IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1823 OF 2019

Sub-Area Manager, Western Coal Fields
Ltd., Padmapur, Tah and Dist. Chandrapur. APPELLANT

// VERSUS //

1. Smt. Anjutai Wd/o Rajkumar Tiple,
Aged about 51 years, Occu.: Household,

2. Jitendra S/o Rajkumar Tiple,
Aged about 31 years, Occu.: Education,

3. Sudarshan s/o Rajkumar Tiple,
Aged about 28 years,
Occu. Education,
1 to 3 all R/o Sumitra Nagar, Dewai
Govindpur, Tukum,
Tah and Dist. Chandrapur.

4. Sudhakar s/o Pundlikrao Kathale,
Aged about 59 years, Occupation: Driver,
R/o Quarter No.M/267, Western Coal
Fields Ltd., Durgapur Colony,
Tah and Dist Chandrapur. RESPONDENTS

Mr. Shriram Chopde, Advocate h/f Mr. D. L. Dharmadhikari, Advocate for appellant.
Mr. P. R. Agrawal, Advocate for respondent Nos.1 to 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/03/2023

ORAL JUDGMENT

1. Admit.

2. The present appeal is finally heard with the consent of the learned counsel for the parties.

3. Present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the Western Coal Fields Limited Padmapur, District Chandrapur challenging the Judgment and Award passed by the Motor Accident Claims Tribunal, Chandrapur in M.A.C.P. No.85/2014 dated 29.08.2018 by which Tribunal has awarded the compensation of Rs.62,26,400/- inclusive of the amount paid under Section 140 of the Motor Vehicles Act.

4. Brief facts which are necessary for the disposal of the appeal are as under.

On 17.08.2013 deceased Rajkumar Tiple and Shakil @ Chotu Abdul Sheikh travelling by Scooty bearing MH-34-Q-6325 to Padmapur W.C.L. The driver of the Crane bearing equipment Serial No.4812 was driven rashly and negligently and dashed against Scooty bearing No. MH-34-Q-6325. Due to the said accident, deceased who was riding Scooty died on the spot. Regarding the said accident offence was registered at Durgapur Police Station under Sections 279, 337, 338, 304-A of Indian Penal Code and under Section 184 of the Motor Vehicles Act. The claimant No.1 is the wife, claimant Nos. 2 and 3 are the children of the deceased. As per contention of the claimants, as the said

accident took place due to the rash and negligent driving of the Crane driver, the claimants are entitled to receive the compensation. The said Crane is owned by opponent No.1 and driven by the opponent No.2. Hence, opponent Nos.1 and 2 are jointly and severally liable to pay compensation.

5. The claim of the petition was opposed by the respondent No.1 by filing written statement and denied the contentions of the claimant. As per the contention of the respondent No.1, as such the Crane is not a motor vehicle, and therefore provisions of Motor Vehicles Act are not applicable.

6. Learned trial Court has recorded the evidence of the claimants and awarded the compensation at the rate of Rs.62,26,400/-.

7. Being aggrieved and dissatisfied with the judgment passed by the Motor Accident Claims Tribunal, Chandrapur present appeal is preferred by the appellant on the ground that learned trial Court had not considered that the alleged accident has not occurred on a public road but it was occurred on a private road. Moreover, the vehicle involved in the accident is not a vehicle as per the definition given under the Motor

Vehicles Act. The further ground is raised by the appellant is that the compensation awarded by the Tribunal is exorbitant and excessive one and liable to be set aside.

8. Heard learned Advocate Mr. Shriram Chopde holding for learned Advocate Mr. D. L. Dharmadhikari for the appellant submitted that in fact the claimants are not entitled to receive any compensation as vehicle Crane is involved in the accident which is not covered under the definition of vehicle under the provisions of Motor Vehicles Act. He further submitted that there was a contributory negligence on the part of the deceased and the alleged accident has occurred in the private premises of the W.C.L., and therefore claimants are not entitled to receive the compensation. He further submitted that the quantum awarded is excessive and exorbitant one. The learned trial Court has erroneously added 30% towards future prospects instead of 25%. For all above these grounds, the Judgment and Award passed by the Motor Accident Claims Tribunal deserves to be quashed and set aside.

