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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.724 OF 2015
WITH
CIVIL APPLICATION NO.4357 OF 2014
IN
FIRST APPEAL NO.724 OF 2015**

The New India Assurance Company Limited
Regional Office at Shivkrupa Complex,
Navpada, B Cabin, Gokhale Road,
Thane (West) – 400 602.

...Appellant
(Orig.Opp.No.2)

v/s.

1. Ramrao Lala Borse
Aged 45 years, Occ. Household
2. Sushila Ramrao Borse,
Aged 43 years, Occ. Household

Both R/at : Naikwadai, Kongaon,
Kalyan – Bhiwandi Road,
Tal. Bhiwandi, District – Thane.

...Orig.Applicants

3. Kamruddin S. Khan,
Adult, Occ.Business,
R/at Near Chaupat Chabuttra,
Khanapur, Ajmer, District – Ajmer,
Rajasthan State.

...Respondents.
(Org. Applicants &
Opp.No.1)

**WITH
CIVIL APPLICATION NO.1251 OF 2015
(For Withdrawal of Compensation Amount)
IN
FIRST APPEAL NO.724 OF 2015**

1. Ramrao Lala Borse
Age: 74 years, Occupation: Nil
2. Sushila Ramrao Borse,
Age – 69 years, Occupation – Housewife

Both residing at – Naikwadi, Konegaon,
Kalyan-Bhiwandi Road, Taluka: Bhiwandi
District – Thane

...Applicants.
(Original Respondent
No.1 and 2 respectively)

v/s

1. The New India Assurance Company Limited
Regional Office at Shivkrupa Complex,
Navpada, B Cabin, Gokhale Road,
Thane (West) – 400 602.
2. Kamruddin S. Khan,
Adult, Occ. Business,
R/at Near Chaupat Chabuttra,
Khanapur, Ajmer, District – Ajmer,
Rajasthan State.

...Opponents
(Orig Appellant &
Respt No.3 respectively)

Mr.D.R.Mahadik, for the Appellant and Applicant in Civil Application
No.4357 of 2014.

Mr.R.S.Chahul a/w Mr.Raghujeet Singh i/b Ms.Rina Kundu, for the
Respondent Nos.1 and 2 in First Appeal and for the Applicants in Civil
Application No.1251 of 2015.

CORAM

**: A. S. OKA &
REVATI MOHITE DERE, JJ.**

RESERVED ON

: 17th JULY, 2015.

PRONOUNCED ON

: 23rd OCTOBER, 2015.

JUDGMENT (Per Revati Mohite Dere, J.) :-

1. Rule. Rule is made returnable with the consent of the parties forthwith and is taken up for final hearing.
2. The Appellant – Insurance Company has taken exception to the Judgment and Award dated 21st July, 2014 passed by the learned District Judge – 5 and Additional Member, Motor Accident Claims Tribunal, Thane at Thane, by which the Respondent – Claimants were awarded compensation of Rs.61,55,000/- with simple interest @ 9% per annum from the date of the petition till its realization.
3. The impugned award has been challenged by the Appellant – Company on several counts, viz., (i) that the issue of negligence has not been proved ; (ii) that the compensation awarded by the Tribunal is contrary to the established legal principles. It is contended that though the last salary certificate of the deceased reflected his salary as Rs.2,800/- per month, the Tribunal has erred in concluding the income of the deceased to be Rs.40,000/- per month ; (iii) that the Tribunal has committed an error in awarding 50% towards future prospects, though the deceased was working as an Assistant Teacher on temporary contract basis with an

unaided school ; (iv) that the Tribunal has erred in choosing the multiplier of '17' on the basis of the age of the deceased by ignoring the age of the respondent – claimants i.e. parents as has come on record ; and (v) that the dependency formula of $1/3^{\text{rd}}$ was wrongly applied, considering the fact that the first respondent – claimant i.e. the father was not dependent on the deceased ; and lastly (vi) that the rate of interest awarded @9% per annum on the additional income of future prospects from the date of the application till realization is unjustified.

