Presented on : 03.12.2014
Registered on : 03.12.2014
Decided on : 11.04.2019
Duration : 4-Y 4 M 8-D

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI

APPLICATION NO.1887 OF 2014

(Presided over by Shri. S. M. Yallatti, Member)

1. Mrs. Ramjasi Shankarlal Gupta.
   Aged 47 Years, (Widow of deceased).
2. Mr. Mohanlal Madhav Gupta.
   Aged 80 Years, (Father of deceased).
   Residing at : Daud Mistry Chawl,
   Gaondevi Road, Room No.7,
   Opp. New Bakery, Bhandup (W),
   Mumbai – 400 078. **... Applicants**

Vs.

Mr. Vilas Pandurang Ghodke.
Shivaji Nagar, Vikhroli Park Site,
Vikhroli (W), Mumbai – 400 079.
(Owner of A/Rickshaw No.MH-03-AA-3300) **... Opp. Party**

And

Reliance General Insurance Co. Ltd.
4th Floor, Chintamani Avenue,
Western Express Highway,
Next to Virvani Industrial Estate,
Goregaon (E), Mumbai – 400 053.
Policy No.1109732339000472.
Valid From : 13-06-2013 to 12-06-2014 **... Insurer**

Appearances :-
Mrs. E. H. Shetty - Advocate for the Applicant.
Opposite Party - Ex-parte.
Smt. D. S. Kulkarni - Advocate for the Insurer.

JUDGMENT

(Delivered on 11th April, 2019)

This is an Application U/s.166 of the Motor Vehicles Act, 1988, claiming compensation on account of death of Shankarlal

Mohanlal Gupta in a motor accident on 01.04.2014, on Jangal Mangal Road, Near Nikam Hotel, Shivaji Talao, Bhandup, Mumbai, involving Auto Rickshaw bearing No.MH-03-AA-3300.

2. Briefly stated facts of the Application are as under:-

It is alleged that on 01.04.2014 at about 22.30 Hrs. deceased was crossing Jangal Mangal Road, near Nikam Hotel, Opposite Mistry Chawl, New Bakery, Bhandup (W), at that time one Auto Rickshaw bearing No.MH-03-AA-3300 (Hereinafter referred as offending vehicle) came in fast speed as well as in rash and negligent manner and knocked down the deceased. As a result deceased sustained serious injuries and was removed to hospital where he succumbed to his injuries on 04.04.2014 while he was under treatment. It is alleged that, Opposite Party is the owner of offending vehicle at relevant time and same was insured with Insurer, as such both Opposite Party and Insurer are liable to pay compensation jointly and severally. Accordingly, it is prayed by Applicants that present application be allowed and Opposite Party as well as Insurer be directed jointly and severally to pay compensation of Rs.10,00,000/- to Applicants with future interest @ 12% p.a. Hence, the claim.

3. Insurer by filing its Written Statement at Ex.13 contended that all the allegations raised in the claim application are unreasonable and doubtful, hence, denied in toto. It is also contended that the accident had not occurred due to negligence on part of offending vehicle. It is also contended that Opposite Party has not appeared before the court nor any Advocate has

appeared through Opposite Party before the court. Thus, it is submitted that claim application itself is devoid of merit and substance. Therefore, it is prayed that application be dismissed with costs.

4. Having considered rival pleadings, following issues are framed by me at Ex.17 on 01.12.2018. Accordingly, I have recorded my findings on said issues as follows for reasons stated below:

No.	**Issues**		**Findings**
1.	Whether applicants prove that on 01.04.2014, deceased Shankarlal M. Gupta died in a motor accident as alleged ?	:	Affirmative.
2.	Whether they further proves that accident took place because of negligence on the part of driver of Auto Rickshaw bearing No.MH-03-AA-3300 ?	:	Affirmative.
3.	Whether Applicants are entitled to compensation ? If yes to what extent and from whom ?	:	Yes, to the extent of Rs.5,90,000/- from Opp. Party and insurer jointly and severally.
4.	What Order ?	:	As per final order.

REASONS

5. Heard learned Advocate, Mrs. E. H. Shetty for Applicant at length. She has filed her written arguments at Ex.30. Heard learned Advocate, Smt. D. S. Kulkarni for Insurer at length. At the outset, I would like to make it clear that Applicant Mrs. Ramjasi Shankarlal Gupta testified herself at Ex.19. Documentary evidence consist of certified copy of FIR along with statement at Ex.20, Supplementary Statement of

Witnesses Ex.21 Colly, Spot Panchanama Ex.22, Additional Panchanama Ex.23, Inquest Panchanama Ex.24, Cause of Death Certificate Ex.25, Post Mortem Report Ex.26 and Insurance Policy Ex.27. Applicants by filing evidence close pursis at Ex.28 closed their evidence. As against this, on behalf of Insurer by filing pursis at Ex.29, it is contended that Insurer does not want to adduce any evidence in support of its case. Accordingly, evidence of insurer is treated as closed.

