
**The New India Assurance Company Limited Vs Rajni Harshwardhan
Sharma and Others**

**First Appeal No. 445 of 2015 and Civil Application No. 3293 of 2014 in First Appeal
No. 445 of 2015**

Court: Bombay High Court

Date of Decision: Aug. 11, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33#Income Tax Act, 1961 - Section 192 (1),
201(1A)#Motor Vehicles Act, 1988 - Section 140, 166, 170, 171

Hon'ble Judges: Abhay Shreeniwas Oka, J; Revati Mohite Dere, J

Bench: Division Bench

Advocate: Shrikant M. Dange, for the Appellant; V.M. Parkar, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Revati Mohite Dere, J.

1. Rule. Rule returnable forthwith with the consent of the parties. Vide order dated 8th June, 2015, it was noted that the Appeal deserves to be

disposed of finally at the stage of admission. Accordingly, the matter was taken up for final disposal.

2. The appellant -Insurance Company has challenged the Judgment and Award dated 22nd November, 2013, passed by the Member, Motor

Accident Claims Tribunal, Mumbai, by which compensation of Rs. 37,67,000/- was granted to the respondent -claimants, alongwith interest @ of

7.5% per annum from the date of the claim application till realisation of the entire award. Although the respondent -claimants have not filed any

cross objection/appeal, they have filed an affidavit praying therein, that the interest awarded be enhanced from 7.5% p.a. to 9% p.a., from the date

of the application by taking recourse to Order 41, Rule 33 of the Civil Procedure Code, 1908. At the outset, it may be noted that the award

passed by the Tribunal has been challenged only on two counts, viz., (i) the quantum of compensation awarded and (ii) that the interest awarded

was excessive.

3. Before we deal with the two issues raised by the learned counsel for the appellant, it will be necessary to set out the factual matrix out of which

the issues arise.

4. On 18th August, 2004, at about 9.15 a.m., when the deceased -Harshwardhan Sharma, was traveling in an auto rickshaw bearing no. GJ-16-

T-1623, near Rohini Nagar, Bharuch, one truck bearing no. GJ-16-V-3766 dashed into the said auto rickshaw. The truck is stated to have come

from the opposite side in a fast speed and in a rash and negligent manner. As a result of the severe impact, the deceased sustained serious injuries

and ultimately succumbed to the same.

5. Harshwardhan Sharma"s wife, son and mother preferred a claim petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter

referred to as the "said Act") claiming compensation of Rs. 60 lacs. The appellant -Insurance Company sought leave to defend under section 170

of the said Act and contested the claim as the owner of the offending vehicle despite service, failed and neglected to appear and defend the claim.

The accident nor the insurance coverage has been disputed. The claimants examined two witnesses; i.e. first respondent -claimant and Mr. Manoj

Bhanushankar Trivedi, the employer of the deceased. The documents which were tendered below Exhibit -12 were true copies of the passport

(for date of birth), Income Certificate, HSC Certificate, Degree Certificate (Bachelor of Technology in Electrical Engineering) and other documents

like police papers etc. No oral or documentary evidence was led by the appellant.

6. The Tribunal, after considering the material on record i.e. oral and documentary held that the offending truck was being driven in a rash and

negligent manner, resulting in the accident in which the deceased sustained injuries and succumbed to the same. The said finding on negligence has

not been challenged by the appellant and hence is not required to be dealt with.

7. On the point of compensation, the Tribunal accepted the salary of the deceased as Rs. 35,000/- per month and after granting 15% increase

towards future prospects and after making the required deductions by applying the dependency formula, came to a conclusion that the monthly

income of the deceased was Rs. 26,833/- per month, (Rs. 26,833 X 12 " Rs. 3,22,000/-). Considering the age of the deceased i.e. 51 years it

applied the multiplicand of 11 and after granting compensation for loss of consortium, loss of love and funeral expenses, awarded compensation of

Rs. 37,67,000/- along with interest @ 7.5% per annum.