4. The respondent – claimants supported the award and contended that no interference was warranted in the same.

5. Before we deal with the rival submissions, it would be necessary to set out the factual matrix of the case and the evidence adduced by the respondent – claimants in support of their claim petition. On 19th February, 2006, Deepak was travelling as a passenger in a luxury bus on the Mumbai – Agra Road. He was occupying a seat on the driver's side of the bus. When the bus was near Maharana Hotel, Village Atgaon, District Nashik, a truck bearing No.RJ-01-G-6386 is stated to have come from the opposite direction and dashed into the luxury bus on the driver's

side, resulting in the passengers including Deepak suffering grievous injuries. Deepak was shifted to the Government Hospital, Nashik, however, he succumbed to the fatal injuries. The driver of the trailer truck is alleged to have driven the vehicle in excessive speed and in a rash and negligent manner, resulting in the collision. FIR came to be registered against the driver of the offending truck. At the relevant time, the deceased – Deepak was serving as an Assistant Teacher in the Dadasaheb Dandekar Vidyalaya, a school run by Shishu Vihar Education Society. The first and the second respondent – claimants, i.e. the father and mother of the deceased – Deepak respectively, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 in the Motor Accident Claims Tribunal, Thane in 2008 as against the owner of the offending truck and the appellant – company and sought compensation of Rs.66,70,000/-. The third respondent failed to contest the petition and hence the appellant – company sought leave to defend and contested the claim petition, by filing their written statement. The appellant - Company denied that the driver of the offending truck was negligent and that Deepak suffered injuries in the accident and died as a result of the same. They also questioned the claim petition with regard to the age, income and nature of employment of the deceased, the age of the respondent – claimants and contended that the

claim petition was exorbitant.

6. The respondent – claimants in support of their claim petition examined the first respondent – claimant ; PW.2 – Deepali Abhay Tambde, an Accountant in Shishu Vihar Shikshan Sanstha to prove the income of the deceased ; PW.3 – Sudhir Gunvantrao Deshmukh – Secretary of Shishu Vihar Educational Trust, also to prove the income of the deceased ; and PW.4 – Suresh Kulkarni – Assistant Teacher in Shishu Vihar Shikshan Sanstha, a colleague of the deceased again on the point of salary. The Tribunal after considering the evidence on record concluded that the respondent – claimants had proved that the driver of the offending truck was rash and negligent ; that had the deceased survived, he would have been made permanent and would have drawn a higher salary ; that he then would have been entitled to the benefit of the 6th Pay Commission and as such would have drawn a salary of atleast Rs.40,000/- per month ; and after applying the formula laid down in Sarla Verma's case, considering the age of the deceased, the dependency and by applying the multiplier of '17', awarded compensation of Rs.61,20,000/- to the respondent – claimants. Both the third respondent and the appellant – company were held jointly and severally liable to pay the compensation. Under the conventional

heads, the compensation awarded to the respondent – claimants was Rs.25,000/- towards loss of love and affection and Rs.10,000/- for funeral expenses/charges. Interest @9% per annum was awarded on the said amount of Rs.61,55,000/- from the date of the application till its realization. The apportionment ordered was as follows ; that the first and second respondents were awarded Rs.30,77,500/- each, with an amount of Rs.25,00,000/- to be kept in Fixed Deposits for one year.

7. The first respondent – claimant filed his affidavit of evidence in lieu of examination-in-chief. He has stated that on 18th February, 2006 at about 7.30 a.m., his son Deepak along with other residents of Village – Kone, Taluka – Kalyan, District – Thane had gone to Amalner in a luxury Bus bearing No.MH-02-G-988 to attend a marriage ceremony ; that after attending the said ceremony they were returning back from Amalner to Village Kone by the same luxury bus, when the accident took place. He has further stated that at about 11.30 p.m., when the luxury bus which was being driven at a moderate speed came near Maharana Hotel, at Aadgaon Shivar, on Mumbai-Agra Road, all of a sudden one trailer truck bearing No.RJ-01-G-6386 came from the opposite direction i.e from Nashik side in an excessive speed and dashed the luxury bus from the driver's side.

Pursuant to the impact, five seats of the luxury bus from the driver's side were completely damaged and the passengers occupying the said seats were grievously injured. Deepak who was sitting on one of the seats behind the driver's side, suffered grievous head injuries and other injuries. The first respondent – claimant produced the Advance Death Certificate, Inquest Panchanama and PM Report in support of the same, in order to show that Deepak had succumbed to the accidental injuries, prior to his admission in the Civil Hospital, Nashik.

