**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2908 OF 2008

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1. Suresh s/o Dattatraya Patil,
age 46 years, Occ. Agril.

2. Godawari w/o Suresh Patil,
age 42 years, Occ. Household

3. Madhukar s/o Dattatraya Patil,
age 20 years, Occ. Agri.

All R/o Sonkhed, Tq. Nilanga,
District Latur. ..Appellants..
[orig claimants]

VERSUS

1. Sudhakar s/o Baburao Pawar,
age major, occ. Driver,
R/o Jamga, Tq. Nilanga,
Dist. Latur.

2. National Insurance Co. Ltd.,
Through its Branch Manager,
Latur, Hanuman Chowk, Latur. Respondents
Orig respondents

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Advocate for Appellants : Mr N P Patil
Advocate for Respondent 2 : Mr S V Kulkarni
Respondent no.1 served.

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CORAM : V.K. JADHAV, J.
Dated: April 11, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award

passed by the Member, Motor Accident Claims Tribunal, Nilanga in MACP No.26 of 2006, the original claimants preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 5.9.2004 deceased Sudhakar was proceeding in a mini door tempo bearing registration No.MH-24/F-5594 alongwith his goods. On way, respondent no.1, who was the driver cum owner of the said mini door tempo lost his control over the vehicle and accordingly said vehicle turned turtled. In consequence of which deceased Sudhakar sustained severe injuries and died on the spot. The legal representatives of deceased Sudhakar filed claim petition for grant of compensation under the various heads before the Motor accident Claims Tribunal, Nilanga.

B] Respondent No.1 owner cum driver though duly served, remained absent and, therefore, claim petition ordered to proceed ex-parte against him.

3. Respondent No.2 Insurer has strongly resisted the claim petition by filing written statement. It is specifically denied that, deceased Sudhakar was travelling in the said vehicle alongwith his goods. Respondent No.2-Insurer has raised defence that, deceased Sudhakar was travelling in a goods vehicle as a passenger and therefore, there has been breach of conditions of the policy. The learned Member of the Tribunal has partly allowed the claim petition and thereby directed the respondents to pay compensation of Rs.1,64,200/- alongwith interest and further directed that respondent no.2 insurer shall pay the entire amount under Award and recover the same from the respondent no.1 owner. The appellant/original claimant has preferred this appeal to the extent of quantum.

4. Learned counsel for the appellant submits that, the Tribunal has not considered the income of the deceased Sudhakar. Deceased Sudhakar was earning Rs.5,000/- p.m. by driving an auto rickshaw. Learned counsel submits that, even though the claimants have produced on record driving licnece of the deceased

Sudhakar and the same is marked as Exh.24, the Tribunal has considered the income of deceased Sudhakar at Rs.90/- per day. Learned counsel further submits that, the Tribunal has erroneously applied the multiplier '7' by considering the age of the parents. Learned counsel submits that by considering the age of deceased Sudhakar, the Tribunal ought to have applied the multiplier '**17**' instead of '**7**'.

5. Learned counsel for respondent no.2 insurer submits that, deceased Sudhakar was driving auto rickshaw on hire basis. There is no direct income proof, however, considering the driving licence possessed by deceased Sudhakar the Tribunal has considered his income from the said business @ Rs.90/- per day. Learned counsel submits that, Tribunal has erroneously deducted 1/3rd of amount towards his personal expenses instead of ½ of the amount. Learned counsel submits that, it is well settled that in case of unmarried son ½ of the amount is required to be deducted towards personal expenses. Learned counsel submits that, considering the income and parents age, the Tribunal

has awarded just and reasonable compensation in the matter. Learned counsel submits that, no interference is required and the appeal is thus liable to be dismissed.

6. It is not disputed that the accident had taken place on account of the rash and negligent driving of respondent no.1 owner and deceased Sudhakar sustained injuries in the said accident and died on the spot. Further, it is also accepted that the Tribunal has rightly directed respondent no.2 insurer to pay the compensation amount first and then recover the same from the respondent no.1 owner.

7. So far as quantum is concerned, it appears that the Tribunal has committed mistake while considering the income of deceased Sudhakar. Usually, if the claimants fail to prove income of the deceased person who met with an accidental death, notional income is considered as Rs.3,000/- as income of the labour. In the case in hand, deceased Sudhakar was driving auto rickshaw on hire basis. He was having valid and effective driving licence to drive the rickshaw and his

driving licence is produced on record and the same is marked as Exh.24. In view of this, the Tribunal ought to have considered his income at Rs.4,000/- p.m.

8. The learned Member of the Tribunal has also committed mistake while applying the multiplier by applying multiplier '7'. It appears that the Tribunal has considered the age of the claimants while applying the said multiplier. In a case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 Supreme Court Cases 121,** it is held that age of the deceased person at the time of his accidental death is required to be considered for applying multiplier. It is well settled that, for a person within the age group of 26 to 30 relevant multiplier is '17'. So far as deductions on the count of personal expenses is concerned, learned counsel for the respondent-insurer has rightly pointed out that the Tribunal has deducted 1/3rd of amount towards personal expenses instead of deducting ½ of the amount. Admittedly, deceased Sudhakar was unmarried at the time of his death and after his accidental death,

claim has been preferred by his parents.

9. In view of the above discussion, monthly income of deceased Sudhakar is considered as Rs.4,000/- (Rs. Four thousand). After deducting ½ of the amount towards his personal expenses, loss of dependency/income comes to Rs.2,000/- corresponds to (Rs.2,000 x 12) = Rs.24,000/- per year. Said amount of Rs.24,000/- multiplied by '17' = Rs.24,000 x 17 = Rs. 4,08,000/- would be the proper compensation. The Tribunal has correctly awarded the compensation under the heads of non pecuniary and no interference is required.

10. In view of the aforesaid modifications, the compensation is required to be recalculated. Thus, break up of compensation, which can be broadly categorized as under :-

1.	Loss of dependency/income	Rs.4,08,000/-
2.	Loss of love and affection	Rs. 20,000/-
3.	Funeral Charges	Rs. 03,000/-
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		Rs.4,31,000/-
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11. Thus, the claimants are entitled for the same. In view of the above discussion, following order is passed.

ORDER

I. Appeal is hereby partly allowed with proportionate costs.

II. Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Nilanga, dated 14.2.2007 in MACP No.26/2006 is modified to the following effect :-

> "Respondent No.1 is liable to pay the compensation of Rs.4,31,000/- (Rs. Four Lacs thirty one thousand only) with interest @ 9% p.a. from the date of application till the realization of the entire amount to the appellants/claimants and respondent No.2 shall first pay the compensation amount to the appellants-claimants and then recover the same from respondent No.1-owner and for that purpose the respondent No.2 Insurer is not required to initiate any independent proceeding.

III. Rest of the Judgment and Award passed by the Tribunal stands confirmed.

IV. Award be drawn up accordingly.

V. First appeal stands disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-