

enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

- (xi) *The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."*

(emphasis supplied)

15. In the present case, the owner of the vehicle (respondent No.1) had produced the insurance certificate indicating that vehicle No. DIL- 5955 was comprehensively insured by the respondent No.2 (Insurance Company) for unlimited liability. Applying the dictum in the case of National Insurance Company Ltd. (supra), to subserve the ends of justice, the insurer (respondent No.2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (respondent No.1) in accordance with law.

16. Accordingly, the appeal is allowed to the extent that the compensation amount awarded by the Tribunal and confirmed by the High Court shall be paid and satisfied by the insurer (respondent No.2) in the first instance, with liberty to recover the same from the owner of the vehicle (respondent No.1) in accordance with law.

17. Appeal is disposed of in the aforementioned terms with no order as to costs.

Order accordingly.

SUPREME COURT OF INDIA

Before: Dipak Misra, CJI., A.M. Khanwilkar & Dr. D.Y. Chandrachud, JJ.

Civil Appeal No. 418 of 2018

Decided on : 19.01.2018

[Arising out of SLP(C) No.7375 of 2017]

Ramrao Lala Borse and anr.

Appellants

Versus

New India Assurance Company Ltd. and anr.

Respondents

Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in motor vehicle accident case – Bachelor-deceased 29 years old, in 2006 -- Deceased was working as Assistant Teacher -- Correct multiplier would be 17 – As regards future prospects, an addition of 50 per cent would be warranted -- Making a deduction of 50 per cent towards personal expenses (the deceased being a bachelor), the total compensation would stand quantified at Rs 61,20,000/- -- After making an addition on account of conventional heads, the total compensation would stand computed at Rs 61,90,000/- -- Aforesaid amount shall carry interest @ 9% p.a. from the date of the filing of the claim petition.

(Para 8)

Cases referred:

1. National Insurance Company Limited v Pranay Sethi, 2018(1) L.A.R. 1 (SC).
2. Sarla Verma v Delhi Transport Corporation [(2009) 6 SCC 121].

JUDGMENT

Dr D Y CHANDRACHUD, J. –

1. The present appeal arises from a judgment and order of a Division Bench of the High Court of Judicature at Bombay dated 23 October 2015. The High Court has partly allowed the appeal of the insurer and reduced the award of compensation by the Motor Accident Claims Tribunal from Rs 61,55,000/- to Rs 26,45,000/-.

2. The claim before the Tribunal arose thus:

On 19 February 2006, Deepak was travelling as a passenger in a luxury bus on Mumbai-Agra road and was occupying a seat on the driver's side. When the bus was at Atgaon in Nashik district, a truck bearing Registration No.RJ-01-G-6386 came from the opposite direction and collided with the bus resulting in grievous injuries to the passengers including Deepak. Deepak was shifted to the Government hospital at Nashik where he succumbed to his injuries.

3. At the time of the accident, the deceased was serving as an Assistant Teacher in Dadasaheb Dandekar Vidyalaya, a school run by Shishu Vihar Education Society. The claimants, who were his parents, filed a claim under Section 166 of the Motor Vehicles Act 1988 seeking compensation against the owner of the offending truck and the insurer. The Tribunal held that the accident was caused due to the rash and negligent act of the driver of the offending truck. The Tribunal accepted the evidence adduced by the Claimants that had the deceased survived, he would have been made permanent and would have been entitled to the benefit of 6th Pay Commission wages of at least Rs 40,000 per month. Adopting a multiplier of 17, the Tribunal awarded compensation of Rs 61,20,000/- to which it added a further sum of Rs 35,000/- under conventional heads. Interest was awarded @9% p.a.

4. The High Court, on an analysis of the evidence, confirmed the finding of negligence arrived at by the Tribunal. On compensation, the High Court noted that the salary certificate (Exh.42) dated 18 March 2013 indicated that the deceased was working as an Assistant Teacher on a temporary basis in the

secondary section of Shishu Vihar Education Society between June 2001 and February 2006. The income certificate indicated that in February 2006 the deceased was in receipt of a salary of Rs 2,800 per month. Another certificate issued by the Headmaster on 20 March 2006 (Exh.47) indicated the same position.