8. According to the first respondent – claimant, the driver of the offending vehicle was driving the said vehicle in a high and excessive speed and in a rash and negligent manner, resulting in loss of control over his vehicle and colliding with the luxury bus. He has further stated that he is 50 years of age and his wife 48 years and that both of them were completely dependent on their son. He has further stated that his son Deepak was intelligent and had completed his B.Ed. Degree Course from the University of Mumbai in March, 2000; that at the relevant time Deepak was working as a teacher in Dadasaheb Dandekar Vidyalaya, Dandekar Wadi, Taluka – Bhiwandi, District - Thane on temporary basis and was drawing a salary of Rs.2,800/- per month and as such was

providing strong financial support to the family ; that as Deepak was working with the said school from 2006 to 2013, he would have definitely been made permanent and consequently his salary would have been approximately Rs.20,000/- per month. He has stated that it was necessary to consider the future prospects of the deceased while awarding compensation to the respondent – claimants. According to the first respondent – claimant, the deceased being the only earning member of the family, was taking care and looking after the daily livelihood of the family at the time of his death ; that he being the sole bread earner of the family, irreparable economic loss was caused to them due to his untimely death. He has stated that the deceased was a bachelor, was healthy and had a robust personality and that they were the only legal heirs of the deceased. Apart from compensation under the various heads, the respondent – claimants also sought compensation under the conventional heads i.e. for loss of love and affection etc. The first respondent in support of the claim petition filed several documents i.e. copy of the FIR, spot panchanama, inquest panchnama, advance death certificate, post mortem report, certificate issued by the General Hospital, Nashik, A.A. Form ; copy of the school leaving certificate of the deceased, copy of B.Ed Degree Course, copy of the death certificate, copy of the original salary

certificate issued by the Dadasaheb Dandekar Vidyalaya, Dandekar Wadi, Taluka – Bhiwandi, District – Thane and several other documents which have been set out in para 9 of the claim petition.

9. It has come, in the cross examination of the first respondent – claimant, that he was born in 1941; that his age in 2013 was 70 years and that the current age of his wife was 65 years; and that his age and his wife's age mentioned in the affidavit are incorrect. He has admitted that the deceased was his only son and that he had personally not witnessed the accident. He has admitted that his son was in service in the School from the year 2003 to 2006. He has denied the suggestion that he has falsely stated that his son was working in the school as an Assistant Teacher and was drawing a salary of Rs.2,800/- per month. He has denied the suggestion that the accident occurred on account of his son's fault and that he had put up a false claim.

10. The second witness examined by the respondent – claimants was, Deepali Abhay Tambde, an Accountant in Shishu Vihar Shikshan Sanstha. She has deposed in her evidence that she was working as an Accountant in the said Shishu Vihar Shikshan Sanstha since June 1998,

which was being run and governed by Dadasaheb Dandekar Vidyalaya, Dandekar Wadi, Taluka – Bhiwandi, District – Thane. She has stated that she knew the deceased, as he was working as an Assistant Teacher in the institute and that he had joined the service in 2001 and was working in the institution upto 17th February, 2006 i.e. till his death in the accident. She has stated that at the relevant time the deceased was drawing a salary of Rs.2800/- per month and accordingly a salary certificate dated 18th March, 2011 was issued by the institution. She has admitted that the said salary certificate issued and the contents thereof, were based on record and that she had personally noted the same. The said witness was carrying the salary register maintained by her of all the employees of the institution. The salary register of June, August, 2005 to February, 2006 was shown to the Court. She has stated that the name of the deceased appears in the said salary register, which reflects the net salary drawn by the deceased as Rs.2800/- per month. As the said witness had produced the original register, the salary certificate was exhibited at Exhibit – 42. She has stated that had the deceased been alive and had he been continued in service, he would have been entitled for payment as per the 6th pay commission.

11. Deepali Tambde, in her cross examination, has admitted that the

deceased was working as an Assistant Teacher in a non-aided school. However, she has denied the suggestion that there was no sanctioned post of Assistant Teacher in the non-aided school. She has also denied the suggestion that the deceased was appointed on temporary basis. She has admitted that the document dated 18th March, 2013 certifies that deceased – Deepak was working on a temporary basis ; that she has not placed on record the salary drawn by the deceased from June, 2001 to 2004 ; and that she had not placed on record any document to show that the post of the deceased was a sanctioned post. She has stated that at the time of recording of her evidence the salary of an Assistant Teacher in the school was Rs.8,000/- per month whereas in the year 2008 it was Rs.6,000/- per month.

12. The third witness examined by the respondent – claimants was Sudhir Gunvantrao Deshmukh, Secretary of Shishu Vihar Educational Trust. He has deposed that he has been working as a Secretary of the said Trust since 1990 ; that he was knowing the deceased – Deepak as he was working in the institution as an Assistant Teacher ; that Deepak had joined their institution on 1st June, 2002 and had worked for 11 months upto April 2003 ; thereafter he was continued on the same post by renewing the