AS TO ISSUE No. 1 & 2:-

6. As both issues are interlinked and interconnected with each other, therefore, I have taken up both issues together for discussion. Vide these issues, Applicants were called upon to prove that on 01.04.2014, deceased died in a motor accident involving offending Vehicle No.MH-03-AA-3300. Similarly, Applicants were also called upon to prove that alleged accident took place because of negligence on the part of the driver of offending vehicle. In order to prove both these aspects, Applicant Mrs. Ramjasi Shankarlal Gupta testified herself at Ex.19 and stated as to how said accident took place and who was responsible for the same. She also deposed the detailed facts which led to said accident. According to her, driver of offending vehicle referred above was rash and negligent in driving his vehicle, therefore, alleged accident took place. Applicant was subjected to cross-examination by learned Advocate, Smt. D. S. Kulkarni for insurer at length. No doubt, certain admissions were brought on record from the mouth of this witness during cross-examination. However, in my view,

admissions obtained in cross-examination, at the most amount to a piece of evidence available in favour of Insurer. But at any cost said admissions cannot be called as vital admissions and conclusive proof of the case made out by Insurer in its written statement. Nothing adverse to the case made out by applicant is brought on record during cross examination by learned Adv. Smt. D. S. Kulkarni. Therefore, if the testimony of Applicant is considered in this angle same appears to be reliable and trustworthy.

7. Similarly, oral testimony of Applicant is supported by Police papers like FIR along with statement at Ex.20, Supplementary Statement of Witness Ex.21 Colly, Spot Panchanama Ex.22, Additional Panchanama Ex.23, Inquest Panchanama Ex.24, Cause of Death Certificate Ex.25, Post Mortem Report Ex.26 and Insurance Policy Ex.27 etc. referred above which are self speaking and self explanatory. Said documents speak for themselves as far as question of involvement of offending vehicle is concerned. Because, it is possible that a witness may speak lie by entering witness box on oath but documents never speak lie and they speak for themselves. That is why it is always said that documentary evidence is the best evidence and same prevails over oral testimony. In my opinion, immediately after accident Police machinery is the first Government machinery which approaches spot of accident and completes all legal formalities like drawing of Panchnama, sending injured to Hospital for treatment and recording of FIR etc. Therefore, there is no scope to doubt or to

suspect the Police papers produced before court. At the same time, as per Sec.168 and 169 of M. V. Act a summary enquiry is contemplated while deciding claim Application and not detailed trial like a civil suit. Therefore, in my view, strict rules of evidence cannot be made applicable to a summary enquiry while marking exhibits to documents. Thus, in my opinion, if oral testimony of Applicant and documentary evidence like Police papers filed by applicants are taken into consideration, it is proved that on 01.04.2014 deceased died in a motor accident involving offending vehicle No.MH-03-AA-3300 and it is also proved that alleged accident took place due to rash and negligent act on the part of driver of above referred offending vehicle.

8. It is pertinent to note that on behalf of Insurance Company and Opposite Party, no any oral evidence or documentary evidence by way of rebuttal is produced on record. Inspite of granting sufficient time nothing has been brought on record either by Opposite Party or by Insurance Company. Under such circumstances, in my view, only by raising certain plea or contentions like no negligence of offending vehicle, in Written Statement is not sufficient to prove the case made out by insurer. Because burden of proof regarding such plea is cast upon insurer. Onus of proof regarding the same never shifted on applicants. However, insurer miserably failed to discharge burden of proof cast upon them to the satisfaction of this Court. As such said plea needs to be proved by adducing evidence. Bare plea is not sufficient

because such plea does not take place of evidence. If all these facts are taken into consideration, in the light of evidence adduced by applicants supported by police papers, it is clear that Applicants had proved the fact of accident dated 01.04.2014 in which deceased died due to rash and negligent driving of offending vehicle No.MH-03-AA-3300 by its driver. Accordingly, I proceed to record my findings on issue Nos.1 and 2 in affirmative.