9. Per contra, learned Advocate Mr. P. R. Agrawal for the respondent Nos.1 to 3 submitted that the vehicle Crane is very well covered under the definition of the vehicle under the Motor Vehicles Act.

He further submitted that there is no pleading regarding the contributory negligence as well as no pleadings as to that accident occurred in the private premises of the W.C.L., and therefore W.C.L. is not liable to pay compensation. He further submitted that the 30% towards the future prospects is rightly added by the trial Court and hence no interference is called for. The appeal has no merits and liable to be dismissed.

10. After hearing both the sides and after perusal of the evidence on record, following points arise for my consideration and I answer the same as follows.

(i) Whether the Judgment and Award passed by the Tribunal awarding the compensation is excessive and exorbitant one without considering the evidence on record?

11. I have perused the application and the evidence on record with the assistance of the learned Advocates for the claimants as well as the respondents. This claim petition is filed under the provisions of Motor Vehicles Act, claiming the compensation. To substantiate the contention claimant No.1 stepped into the witness box by filing affidavits of examination-in-chief vide Exh.29. She reiterated the contentions as per her pleadings. In support of her contention, she further relied upon

the Police papers i.e. FIR, Spot panchnama, Inquest panchnama, Postmortem examination report, Accident Form AA and Form No.54. The said documents are exhibited at Exhs.34 to 39. During cross-examination, she admitted that the deceased was working as a Crane operator with Padmapur miles W.C.L. and he was having duty hours from 8.00 a.m. to 4.00 p.m. Witness No.2 – Bhayya Rushi Dhande is also examined in support of the contention by the claimants, who is on the point of income of the deceased. He testified that that he produced on record the salary slips for the months of June and July 2013. His evidence is not challenged by the W.C.L. On behalf of W.C.L. one Lokchand Balaji Kapgate is examined. As per his evidence when he was on duty on 17.08.2013 he received the information that Crane meet with an accident and he saw that one person died due to the dash by the Crane. The name of the deceased was revealed as Rajkumar Kashinath Tiple.

12. During cross-examination he admitted that deceased Rajkumar Tiple was also an employee at Padmapur W.C.L. Colliery. On the day of accident deceased was proceeding by his TVS Scooty along with one Shakil Abdul Sheikh to Padmapur Colliery. He further admitted that the Scooty was dashed from back side by the Crane. Thus, this

admission of the witness of W.C.L. is sufficient to show that it was Crane which was driven by its driver in rash and negligent manner and dashed the two wheeler of the deceased from the back side. It is an admitted position that deceased died in an accident which took place between of the Scooty and the Crane which is owned by the W.C.L. Another witness Yerni Mallesh Banaya was examined on behalf of the W.C.L. His evidence is only to the extent that he received the massage that one person died. He went at the spot and saw that deceased Rajkumar Tiple came under the Crane. He also admitted that said incident was occurred because of mistake of Crane operator. Thus the evidence of both these witnesses shows that the incident took place due to the rash and negligent driving of the Crane driver. Besides the oral evidence, claimant relied upon the police papers FIR Exh.34, Spot panchnama Exh.35, Inquest panchnama Exh.36 and Postmortem report Exh.37. On the basis of evidence, claimant has claimed that alleged accident took place due to the rash and negligent driving of the Crane driver, and therefore claimants are entitled to receive the compensation. After perusal of the evidence on record, it is crystal clear that not only the evidence of the claimant but the evidence of the witnesses examined by the W.C.L. also shows that the Crane dashed the Scooty from the back side which is sufficient to hold that the accident occurred due to the rash

and negligent driving of the Crane driver. Though the learned Advocate for the appellant vehemently submitted that pillion rider was not examined by the claimants to prove the rash and negligent act of the Crane driver but the evidence on record i.e. admission which are brought on record during the cross-examination of the witness of the W.C.L. sufficiently shows that said accident is occurred due to the rash and negligent driving of the Crane driver. Therefore, non-examination of the pillion driver in support of the contention will not affect the case of the claimants.