contract on the same post ; that Exhibit – 42 is the salary certificate of the deceased – Deepak ; that the contents of the said certificate were correct ; he has identified his signature on the said certificate. He has further stated that the strength of the students in that institution is more and as such there was more workload ; however for want of sanction and approval of the Government for the post, persons like the deceased – Deepak were continued in the service by regularly renewing their contract. He has specifically deposed that had the deceased been alive and had the Government sanctioned the post, considering the experience and seniority of the deceased, the institution would have preferred him. He has also categorically stated that the permanent teachers of their institution are given the benefit of the 6th pay commission and an Assistant Teacher who is permanent is paid a salary of Rs.40,000/- per month. The said witness in his cross examination has admitted that the deceased – Deepak was not working in a post which was sanctioned and no proposal was forwarded by the institution for sanctioning the said post; however proposals were sent for increasing the division in view of the increase in the strength of the students. He has admitted that when the deceased was appointed he was purely on temporary basis ; that the certificate which is at Exhibit – 42 (salary certificate) and the contents therein were correct and that the same

was issued by him ; that the Society had not passed any Resolution authorizing him to appear on behalf of the Society and that he was appearing in response to the summons issued by the Court. Lastly, he has denied the suggestion that he was falsely deposing only with the intention of seeing that the claimant receives more benefit.

13. Suresh G. Kulkarni, an Assistant Teacher in Shishu Vihar Shikshan Sanstha at Bhiwandi was examined as the last witness by the respondent – claimant. He has deposed that he was working as an Assistant Teacher in the said Sanstha at Bhiwandi since 1997 ; that in 1997 he also was serving as an Assistant Teacher and that his appointment was on temporary basis. He has further deposed that he became permanent in the year 1999. He has stated that when he joined his salary was Rs.1,700/- per month and that today he was working as an Assistant Teacher after being made permanent. He has further deposed that at the time of recording of his evidence, he was drawing a salary of Rs.50,400/- per month and that he was receiving the benefit of the 6th Pay Commission. He has stated that he knew Deepak, as he too was an Assistant Teacher and that both of them were teaching English. He has stated that Deepak was working upto 2006, till his death in the accident. He has stated that till his death Deepak

was in continuous service and had he been alive, he too would have been made permanent and would have received the benefit of the 6th pay commission. Nothing substantive has been brought in the cross examination of the said witness. He has admitted that the contents of Exhibit – 47 are correct. He has admitted that there was a practice of giving a break in the month of May and again issuing service order in June and that the same amounts to break in service.

14. We have perused the impugned award, the evidence and the documents on record with the assistance of the learned counsel for the parties. We have also given our anxious consideration to the submissions advanced by the learned counsel for the parties. With regard to the submission of the learned counsel for the appellant – company that negligence has not been proved, we are of the opinion that there is no merit in the said submission. Although the first respondent – claimant is not an eye witness to the accident, he has produced on record all the relevant documents to show that the deceased sustained fatal injuries in the said accident. There is nothing substantial brought on record in the cross examination of the first respondent, on the point of negligence except making a suggestion that he was falsely stating that the driver was driving

the offending vehicle in excessive speed and in a rash and negligent manner, which was denied by him. It is pertinent to note, that the appellant – company has neither examined the driver of the offending vehicle nor has brought any evidence/material on record, to prove to the contrary. Adverse inference can be drawn for the failure to examine the driver. Hence, there is no merit in the contention raised by the learned counsel for the appellant, that the respondent – claimants have not proved negligence by the driver of the offending vehicle.

15. The second submission of the learned counsel for the appellant is that the Tribunal has erred in concluding that the income of the deceased was Rs.40,000/- per month, when infact, the last salary certificate of the deceased reflected his salary as Rs.2,800/- per month. He submitted that the deceased was admittedly working on a temporary basis in a non-aided school and that there were no prospects of his permanency, in the light of the evidence that has come on record. We may note here, that the salary certificate (Exhibit – 42) dated 18th March, 2013 shows that the deceased was working as an Assistant Teacher on a temporary basis in the secondary section with Shishu Vihar Shikshan Sanstha. In the said certificate his service tenure was stated to be from June 2001 to February, 2006. It is

further stated in the said certificate that as per the school record, Deepak met with an accident on 20th February, 2006 and that at the relevant time i.e. February, 2006 the deceased was drawing a salary of Rs.2,800/- per month. The said salary certificate has been issued by the Secretary of the Shishu Vihar Educational Trust. There is another certificate which is on record at Exhibit – 47 dated 20th March, 2006 which is issued by the Head Master of Dadasaheb Dandekar Vidyalaya, (Secondary Section), Dandekar Wadi, Taluka – Bhiwandi, District - Thane. It certifies that the deceased was working in the institution as an Assistant teacher on temporary basis from 13th July, 2003 till 30th April, 2005. It is further certified that he was appointed again on 13th June, 2005 on the temporary post and that he was drawing a salary of Rs.2,800/- per month. The evidence of the first respondent – claimant shows that the deceased had completed his B.Ed. from the University of Mumbai in the year 2000. According to the first respondent – claimant, the deceased was working as an Assistant Teacher in Dadasaheb Dandekar Vidyalaya, Dandekar Wadi, Taluka – Bhiwandi, District - Thane on temporary basis, at the relevant time and was drawing a salary of Rs.2,800/- per month. According to the said witness, had the deceased been made permanent in the said institution, his salary would have been approximately Rs.20,000/- or more per month.