8. The respondent -claimants, in particular, the first respondent -claimant in support of the Claim Petition filed her evidence on affidavit (Exhibit -

13). She has stated that her husband at the time of the incident, was 51 years old. She has placed on record, the certified copies of the deceased"s

HSC Certificate, Degree Certificate of IIT, Madras, passport and salary certificate. She has produced certified copies of the FIR, Panchanama,

Inquest Panchanama, P.M. Report etc., which came to be exhibited. She further stated that at the time of the accident her deceased -husband was

working as a Manager -Electrical/Instrumentation with Tricon International, Andheri (E), Mumbai and that he was earning a salary of Rs. 35,000/-

per month. She relied on the salary certificate/slip. She has further stated that her deceased -husband would contribute Rs. 25,000/- per month

towards household expenses and maintenance of her family which consisted of herself, her young son -second respondent and her widowed

mother-in-law -third respondent. She has further stated that they were the only legal heirs of the deceased and as such all of them were totally

dependent on him; that her husband was in good health at the time of his death and due to his sudden death they had lost the sole bread earner and

were suffering great financial hardships and mental agony; and that they had no other source of income.

9. As noted earlier, as the owner of the offending vehicle failed to appear despite service, the appellant -company sought leave to defend under

Section 170 of the Motor Vehicles Act, which was granted. Accordingly, the appellant cross examined the witnesses. As far as the cross

examination of the first respondent -claimant is concerned, the only cross examination with respect to the challenge in the present petition is as

under;

My husband had gone to Bharuch for official work. I have filed income tax returns of my husband. The company has not given any compensation"".

10. The suggestions made by the appellant that the contents of para no. 7 and 8 of the claim affidavit filed by the first respondent, with respect to

the degree and salary of her husband; that she had filed a false claim; and that her husband was not getting a salary of Rs. 35,000/- per month

were denied by the first respondent -claimant. These were the only questions put to the first respondent in the cross-examination vis-a-vis the

challenge in this appeal.

11. The respondent -claimants also examined Mr. Manoj B. Trivedi, the proprietor of Tricon International, where the deceased was working at

the relevant time. The said witness has stated; that he is the proprietor of Tricon International since 1987; that the deceased was employed in his

company for about three years; and that the deceased was working as the Manager -Electrical/Instrumentation with Tricon International, Andheri

(E), Mumbai. He has further stated that the monthly salary of the deceased was Rs. 35,000/-. The said witness has accepted that the letter at

Exhibit -19 is issued by him and that its contents were correct and that the same bears his signature. It may also be noted here, that the letter dated

1st July, 2004 issued by the said witness certifies that the deceased was drawing a salary of Rs. 35,000/- per month. It also certified that the

deceased was found to be hardworking and sincere in his work. The said witness has also deposed that the deceased was an Electrical Engineer

from IIT. In his cross examination, the said witness has stated that the payments were made by cheques and that there was a statutory deduction of

professional tax and TDS at the end of the year. The said witness has denied the suggestion that the deceased was not drawing a salary of Rs.

35,000/- per month.

12. The Tribunal, after considering the evidence on record held the owner of the offending truck and the appellant -insurance company as being

jointly and severally liable to pay compensation. The Tribunal, accordingly directed the Insurance Company and the owner of the offending vehicle

to jointly and severally pay an amount of Rs. 37,67,000/- along with an interest of Rs. 7.5% p.a. from the date of the application till the realization

of the entire amount to the respondent -claimants. The apportionment under which the compensation was to be distributed was; 60% amount was

to be paid to the first respondent -claimant (out of which 50% was to be paid by A/c payee cheque and 50% was to be deposited in any

Nationalized bank in her name under a Fixed Deposit Scheme for 3 years); the balance 40% was to be distributed between the second and third

respondents equally i.e. 20% each respectively by A/c payee cheque.

13. We have gone through the evidence on record and all the documents with the assistance of the learned counsel for the appellant and the

respondents. As noted earlier, the learned counsel for the appellant has challenged the Award, only on the quantum of compensation awarded and

the interest granted thereon.