<u>AS TO ISSUE NO.3</u> :-

9. In my opinion no amount of money can compensate the pain and suffering mental agony and distress undergone by victim of motor accident. Because human life cannot be valued in terms of money. The liability to pay compensation to a third party by the insurer is a statutory liability which cannot be taken away because of violation of terms and conditions of policy by owner of the vehicle. It is pertinent to note that this court being a fact finding court, is duty bound to consider all facts brought before it on priority basis and decide the case on the basis of facts by applying relevant provisions of law. Having considered above observations now let us proceed to determine compensation amount to which applicant is entitled.

10. Admittedly this is a death claim. While deciding such claim Tribunal is duty bound to consider three aspects, namely, age of the deceased, income of the deceased and dependency. As far as age factor is concerned it is revealed from Claim Application that, age of deceased is shown 50 years, 50 years in

Cause of Death Certificate and 50 years in P. M. Report. Considering age mentioned in documents referred above and in the absence of rebuttal evidence from the side of insurer, I have no reasons to take a different view than the one possible on the basis of evidence brought before Tribunal. Relying on above documents, I hereby take average age of deceased as **50 years** on the date of accident.

11. Secondly, as far as income factor is concerned, applicants had came before the Court with a case that deceased was self employed fruit vendor and earning Rs.8,000/- p.m. However, in order to prove this aspect of income except bare words of applicant on oath nothing is brought before the court. No documentary proof is produced on record and no independent witness testified before the court about monthly income of deceased. Under such circumstance, taking in to consideration facts and circumstance prevailing at the time of accident in the year 2014 along with the fact that deceased was staying at Mumbai at the relevant time, I hereby take average notional income of deceased at **Rs.5,000/- p.m.**

12. Thirdly as far as question of dependency is concerned, it is pertinent to note that Applicant No.1 is widow wife of deceased and applicant No.2 is father of deceased. Admittedly, applicant No.1 being 47 years old lady at relevant time and it cannot be expected that she will do any work at this advanced age. Similarly, applicant No.2 being father of deceased was 80 years old therefore it cannot be expected that he will do any job

or work at this advanced age. Nothing is brought on record or no rebuttal evidence is adduced by insurer as far as the question of dependency of applicants is concerned. Admittedly, applicant No.1 is wife of deceased and applicant No.2 is father of deceased. If this relationship between deceased and applicants is taken in to consideration definitely they are depending on deceased for their maintenance. Nothing adverse to the interest of applicants is brought on record as far as question of dependency is concerned. Considering above aspects, I am of the view that both applicants were depending on deceased on the date of accident.

13. Having considered above facts and circumstances in the light of evidence brought on record, relating to age, income and dependency of deceased, if annual income is worked out by multiplying monthly income of deceased that is Rs.5,000/- with 12 annual income comes to Rs.60,000/- (**Rs.5,000X12=Rs.60,000**). Admittedly, there is nothing on record to show that deceased was holding a permanent job and salary employee. Similarly, there is nothing on record to show that deceased was having self established income in the capacity of self employment as fruit vendor. Therefore, in my view as per the ratio laid down in **Pranay Sethi's Case** applicants are not entitled to get any compensation by way of future prospects. Accordingly, I hereby Reject and Disallow claim of applicants towards future prospects.

14. Now as far as the question of deduction towards personal

and living expenses of deceased are concerned in my opinion 1/3rd of prospective annual income requires to be deducted towards personal and living expenses of deceased as per the ratio laid down in **Pranay Sethi's Case cited supra.** Accordingly, if 1/3rd amount that is Rs.20,000 (60,000/3=20,000) is deducted from prospective annual income of Rs.60,000, net annual income comes to **Rs.40,000** (60,000 – 20,000 = 40,000). This is net annual income of deceased after 1/3rd deduction towards personal and living expenses of deceased.

15. Lastly, as far as question of multiplier applicable to present application is concerned, again as per ratio laid down in **Constitutional Bench judgment of Hon'ble Apex Court of India delivered on 31-10-2017 National Insurance Co. Ltd. V/s. Pranay Sethi and Ors.**, multiplier applicable to present application is 13 because deceased is coming in the age group of 46 to 50 as per the table prepared in above referred case law. Accordingly, by adopting 13 multiplier if net annual income of Rs.40,000/- is multiplied, final dependency comes to Rs.5,20,000 (**Rs.40,000 X 13 = 5,20,000**). Thus, in my opinion, final dependency comes to **Rs.5,20,000**.