A perusal of the evidence of the said witness shows that the suggestion made to the said witness, that his son was not serving as an Assistant Teacher at the relevant time and was not drawing a salary of Rs.2,800/- per month, has been categorically denied by him. A perusal of the evidence of the other witnesses also reveals that the deceased was working as an Assistant Teacher in the institution at the relevant time ; that he had joined the service in 2001 and was working in the said institution till his death in February, 2006, in an accident. It has come in the evidence of all the witnesses, that the deceased was drawing a salary of Rs.2,800/- per month. The witnesses have also proved the contents of both the documents at Exhibits – 42 and 47 which are the Salary Certificate and Service Certificate respectively. Thus, from the evidence that has come on record, we can safely conclude that the deceased – Deepak was working in the said institution as an Assistant Teacher on temporary basis from 2001 to 2006 i.e. till his unfortunate death in the accident.

16. Considering the aforesaid evidence and the conclusion arrived at we proceed to consider whether there was a likelihood of the deceased being made permanent in the said institution and consequently being entitled to a higher salary. Before we deal with the said submission, it

would be necessary to take note of a few provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'the MEPS Act'). The MEPS Act regulates the recruitment and conditions of service of employees in certain private schools with a view to provide such employees security and stability of service, so as to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general effectively and efficiently.

17. Section 2(20) of the MEPS Act defines the term 'private school' to mean a recognised school established or administered by a Management, other than the Government or a local authority. ** As noted earlier the MEPS Act, provides for regulating recruitment and conditions of service of employees in certain private schools. Thus, the expression 'private school' would cover schools other than the primary schools established or administered by a local authority. Section 3 deals with the Application of the said MEPS Act. It reads thus :-

“3. Application of Act : (1) The provisions of this act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

(2)

18. Section 4 deals with the 'Terms and Conditions of Service of employees of private schools' :-

4. Terms and Conditions of Service of employees of private schools :-

(1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualifications for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of the backward classes :

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules.

2.

It is thus evident that the Rule making power is conferred on the State Government and the State Government has the power to make rules, where the pay-scales and allowances etc., of any private school are less

favourable than those prescribed by the Rules. It empowers the Director of Education to direct the Management of such a school in writing to bring existing Rules in conformity with the level given in the Rules, 1981. Failure to comply with the directives given by the Director can result in withdrawal of the recognition of the defaulting school. A perusal of Section 4 reveals, that every employee of a private school shall be governed by such code of conduct that may be prescribed ; that if the scales of pay and allowances, post-retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school to bring the same upto the level provided by the said rules, within such period or extended period as may be specified by him. Thus, the teachers in the recognised un-aided schools are entitled to receive the salary as per the pay scale prescribed under the Rules.

19. We have seen from the evidence that has come on record, in particular, the evidence of PW-3 Sudhir Deshmukh, Secretary of Shishu Vihar Educational Trust, that the deceased was working in the said institution from 1st June, 2002 to 2006 with notional breaks as an Assistant Teacher. The said witness has categorically stated that the strength of the

students in the institution had increased and so had the work load, however, for want of sanction and approval of the Government for the post, persons like deceased – Deepak were continued in service regularly on contract basis. He has further stated that had the deceased been alive and had the Government sanctioned the post considering the experience and seniority of the deceased, they would have preferred to appoint him as a permanent teacher. He has also categorically stated that a permanent teacher of their institution receives the benefit of the 6th Pay Commission and that for the permanent post of an Assistant Teacher, the institute pays a salary to the tune of Rs.40,000/- per month. It is pertinent to note that in the cross examination of the said witness, there is no cross examination or any suggestion on the aforesaid material that has come on record. The only cross examination/suggestion on the point is that the deceased – Deepak was not working on a post which was sanctioned ; that no proposal was forwarded by the institution for sanctioning the post of Deepak and that the deceased was appointed on a purely temporary basis. There is no dispute, that Deepak was appointed to the post of an Assistant Teacher on temporary basis. The evidence of Sudhir Deshmukh, that has come on record, with regard to the salary of an Assistant Teacher, who was made permanent, being Rs.40,000/- per month ; has gone unchallenged. The

evidence of the said witness, that the teachers who were made permanent were getting the benefit of the 6th Pay Commission ; that had the deceased continued in service and had the Government sanctioned the post, considering the deceased's experience and seniority he would have been made permanent has literally gone unchallenged. As far as the evidence of Suresh Kulkarni, a colleague of the deceased is concerned, the said witness has categorically stated that he was made permanent as an Assistant Teacher in 1999 and was presently drawing a salary of Rs.50,400/- per month and that he was getting the benefit of the 6th pay commission. The said witness has stated that had the deceased been alive, he too would have been made permanent and would have received the benefit of the 6th pay commission.