14. It is not in dispute that the accident in question took place on 18th August, 2004, when the deceased -Harshwardhan Sharma was traveling in

an auto rickshaw and the offending truck bearing registration no. GJ-16-V-3766 which was driven in a rash and negligent manner dashed into the

said auto rickshaw. It is also not in dispute that as a result of the severe impact caused by the offending vehicle, the deceased sustained serious

injuries, as a result of which he succumbed to the same. It is also not in dispute that the respondent -claimants are the only claimants in the Claim

Petition; the first respondent being the wife; the second respondent being the minor son and the third respondent being the widowed mother of the

deceased. It also appears from the evidence on record and is not seriously disputed that the deceased was the sole bread earner of the family and

that the family had no other source of income. It is also not in dispute that at the relevant time the deceased was aged 51 years.

15. As regards the compensation awarded, the learned counsel for the appellant submitted that the Tribunal grossly erred in concluding that the

monthly salary of the deceased was Rs. 35,000/- per month. He submitted that the Tribunal had failed to deduct the Income Tax and Professional

Tax thereon, from the said amount. He thus submitted that after deducting the Income Tax and the Professional Tax, the salary would come to less

than Rs. 35,000/- per month. According to the learned counsel for the appellant -Insurance Company, no document was placed on record to

show the said deductions.

16. It appears from the evidence on record and the documents produced in support thereof, that the deceased was a highly qualified person having

passed his HSC (CBSC) from Sardar Patel Vidyalaya, (Higher Secondary School), Lodhi Estate, New Delhi with First Division. It also appears

that he had obtained distinction in Mathematics as is evident from the HSC Certificate. It also appears that the deceased had completed his

Electrical Engineering (Power) from IIT -Madras, with a First Class. Both the said certificates and qualifications are not seriously disputed by the

appellant -company. Thus, it can be safely concluded that the deceased was a highly qualified person. The deceased, at the relevant time was

working as a Manager with Tricon International and as is evident from the Salary Certificate was drawing a salary of Rs. 35,000/- per month. The

evidence of Mohan Trivedi, the proprietor of Tricon International reflects that the TDS and Professional Tax was deducted at the end of the

financial year. Therefore, the question that arises for consideration before us, is whether the evidence of Mohan Trivedi, the employer of the

deceased is sufficient to prove the income of the deceased in the absence of any document produced on record in support thereof. As observed

earlier, the deceased was highly qualified and was holding a degree in Engineering of a reputed institution like IIT. Therefore, the income of such a

highly qualified person in August 2004 can be reasonably taken as Rs. 35,000/-. Hence, it can be held that the respondent -claimants have

discharged the burden of proving that the deceased was drawing a salary of Rs. 35,000/- per month. However the question is whether the Income

Tax and Professional Tax were deducted at source, as stated.

17. It may be noted that the Apex Court in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, (2013) 2 ACC 752 : (2013) ACJ

1441 : (2013) 6 AD 568 : AIR 2013 SC 3830 : (2013) 259 CTR 420 : (2013) 8 JT 234 : (2013) 171 PLR 776 : (2013) 2 RCR(Civil) 945 :

(2013) 6 SCALE 705 : (2013) 7 SCC 476 : (2013) 7 SCC(L&S) 759 : (2013) 216 TAXMAN 300 ,was required to deal with a similar

situation. While deciding the issue as to whether the income tax is liable to be deducted for determination of compensation under the Motor

Vehicles Act, the Apex Court in paras 22 and 23 observed as under :-

22. The third issue is ""whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act"".

23. In Sarla Verma this Court held :

20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation.

This Court further observed that : (SCC p.134, para.24)

24. ...Where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax".

Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual

salary. But while deducting income tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income

chargeable under the head "salaries" one should keep in mind that under Section 192 (1) of the Income tax Act, 1961 any person responsible for

paying any income chargeable under the head "salaries" shall at the time of payment, deduct income tax on estimated income of the employee from

salaries" for that financial year. Such deduction is commonly known as tax deducted at source ("TDS", for short). When the employer fails in

default to deduct the TDS from employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed

under Section 201(1A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption would be

that the employer under Section 192 (1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an

objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to

deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from

sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party

then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income".

18. Keeping in mind the aforesaid principle, the evidence and the salary certificate in the present case, show that the deceased was drawing a

salary of Rs. 35,000/- per month. Manoj Trivedi, Proprietor of Tricon International in his cross examination has categorically stated that "the

payments are made by cheques. The statutory deduction of professional tax and TDS is deducted at the end of the year". There is no further cross

on this statement. There is no suggestion that the said statement is false nor is there any suggestion that no records have been produced by him to

substantiate the said statement. Infact, in the absence of any suggestion challenging the veracity of the said statement, there was no occasion for the

respondent -claimants to bring on record the documents to prove the same. Thus, the statement of the employer Manoj Trivedi, that the statutory

deduction of professional tax and TDS were deducted at the end of the year", has gone unchallenged. There is nothing on record to disbelieve the

said statement, which has come in the cross-examination itself. It thus appears that the income of the deceased from salary was Rs. 35,000/- per

month. In light of the evidence of Manoj Trivedi that the TDS and Professional Tax were deducted at the end of the year and keeping in mind the

ratio laid down in Vimal Kanwar's case by the Apex Court, we do not find any merit in the submission of the learned counsel for the appellant,

that the Tribunal has erred in not deducting the TDS and the Professional Tax, whilst quantifying the compensation. Even assuming that deduction

of Income Tax ought to have been made from Rs. 35,000/- for the purpose of calculating multiplicand, we must note here that the Tribunal has

granted only 15% increase on account of further prospects of increase in earnings. Considering the fact that the deceased was a graduate from IIT,

the said increase ought to have been more than 15%. Hence, taking overall view of the case, the Tribunal rightly held that the income of the

deceased was Rs. 35,000/- per month.

19. The law regarding award of compensation in applications under Section 166 of the Motor Vehicles Act in fatal accident cases is well settled.

The Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC

3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009)

AIRSCW 4992 : (2009) 3 Supreme 487 has laid down the formula for Tribunals to calculate the compensation. It has also held that in cases of

salaried persons additions have to be made depending upon the age of the deceased to the actual income of the deceased while computing future

prospects. In Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 :

(2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , the Apex Court held

that the formula set out in Sarla Verma"s case, would also apply to cases, where the deceased was either self employed or on fixed wages, while

computing future prospects.

20. The Tribunal has rightly applied the said formula in arriving at the compensation. It has awarded 15% towards future prospects and after

making the necessary deductions and applying the appropriate multiplicand; concluded that the respondent -claimants are entitled to compensation.

The Tribunal has also rightly awarded compensation to the first and second respondents for loss of consortium and loss of love respectively and

funeral expenses. We do not find any error or infirmity in the compensation awarded.

21. The second submission of the learned counsel for the appellant is that the interest of 7.5% per annum which was granted on the said

compensation was on the higher side and that the interest ought not to have exceeded 6% per annum, considering the interest rates prevalent now.

The respondent -claimants although have not filed any cross appeal/cross objection, have filed an affidavit of the first respondent -claimant praying

for dismissal of the appeal. The first respondent has stated in the affidavit that they are not in a position to file a cross appeal/objection, the same

because of the huge debts and hardships that they have had to suffer. The respondents have prayed that this Court can by taking recourse to

Order 41, Rule 33 of the Code of Civil Procedure, 1908 enhance the interest component, by directing the appellant to pay interest @ 9% p.a.

from the date of the application, as the rate of the domestic term deposits at the time of the Award was 9% p.a. The first respondent has enclosed

to her affidavit, a copy of the Circular issued by the Oriental Bank of Commerce in support of the same.