16. Now as far as compensation to which applicants are entitled under other conventional heads are concerned, again in view of ratio laid down in **Constitutional Bench judgment of Hon'ble Apex Court of India delivered on 31-10-2017 National Insurance Co. Ltd. V/s. Pranay Sethi and Ors.**

applicants are entitled to get an amount of Rs.15,000 towards loss of estate and Rs.15,000 towards funeral expenses. No question of granting any compensation towards loss of love and affection arises for my consideration as Hon'ble Apex Court of India has restricted compensation under conventional heads only to loss of estate, loss of consortium (in case of spouse) and funeral expenses. Therefore, in my opinion applicants are not entitled to get compensation under any other conventional heads except loss of estate and funeral expenses. Accordingly, I hereby allow **Rs.15,000** as compensation towards loss of estate, **Rs.15,000** as compensation towards funeral expenses and **Rs.40,000** as compensation towards loss of consortium.

17. Thus, Applicants are entitled to get total amount of Rs.5,90,000/- (**Rs.5,20,000+Rs.15,000+Rs.15,000+Rs.40,000 =5,90,000**) by way of compensation. In the result, Applicants succeed in proving their Application for compensation to the extent of Rs.5,90,000/-. Accordingly, I proceed to record my finding on issue No.3 in affirmative to the extent of Rs.5,90,000/- from opposite party and insurer jointly and severally. Hence, the following order :

O R D E R

Application is partly allowed with proportionate Costs.

1. Opposite Party and Insurance Company shall jointly and severally pay a sum of Rs.5,90,000/- (Rs. Five Lakh Ninety

Thousand Only) inclusive of the NFL, to the Applicants along with interest @7.5% p.a. from the date of Application, till realisation.

2. **Apportionment order is as under** :

(a) Applicant No.2 (Father) is entitled to get Rs.1,00,000/- only along with interest accrued there on.

(b) Remaining amount along with interest accrued there on be paid to applicant No.1 (Widow wife of deceased).

3. Opposite Party and Insurance Company are directed to deposit the amount of compensation with accrued interest by A/c payee cheque duly crossed and drawn in the name of Applicants.

4. Office shall deliver the cheques to the Applicants after due verification and on recovery of deficit court fee, if any.

5. Award be drawn up accordingly.

(S.M. Yallatti)
Member, CR-8,
MACT, MUMBAI

Date : 11.04.2019
sdk.

1. Name of Stenographer : S. D. Kamble.
2. Date of Pronouncement of Judgment : 11-04-2019.
3. Transcript made ready on : 11-04-2019.
4. Corrected transcript made ready on : 11-04-2019.
5. Judgment Signed on : 11-04-2019.
6. Judgment uploaded on : 11-04-2019.

APPLICATION NO.1887 OF 2014
AWARD

1. Mrs. Ramjasi Shankarlal Gupta.
   Aged 47 Years, (Widow of deceased).
2. Mr. Mohanlal Madhav Gupta.
   Aged 80 Years, (Father of deceased).
   Residing at : Daud Mistry Chawl,
   Gaondevi Road, Room No.7,
   Opp. New Bakery, Bhandup (W),
   Mumbai – 400 078. **... Applicants**

Vs.

Mr. Vilas Pandurang Ghodke.
Shivaji Nagar, Vikhroli Park Site,
Vikhroli (W), Mumbai – 400 079.
(Owner of A/Rickshaw No.MH-03-AA-3300) **... Opp. Party**

And

Reliance General Insurance Co. Ltd.
4th Floor, Chintamani Avenue,
Western Express Highway,
Next to Virvani Industrial Estate,
Goregaon (E), Mumbai – 400 053.
Policy No.1109732339000472.
Valid From : 13-06-2013 to 12-06-2014 **... Insurer**

Claim U/s. 166 of M. V. Act, 1988 for Rs.10,00,000/- on account of accidental death of deceased in vehicular accident.

This claim petition coming on this day on 11-04-2019 for final disposal before Shri. S. M. Yallatti, Member, MACT, Mumbai, in presence of Mrs. E. H. Shetty, Advocate for the Applicant, Smt. D. S. Kulkarni, Advocate for insurer. It is ordered and decreed as under :-

O R D E R

Application is partly allowed with proportionate Costs.

1. Opposite Party and Insurance Company shall jointly and severally pay a sum of Rs.5,90,000/- (Rs. Five Lakh Ninety Thousand Only) inclusive of the NFL, to the Applicants along with interest @7.5% p.a. from the date of Application, till realisation.

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(S.M. Yallatti)
Member, CR-8,
Date : MACT, MUMBAI