20. Admittedly, the deceased was working as an Assistant Teacher in a non-aided school on a temporary post since 2001. It is not seriously disputed that the last drawn actual salary of the deceased was Rs.2,800/- per month (in January, 2006) as is reflected in the salary certificate. Considering the said fact and the evidence of Mr.Sudhir G.Deshmukh (PW.3) and Mr.Suresh Kulkarni (PW.4) that has come on record, it is evident that had the deceased continued in service, he would have been

made permanent and would have also been entitled to the benefit of the 6th pay commission i.e he would be entitled to a salary of Rs.40,000/- per month. Section 5 of the MEPS Act casts certain obligation on the Management of the private schools. Under sub-section 1 of section 5, it is the responsibility of the Management to fill in, as soon as possible, in the manner prescribed, every permanent vacancy in a private school by appointing a person duly qualified to fill in such vacancy. Sub-section 2 of the said section 5 stipulates that every person appointed to fill in a permanent vacancy except [Assistant Teacher (Probationary)] shall be on probation for a period of two year and subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed : provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years. Subject to the provisions of sub-sections (3) and (4), the Assistant Teacher (Probationary) shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a permanent teacher.

21. Having regard to the statutory provisions of the MEPS Act in particular section 5, it is clear that had the institution obtained sanction

from the Government in time and had the deceased been absorbed to such a post within a short span of three years, he would be confirmed as a permanent teacher. The deceased at the relevant time was 29 years of age, having completed his B.Ed from the University of Mumbai. He was serving as an Assistant Teacher, teaching English language on a temporary/contract basis from the year 2001 to 2006 till his death, in the said Institute. Considering the statutory provisions of the MEPS Act and the evidence that has come on record, we are of the opinion that had the deceased continued in service, he would have been regularized in his employment as an Assistant Teacher and as such would have been entitled to the benefit of the 6th pay commission. Thus, we do not find any error in the finding of the learned Judge of the Tribunal that had the deceased been alive, he would have been regularized on the post sanctioned and as such would have drawn a salary of Rs.40,000/- per month.

22. The next question that falls for consideration is, whether the Tribunal has committed an error in awarding 50% towards future prospects. Though the deceased was working as an Assistant Teacher on temporary/contract basis with an non-aided school, as set out in the earlier paragraphs, having regard to the provisions of the MEPS Act and the

evidence that has come on record and having regard to the decision of the Apex Court in *Sarla Verma (Smt) and Others v/s Delhi Transport Corporation and Another*¹, the deceased would be entitled to future prospects which would be 50%. The relevant paras read thus ; -

- "20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.
21. In *Susamma Thomas* this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs 1032 per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs 2000 as gross income before deducting the personal living expenses.
22. The decision in *Susamma Thomas*-was followed in *Sarla Dixit v. Balwant Yadav*-where the deceased was getting a gross salary of Rs 1543 per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs 3000. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs 2200 per month.
23. In *Abati Bezbaruah v. Geological Survey of India*, as against the actual salary income of Rs 42,000 per annum (Rs 3500 per month) at the time of the accident, this Court assumed the

1 (2009) 6 SCC 121

income as Rs 45,000 per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In *Susamma Thomas* this Court increased the income by nearly 100%, in *Sarla Dixit* the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

23. The evidence of Suresh Ganesh Kulkarni (PW.4) clearly shows that he was also working as an Assistant Teacher in the said institution and on the post being sanctioned, he was made permanent and accordingly he received the benefit of the 6th pay commission. We, therefore, do not find any error in the conclusion arrived at by the learned Tribunal that the deceased was entitled to 50% towards future prospects, considering the evidence that has come on record.

24. The next question is which multiplier would be applicable in the facts of the present case; whether the age of the respondent – claimants ought to be considered or the age of the deceased. The Tribunal has applied the multiplier of '17' on the basis of the age of the deceased. We find the Tribunal has erred in applying the multiplier of '17' in the facts of the present case.