5. The case of the claimants rested on the premise that the deceased was likely to be made permanent in which event, he would be entitled to a higher salary. PW 3, who was the Secretary of the Trust, deposed that though the strength of the students had increased, and the workload had increased, persons such as the deceased continued in service on a contract basis for want of sanction from the government for the post. The High Court observed that the evidence of PW 3 was that if the government were to sanction the post, considering the seniority and experience of the deceased, the Trust would have appointed him as a permanent teacher in which event his salary, according to the scales of the 6th Pay Commission, would have been Rs 40,000 per month. The finding was that the deceased at the relevant time was 29 years of age; that he had completed his B.Ed. from the University of Mumbai and was an Assistant Teacher employed on a temporary/contract basis for teaching English from 2001 to 2006. The High Court adverted to the provisions contained in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In this background, the High Court arrived at the finding that if the deceased were to be alive, he would have been regularized and would have drawn a salary of Rs 40,000/- per month. The High Court held that an addition of 50 per cent on account of future prospects ought to have been made. However, the High Court held that the Tribunal erred in applying a multiplier of 17. Having regard to the fact that the father of the deceased was 65 years old in 2006 and his mother was 50 years old, the High Court came to the conclusion that a multiplier of 7 should be adopted, taking the average age of the parents as 61 years. The High Court held that since the deceased was a bachelor, a deduction of 50 per cent should be made on account of personal expenses. On the above basis, the High Court computed the yearly income of the deceased at Rs 4,80,000; enhanced the income by 50% on the ground of future prospects to Rs 7,20,000, deducted a sum of Rs 3,60,000 towards personal expenses and on the basis of a multiplier of 7 arrived at a total compensation of Rs 25,20,000. The amount payable to each of the two claimants for loss of love and affection was enhanced to Rs 50,000 and funeral expenses of Rs 25,000 were allowed. The High Court has, accordingly, awarded a total compensation of Rs 26,45,000 together with interest @ 9% p.a.

6. The principal ground which has been urged in support of the appeal is that the High Court erred in applying a multiplier of 7. Since the age of the deceased at the time of the accident was 29 years, it was urged that the correct multiplier to be applied would be 17.

7. The insurer had challenged the judgment of the High Court before this Court in Special Leave Petition (C) No 7717 of 2016. The Special Leave Petition was dismissed on 25 April 2016. The challenge of the insurer to the judgment of High Court has hence failed. Consequently, for the purpose of the present appeal, we will have to proceed on the basis of the income as accepted by the High Court. The finding of fact in regard to the income of the

deceased would not be challenged in the present appeal, at the behest of the insurer in view of the above background.

8. In terms of the judgment of the Constitution Bench of this Court in **National Insurance Company Limited v Pranay Sethi¹ [(2017) 13 SCALE 12 = 2018(1) L.A.R. 1 (SC)]** and the judgment in **Sarla Verma v Delhi Transport Corporation² [(2009) 6 SCC 121]**, the correct multiplier to be applied in the present case would be 17 having regard to the age of the deceased. As regards future prospects, an addition of 50 per cent would be warranted. On the above basis and making a deduction of 50 per cent towards personal expenses (the deceased being a bachelor), the total compensation would stand quantified at Rs 61,20,000/-. After making an addition on account of conventional heads, the total compensation would stand computed at Rs 61,90,000/-. The aforesaid amount shall carry interest @ 9% p.a. from the date of the filing of the claim petition. Apportionment shall be carried out in terms of the award of the Tribunal.

9. The appeal shall accordingly stand allowed. There shall be no order as to costs.

Appeal allowed.

SUPREME COURT OF INDIA

Before: Dipak Misra, CJI., A.M. Khanwilkar & Dr. D.Y. Chandrachud, JJ.

Civil Appeal Nos. 3291-3292 of 2011

Decided on : 19.01.2018

Anil & ors

Appellants

Versus

New India Assurance Co. Ltd. & ors

Respondents

Motor Vehicles Act, 1988 (59 of 1988), Section 166 -- Compensation in motor vehicle accident case – No post-mortem – FIR after more than one month – While at one stage it was stated that the deceased was brought dead, at another place it was stated that he was referred to the government hospital for further treatment – Circumstance that no post-mortem was conducted is an extremely significant aspect –The person who died was the brother of the owner of the tractor – A complaint was not lodged for nearly one month is a significant omission in the case – No hospital records to indicate the nature of the injuries, that death had occurred due to an accident of the nature alleged – Each of the circumstances relied upon by the High Court is germane to the ultimate conclusion that a false case was set up to support a claim for compensation.

(Para 3,4)

JUDGMENT

Dr D Y CHANDRACHUD, J. –

1. The Punjab and Haryana High Court by its judgment dated 6 September 2010 reversed a decision of the Motor Accident Claims Tribunal,