13. So far as the submission of the learned Advocate for the appellant is concerned, that deceased was also responsible for the accident, and therefore contributory negligence of the deceased is attributed. It is pertinent to note that though this submission is made by the learned Advocate for the appellant but there is no pleading in the written statement of the W.C.L. that the contributory negligence of the deceased is also responsible for the said accident. Therefore, contention of the learned Advocate is not sustainable. Another contention raised by the learned Advocate is that the alleged accident has taken place in the private premises of the W.C.L. and therefore the provisions are not applicable. This submission is also not acceptable as there is no such

pleading in the written statement.

14. Third contention raised by the learned Advocate that the vehicle Crane is not come under the definition of vehicle under the Motor Vehicles Act. In support of this contention, he placed reliance on **V. M. Salgaocar and Brothers Limited and another** Vs **State of Goa and another** reported in **2009 ACJ 2452** wherein this Court has held that machineries like poclains, ripper dozers and drill masters are not fitted with rubber tyres and are fitted with chain plates tracks, and therefore are not motor vehicle within meaning of Act, and are not liable for registration. In para no. 11 it is held that the machinery is adapted for use or designed for use in an enclosed place as a distinct from a road. In fact, it is clearly machinery which is designed for all off the road use. Merely because there is possibility that it can be put on to a road because of its caterpillar tracks with limited mobility, it cannot be said that it is designed or adapted for use on a public road. None of the machines are capable of use for transporting goods or people on public road. This Court has also referred the judgment of a Division Bench of the **High Court of Kerala in (Intelligence Officer and othrs Vs. Ray Constructions Ltd.)** reported in **AIR 06 NOC 743**, where similar machinery ie. excavators, not running on inflated tyres, but on iron chain plats such as

caterpillar vehicles or a military tanks were held as incapable for use upon public roads and, therefore, not motor vehicles within the meaning of sub-section 28 of section 2 of the Motor Vehicles Act.

15. Per contra, learned Advocate Mr. P. R. Agrawal for the respondent Nos.1 to 3 submitted that this Court has also dealt with this issue in the case of **Crane Owners Association and another Vs. State of Maharashtra and another** reported in **1996(2) BCR 587** wherein it is held that whether the mobile crane is a vehicle or machinery this Court has referred Section 181 of the Act which provides that no tax shall be levied in respect of certain items enumerated therein. Section 192 of the said Act provides for levy of octroi at rates not exceeding to those respectively specified in Schedule H to the said Act in respect of articles mentioned in the said schedule, on the entry of the said articles into Greater Bombay for consumption, use or sale thereof. Schedule H thus enumerates the articles and the relevant entries as far as the present petitioners are concerned. In para No.9 of the Judgment it is held that 'the mobile cranes are 'Vehicles' and not 'Machinery'. In view thereof, they are to treated as 'Vehicles' for all purposes including octroi' and the claimants are held to be entitled to receive the compensation. Whether mobile crane is a vehicle or machinery it is necessary to see the

definition of vehicle given under Section 3.

16. Section 2(28) – “Motor Vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has been attached under trailer; but does not include a vehicle running upon fixed rails or vehicles of a special type adapted for use only in a factory or in any other enclosed premises or vehicle having less than four wheels fitted with engine capacity of not exceeding (twenty-five cubic centimeter). Thus, motor vehicles as per its definition means any mechanically propelled vehicle adapted for use upon roads including a chassis to which a body has not been attached whether the chassis is a two-wheeler or three-wheeler scooter or motorcycle. Hon’ble Apex Court in **Bose Abraham Vs. State of Kerala and another** reported in **AIR 2001 SC 835** held that mere fact that excavators are used in an enclosed area and road rollers are used only for making roads and not as vehicle. This does not render them to be different kind of vehicle. Since the excavators and road rollers are motor vehicles for the purpose of M. V. Act.

17. Here in the present case also the Crane is involved in view

of the observations of the Hon'ble Apex Court that mere fact that the excavators are used in an enclosed area and road rollers are used only for making roads and not as vehicle and held that these are also the motor vehicles for the purpose of M.V. Act. Hon'ble Apex Court in para No.6 further dealt with the definition of the motor vehicle and mentioned that motor vehicle as defined in Section 2(28) of the Motor Vehicles Act, 1988. Subject to the provisions of the Act, Section 3 of the Act enables the levy and collection of tax on entry of any motor vehicle into local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act at such rate as may be fixed by the Government. Therefore, in order to attract tax under the provisions of Section 3 of the Act, a motor vehicle must have entered into a local area for use or sale therein and secondly which is liable for registration under the Motor Vehicles Act.