22. We have perused the judgments of the Apex Court in this regard. The Apex Court in the case of Smt. Kaushnuma Begum and Others Vs. The

New India Assurance Co. Ltd. and Others, (2001) 1 ACC 152 : (2001) ACJ 428 : AIR 2001 SC 485 : (2001) 1 JT 375 : (2001) 1 SCALE 1 :

(2001) 2 SCC 9 : (2001) 1 SCR 8 : (2001) 1 UJ 464 : (2001) AIRSCW 85 : (2001) 1 Supreme 5 noticed that the nationalised banks are

granting interest @9% on fixed deposits for one year and held as follows :-

24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that ""in addition to the amount of

compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in

this behalf"". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of

India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We,

therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made

by the appellants. The amount of Rs 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on

the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

23. The Apex Court in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, (2003) 1 ACC 352 : (2003) ACJ

680 : AIR 2003 SC 1817 : (2003) 1 CTC 570 : (2003) 5 JT 205 : (2003) 2 SCALE 120 : (2003) 3 SCC 148 : (2003) 1 SCR 1229 : (2003) 1

UJ 486 : (2003) AIRSCW 1266 : (2003) 2 Supreme 178 noticed the varying rate of interest being awarded by the Tribunals, High Courts and

Apex Court itself. In the said case, the Apex Court held that the rate of interest must be just and reasonable depending on the facts and

circumstances of the case and should be decided after taking into consideration the relevant factors like inflation, change in economy, policy being

adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.

24. In Supe Dei (Smt) and Others v. National Insurance Company Limited & Another (2009) 4 SCC 513 the Apex Court held that the proper

interest would be 9% per annum.

25. Infact, the Apex Court in Puttamma and Others Vs. K.L. Narayana Reddy and Another, (2014) 1 ACC 3 : (2014) ACJ 526 : AIR 2014 SC

706 : (2014) 2 JT 201 : (2014) 1 RCR(Civil) 443 : (2013) 15 SCALE 437 , kept the question open for Tribunals and Courts to decide the rate of

interest, keeping in mind the rate of interest allowed by the Apex Court in similar cases and other factors such as inflation, change in economic

policy adopted by the Reserve Bank of India from time to time, the period from which the case is pending, etc. Infact in Puttamma's case, the

Apex Court enhanced the compensation @ 12% p.a. from the date of filing of the claim petition.

26. There can be no dispute, that even if no cross objection is filed, seeking enhancement of the rate of interest, this Court can under Order 41,

Rule 33 of the Civil Procedure Code, 1908 pass such orders which are just and fair, keeping in mind the peculiar facts and circumstances of the

case.

27. It may be noted that in a catena of decisions, including Kaushnuma Begum (Supra) and Supe Dei (Smt) and Others (Supra), the Apex Court

awarded an interest rate of 9% per annum from the date of the claim petition till realization of the same. Thus, judicial notice can certainly be taken

of certain facts like inflation etc., as well as the document brought on record by the respondent -claimants, that the rate of interest being offered on

domestic term deposits by the Oriental Bank of Commerce in 2014 was 9% per annum, when the award was passed. Considering all these facts,

the interest payable will have to be enhanced from 7.5% to 9% per annum payable on the compensation awarded from the date of application till

its realization. Thus, there is no merit in the submission advanced by the learned counsel for the appellant, that the interest rate granted was on the

higher side and the same deserves to be rejected.

28. The First Appeal is dismissed. However, in exercise of power under Rule 33 of Order XLI of the Code of Civil Procedure, 1908 the final

award of the Tribunal is partly modified only to the extent, that the interest payable will now be 9% per annum on Rs. 37,67,000/-. The said

interest of 9% per annum will be payable to the Respondent -claimants from the date of filing of the Claim Petition till its realization. As far as

apportionment of the amount of compensation is concerned i.e. Rs. 37,67,000/- at the rate of 9% per annum, the apportionment shall be done in

the same proportion as provided in the impugned Judgment and Award dated 22nd November, 2013.

29. Civil Application No. 3293 of 2014 does not survive, the same is accordingly disposed of.