25. We may note that, the Apex Court in the case of ***National Insurance Company Limited v/s Shyam Singh and Others***² was required to deal with a similar situation. It was a case where the aged parents were the sole dependents of their young deceased son. It is in these circumstances that the Apex Court was required to consider whether the age of the deceased or the age of the dependent parents, would be considered while applying the multiplier. The Apex Court after considering the imponderable factors in the determination of compensation and following ***Vijay Shankar Shinde and Others v/s State of Maharashtra***³ held that the multiplier that would apply, would be one, after taking into consideration the average age of the parents of the deceased. Paras 9 and 10 reads thus:-

² (2011) 7 SCC 65

³ (2008) 2 SCC 670

“9. This Court in ***Vijay Shankar Shinde and Others v/s State of Maharashtra***, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:

"6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in [New India Assurance Co. Ltd. v. Charlie](#), it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.

7. The learned Counsel relying on the Second Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that [Section 163A](#) was brought on the Statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens u/s 140 or

166 were really cumbersome and time consuming. Therefore as a part of social justice, a system was introduced via [Section 163A](#) wherein such burden was avoided and thereby a speedy remedy was provided. The relief u/s 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including [Deepal Girishbhai Soni v. United India Insurance Co. Ltd.](#) AIR 2004 SC 2107. The Second Schedule is to be used not only referring to age of victim but also other factors relevant therefore. Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in U.P. [State Road Transport Corporation v. Trilok Chandra](#) (1996) 4 SCC 362, Ahmedi, J. (As the Chief Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide. **It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by the Second Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants. That precisely has happened in this case. Age of the**

parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim and Ors. AIR 2008 SC 103. In our considered opinion, the Courts below rightly struck the said balance."

10. In our view, the dictum laid down in Ramesh Singh case is applicable to the present case on all fours. Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years”.

26. It is thus evident from the aforesaid judgments, that if the deceased is a young man, who dies in an accident, leaving behind his aged parents, who may not survive long enough, the Court will have to offset the high multiplier provided in the second schedule, and balance the same with the short life expectancy of the claimants. In short, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In the present case, the age of the deceased was 29 years at the time of the accident. The age of the dependent parents i.e. father and mother was stated to be 45 and 43 years respectively in the claim petition, whereas, in the cross-examination of the first respondent – claimant, it has come that the first respondent was born in 1941 and that his age and the

age of his wife mentioned in the affidavit are incorrect; that his age in 2013 was 70 years and the age of his wife was 65 years. Although the respondent – claimants have, in the claim petition filed in 2008 given their age as 45 and 43 years respectively, we are unable to accept the same. Admittedly, the age of the deceased was 29 years in 2006. If we accept the age of the respondent – claimants as set out in claim petition to be 45 and 43 years in 2008, then the age of the respondent – claimants would have to be 14 and 12 years respectively when the deceased was born. Hence, we cannot accept the age of the respondent – claimants to be 45 and 43 in 2008. For considering the correct age of the respondent – claimants, we will have to consider the year of birth of the respondent – claimant as has come in the cross-examination of the first respondent. In his cross-examination, the first respondent has admitted that he was born in 1941 and his age to be 70 years in 2013 and that of his wife be 65 years. There appears to be an inadvertent calculation error. If we take the year in which the first respondent– claimant was born as 1941, then the age of the first respondent – claimant ought to be 72 years in 2013 and 65 years in 2006 i.e. when the deceased died. It also appears from the record, that an application was filed by the first respondent seeking expeditious hearing of the present appeal. To the said application, the first respondent has annexed his Adhar Card

which shows his date of birth as 1941. Judicial notice can certainly be taken of the said fact. Thus, even according to the said document, the age of the first respondent would be 65 years in 2006. It also appears from the cross examination of the first respondent – claimant that the second respondent – claimant was 65 years in 2013. As far as the age of the second respondent – claimant is concerned the same has literally gone unchallenged. Thus, the age of the second respondent will have to be taken as 65 years in 2013 and as 58 years in 2006. Considering the aforesaid, we may safely conclude that when the deceased died in 2006, the first respondent was 65 years of age and the second respondent was 58 years. We find that the Tribunal has clearly erred in applying the multiplier of 17, by taking the age of the respondent – claimants to be 45 and 43 years in 2008. Taking the average age of both, as 61 years in 2006 for applying the multiplicand, the compensation would now have to be calculated. Thus, having regard to the aforesaid, and the law in that regard, we are of the view that the multiplier of ‘7’ would apply in the facts of the present case, having regard to the average age of the parents to be 61 years.