18. In view of the observations of the Hon'ble Apex Court in the present case also only the contention of the appellant is that as the Crane is used in a private premises of the W.C.L. it is not a motor vehicle is not acceptable. It is a motor vehicle in view of the definition under Section 2(28) of the Motor Vehicles Act. Therefore, contention of the learned Advocate that Crane is not covered under the Motor Vehicles Act

is not acceptable, in view of the decision of the Hon'ble Apex Court in **Bose Abraham** referred supra.

19. The appellant has also challenged the award on the ground that compensation awarded is exorbitant and excessive one. It is not in dispute that the deceased was serving with the W.C.L. and was getting salary of Rs.46,734/- per month. The monthly salary of the deceased excluding professional tax Rs.200/- and income tax deduction of Rs.1,000/- comes to Rs.45,534/- is considered by the learned Tribunal. As the deceased was survived by three members hence 1/3 was deducted and multiplier of 13 was applied in view of **Sarla Verma and others VS. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. Learned Advocate for the appellant vehemently submitted that regarding the future prospects the trial court has added 30% in fact trial Court ought to have add 25% in view of Judgment of **National Insurance Company Limited Vs. Prany Sethi and others** reported in **AIR 2017 SC 5157**. He invited my attention towards para No.61 clause (iv) and submitted that an addition of 25% where the deceased was between the age of 40 to 50 years. Learned Advocate Mr. Agrawal, for the respondent Nos.1 to 3 also invited my attention towards clause (iii) of para No. 61 and submitted that clause (iv) of para No.61 is in respect of

the self-employed person. Whereas the present deceased was a salaried person, and therefore clause (iii) is applicable. It is well settled that while considering the compensation under the Motor Vehicles Act just compensation is to be awarded. It is also well settled that Section 168 of the Motor Vehicles Act deals with concept of "just compensation" and the same has to be determined on foundation of fairness, reasonableness and equitability or acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and nonviolation of the principle of equitability. In case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Hon'ble Apex Court has considered this issue and guided by issuing the guidelines in the case of **National Insurance Company Vs. Pranay Sethi** (supra). Wherein the principles are enumerated while awarding the compensation. It is held by the Hon'ble Apex Court that while determining the income an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case in

hand the deceased was between the age of 50 to 60 years, the addition should be 50%. Actual salary should be read as actual salary less tax. Whereas in clause No.(iv) the criteria regarding the self-employed person or person on a fixed salary is given and it is held that in a case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 % where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component. Admittedly, in the present case, the deceased was a permanent employee of the W.C.L. and was salaried person. He was not self-employed or on a fixed salary. Therefore, clause (iii) of para No.61 will be applicable in this case as per the guide lines issued by the Hon'ble Apex Court in **National Insurance Company Vs. Pranay Sethi** (supra).

20. The learned Advocate for the appellant though submitted that in view of clause (iv) only 25% is to be added towards future prospects but clause (iv) is in respect of self-employee or for person who is on a fixed salary. Therefore, this submission of the learned Advocate

for the appellant is also not acceptable.

21. Thus, after perusal of the Judgment of the learned trial Court, the learned trial Court has rightly considered the income of the deceased and while awarding the compensation, he is rightly considered the future prospectus at the rate of 30% as the deceased was between 40 to 50 years. While awarding the compensation learned trial Court rightly taken into consideration the various principles enumerated by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi as well as Sarla Varma Vs. Delhi Transport Corporation and others** (supra). Thus, the grounds raised by the appellant in the present appeal are meritless as appellant has not made out the case for interfering with the Judgment and Award passed by the Motor Accident Claims Tribunal.

22. In view of the above discussion, as appeal is devoid of merits, liable to dismissed.

23. The appeal is dismissed. No order as to costs.

24. The claimants are permitted to withdraw the compensation amount along with the accrued interest.

(URMILA JOSHI-PHALKE, J.)

Sarkate.