

Ramrao Lala Borse vs New India Assurance Company Ltd. on 19 January, 2018

Equivalent citations: (2018) 1 TAC 357, AIR 2018 SUPREME COURT 657, (2018) 1 ACC 335, (2018) 1 ORISSA LR 704, (2018) 1 WLC(SC)CVL 395, (2018) 69 OCR 780, (2018) 2 RECCIVR 775, (2018) 1 UC 613, (2018) 1 SCALE 410, (2018) 2 ACJ 973, (2018) 2 ANDHLD 128, (2018) 2 ALLMR 401 (SC)

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Bench: D Y Chandrachud, A M Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 418 OF 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

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 and the judgment in Sarla Verma v Delhi Transport Corporation², 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. 1 (2017) 13 SCALE 12 2 (2009) 6 SCC 121 9 The appeal shall accordingly stand allowed. There shall be no order as to costs.

.....CJI [DIPAK MISRA]J [A M KHANWILKAR]
.....J [Dr D Y CHANDRACHUD] New Delhi;

January 19, 2018