27. The next submission advanced by the learned counsel for the appellant is that the deduction of $1/3^{\text{rd}}$ was wrongly applied. He

submitted that the first respondent – claimant (father of the deceased) was not dependent on the deceased. We do not find any merit in the said submission, inasmuch as, there is nothing brought on record by the appellant – company in the cross-examination of the first respondent – claimant to show that he was working or earning at the relevant time. It is also pertinent to note, that no suggestion has been made to the first respondent – claimant in that regard. Infact, the evidence on record is to the contrary. The first respondent – claimant has categorically deposed that the deceased was the sole bread winner of the family ; that the deceased was taking care and looking after the daily livelihood and that an irreparable economic loss was caused to them due to his untimely death. Admittedly the deceased was a Bachelor and having regard to the law laid down in this regard, 50% would have to be deducted towards the personal expenses of the deceased, and the respondent – claimants would be entitled to the balance 50%. Under these circumstances, the learned Tribunal has erred in applying the 1/3rd formula in computing the compensation.

28. Having regard to all the aforesaid facts and the judicial pronouncements in that regard what is the just compensation that the respondent –claimants would then be entitled to ? Admittedly, the

deceased was aged 29 years and the average age of the first and second respondent – claimants as discussed in the foregoing paras would have to be taken as 61 years in 2006. As noted earlier, the deceased had the prospects of being made permanent ; and as such would have been entitled to a salary of Rs.40,000/- per month and would have been entitled to the benefit of the 6th pay commission. Considering the age of the deceased which was below 30 years of age, at the time of the accident and keeping in mind the formula in ***Sarla Verma's case***, the deceased would be entitled to 50% rise in the income towards future prospects. As the deceased was a bachelor, 50% of the said income would have to be deducted towards his personal expenses. Thus, the income of the deceased will have to be calculated at the rate of Rs.40,000/- per month X 12 = Rs.4,80,000/-. After adding 50% to the income towards future prospects, the income arrived at would be Rs.7,20,000/-. After deducting 50% towards personal expenses as the deceased was a bachelor, the income would be Rs.3,60,000/-. Taking into consideration, the average age of the parents of the deceased i.e. father and mother as 61 years, the multiplier of '7' would apply. Considering the multiplicand and the multiplier that would be applicable i.e. 3,60,000 X 7, the amount arrived at would be Rs.25,20,000/-. Under the conventional heads, the compensation awarded to the respondent – claimants by the

Tribunal was Rs.25,000/- towards loss of love and affection and Rs.10,000/- for funeral expenses/charges. However, we are of the opinion, that the said amount awarded under the conventional heads will have to be enhanced from Rs.25,000/- to Rs. 50,000/- each to the respondent – claimants, towards loss of love and affection and from Rs.10,000/- to Rs.25,000/- towards funeral expenses in conformity of the decision of the Apex Court, in the case of **Rajesh and Others v/s Rajbir Singh and Others**⁴. Thus, the amount of compensation that the respondent – claimants would be entitled to is Rs.26,45,000/-.

29. Lastly, the learned counsel for the appellant has contended that the interest awarded by the Tribunal at the rate of 9% per annum on the additional income of future prospects from the date of the application till its realization was unjust. We may note that as far as the interest rate is concerned, the Apex Court in the case of **Puttamma and Others v/s K.L.Narayana Reddy and Another**⁵, after elaborate analysis to determine appropriate rate of interest in Motor Accident claims, held that -

“In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observations of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the

4 (2013) 9 SCC 54

5 (2013) 15 SCC 45

rate of interest after taking into consideration the rate of interest allowed by this Court in similar cases and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending”. (emphasis supplied)

30. Similarly, in *Abati Bezbaruah v. Deputy Director General, Geological Survey of India & Another*⁶ the Apex Court, taking note of the varying interest rates being awarded by Tribunals and High Courts, held that the rate of the 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.

31. The tribunal had rightly awarded rate of interest at the rate of 9% per annum on the entire amount of compensation including on future prospects. We do not find any infirmity in the same. Accordingly, we pass the following order :-

ORDER

- i) The appeal is partly allowed ;
- ii) The respondent – claimants would be entitled to a compensation

⁶ (2003) 3 SCC 148

of Rs.26,45,000/- at the rate of 9% per annum from the date of the Claim Petition till its realization;

- iii) The apportionment shall be done in accordance with the Judgment and Award dated 21st July, 2014, passed by the learned District Judge – 5 and Additional Member, Motor Accident Claims Tribunal, Thane at Thane.
- iv) Writ of this judgment along with R&P shall be forwarded to the Tribunal, within four weeks.

32. Civil Application nos.4357 of 2014 and 1251 of 2015 do not survive and the same are disposed of.

33. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)