has been assigned to discard the just finding recorded by the Tribunal in the backdrop of lack of evidence regarding the monthly income of the deceased (Satish).

14. We are of the view that the High Court has already granted D more than just compensation amount to the legal representatives of the deceased (Satish). In that, even if the claim of the appellants regarding future prospects, additional medical expenses and additional interest amount was to be accepted, on the basis of the notional income of Rs.5000/- (Rupees five thousand) per month, the question of awarding additional or further compensation amount to the appellants in M.F.A. E No.5874 of 2011 does not arise. The appeal, however, would succeed to the limited extent that the amount of compensation determined by the High Court shall be first paid by the respondent No.1 Insurance Company with liberty to recover the same from the owner of the offending vehicle (respondent No.2 herein). We are inclined to allow the F appeal to this limited extent, keeping in mind the exposition in ***Singh Ram Vs. Nirmala and Ors.***[1] and ***Pappu and Ors. Vs. Vinod Kumar Lamba and Anr.*** [2]

15. Reverting to the appeal preferred by respondent No.1 Insurance Company against Anand (M.F.A. No.5876 of 2011), as noted G in paragraph Nos.11 and 12 of the impugned judgment reproduced above, the High Court disposed of the said appeal by absolving the insurer from the liability to pay compensation amount. As noticed earlier, the appellant (Anand) did not file any appeal against the award passed by

[1](2018) 3 SCC 800
H [2](2018) 3 SCC 208

the Tribunal for enhancement of compensation amount and the cross objection filed by him in the appeal filed by the Insurance Company came to be dismissed for non- prosecution. Even in respect of this appeal, the Tribunal had found that he failed to produce any evidence regarding his monthly income and the permanent disability suffered by him had been determined as not exceeding 10% to the whole body and compensation had been awarded to him on that basis. Resultantly, we intend to dispose of this appeal on the same basis by directing the respondent No.1 Insurance Company to pay the compensation amount awarded to the claimant (Anand) in the first place, with liberty to recover the same from the owner of the offending vehicle (respondent No.2).

16. In view of the above, the appeals are partly allowed by directing the respondent No.1 Insurance Company to first pay the compensation amount to the respective claimants as determined by the High Court and Tribunal as the case may be, with liberty to recover the same from the owner of the offending vehicle, respondent No.2. The impugned judgment and order passed by the High Court stands modified to this limited extent.

17. The appeals are allowed in the aforementioned terms with no order as to costs.

Kalpana K. Tripathy Appeals partly allowed.