IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 653 OF 2001

1. Smt. Chhaya w/o Pralhad Trimukhe,
age 33 yrs, Occ. Household,
R/o Kalasadan Market Road, Majalgaon,
Tq. Majalgaon, Dist. Beed.

2. Rupali d/o Pralhad Trimukhe,
age 17 yrs, Occ. Education, Minor.

3. Avinash s/o Pralhad Trimukhe,
age 10 yrs, Occ. Education, minor.

4. Ravi s/o Pralhad Trimukhe,
age 7 yrs, Occ. Nil, minor.

Petitioner No.2 to 4 are minors,
u/g of petitioner/appellant no.1. ..appellants...

VERSUS

1. Vishwambar s/o Durgaprasad Gupta,
age 23 yrs, Bus owner, r/o winner glass
Industries, 115/A, Khari-Kamti road,
Nagpur, Tq. District Nagpur.

2. Dinesh Suryabhan Sheshka,
age 28 yrs, Occ. Bus driver,
r/o old Babhulkheda, behind police
station, Nagpur, Tq. & Dist.Nagpur. Dismissed.

3. Gulam Mohammad s/o Russom Khan,
age 38 yrs, Occ. Truck owner, r/o Shukhe,
Lagi street, Gal Dharugi, R-5, Bombay400008.

4. Sk. Abdul Jabbar s/o Ashif Ali,
age 24 yrs, Occ. Truck Driver,
R/o Kalyan Nagar, Bihar Road,
F.S.Tata Nagar House, Bombay.

(appeal as against respondent nos.3,4 abated.)

5. The United Insurance Company,
Limited through its Branch
Manager, Rathi Complex, Subhash
Road, Beed, Tq. & Dist Beed. ..Respondents..

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Advocate for Appellants : Mr Girish Thigle
Advocate for Respondent 5 : Mr S G Chapalgaonkar
R/2 Dismissed, Appeal Abated As Against R/3,4

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CORAM : V.K. JADHAV, J.
Dated: July 10, 2017

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PER COURT :-

1. Being aggrieved by the judgment and Award passed by the Member, Motor Accident Claims Tribunal, Beed dated 20.7.2000 in MACP No.204/1995, original claimants have preferred this appeal to the extent of quantum of compensation as awarded by the Tribunal.

2. Learned counsel for the appellants-original claimants submits that, deceased Pralhad was a business man and though he had submitted income tax returns, the Tribunal has considered his income from

the business source for the assessment year 1993-1994 for the accounting year 1.4.1992 to 31.3.1993 vide Exh.57 and ignored income tax returns of the assessment year 1995-1996 for the accounting year 1.4.1993 to 31.3.1994 vide exh.47. Learned counsel submits that, as per Exh.57, total income of deceased Pralhad was Rs.28,310/-, however, vide exh.47, net income of deceased Pralhad is shown as Rs.58,370/-. Learned counsel submits that, thus the Tribunal has not correctly considered income of the deceased from his business source prior to his death. Learned counsel submits that, the Tribunal has not made any addition in the income of deceased towards future prospects. Deceased Pralhad was 34 years of age at the time of his accidental death and as such in view of the ratio laid down in case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr** reported in **(2009) 6 SCC 121** and **Rajesh and others Vs. Rajbir Singh and others** reported in reported in **(2013) 9 Supreme Court Cases 54** the Tribunal ought to have considered 30% addition in the income of deceased Pralhad towards his future prospects. Learned counsel submits that the Tribunal has also not awarded the compensation under the non-pecuniary heads and awarded very meager amount of compensation under the heads of loss of Estate, loss of expectation of life, love and affection and funeral expenses. Learned counsel for the appellants-claimants, however, fairly conceded that, the Tribunal has wrongly applied the multiplier '17' instead of '16' which is inconsonance with the age of deceased. Learned counsel submits that the Tribunal has also erroneously deducted the amount to the extent of $1/3^{rd}$ towards personal and living expenses of deceased Pralhad instead of $1/4^{th}$ which is in consonance with the number of the claimants/dependents who are four in numbers.

3. Learned counsel for the appellants in order to substantiate his contentions placed his reliance on following two cases :-

1. **Darshana Ganesh Kanavaje and others Vs. Maharashtra State Road Transport reported in 2013 (6) Mh.L.J. 779.**

2. **Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation reported in (2015) 2 Supreme Court Cases 764.**

4. Learned counsel for respondent-insurer submits that, the Tribunal has rightly considered the income of deceased from his business as per income tax returns exh.57 for the assessment year 1993-1994 for the accounting year 1.4.1992 to 31.3.1993. Learned counsel submits that, the Tribunal has rightly discarded income tax returns vide exh.47 for the assessment year 1995-1996 for the accounting year 1.4.1993 to 31.3.1994 on the ground that those returns have been submitted after the death of deceased. Learned counsel submits that, the appellant-claimant has not submitted copy of the returns of assessment year 1996-1997 for the accounting period 1.4.1994 to 31.3.1995 and as such the Tribunal has, therefore, rightly considered income tax returns vide exh.57 for the assessment year 1993-1994. Learned counsel submits that, tribunal has awarded rate of interest @ 12% p.a. however, it should be 9% p.a. Learned counsel submits that, the Tribunal has

awarded just and reasonable compensation. No interference is required. There is no substance in the appeal.

5. Learned counsel in order to substantiate his contentions placed his reliance on following two cases :-

1. **V.Subbulakshmi and others Vs. S.Lakshmi and another reported in (2008) 4 Supreme Court Cases 224.**

2. **The oriental Insurance Company Ltd., Khan Market Nagpur Vs. Smt. Ramilaben wd/o of Jayantilal Patel and others in FA No.589/2004 (High Court of Bombay Bench at Nagpur)**,

In case of V. Subbulakshmi and ors., the Supreme Court observed that income tax returns filed after death have rightly not been relied upon by the High Court and also by this court as in case of The Oriental Insurance Company Vs. Ramilaben and ors (supra).

6. On careful perusal of the evidence,most particularly Exh.57 and 47 respectively, it appears that for the assessment year 1993-1994, the appellant-claimant has submitted return for the accounting year

01.04.1992 to 31.3.1993, wherein his total income was shown as Rs.28,310/-. In view of Exh.58, income tax department has considered the net taxable income of the appellant-claimant at Rs.28,311/- for the assessment year of 1993-1994 for accounting year/period 1.4.1992 to 31.3.1993. The learned counsel for the appellant-claimant has vehemently submitted that so far as Exh.47 is concerned, total income of the appellant-claimant was shown at Rs.58,370/- as per the trading account Exh.48 and the same has been corroborated by the assessment order exh.44 wherein the gross turn over of sale is shown as Rs.2,87,892/-. However, the learned counsel appearing for respondent-insurer has rightly pointed out that, assessment order Exh.44 though for the period of 1.4.1994 to 31.3.1995, the same has been issued on 24.1.1997. Furthermore, so far as exh.48 is concerned, the same is xerox copy of Trading account for the accounting year 1.4.1993 to 31.3.1994 and though the income tax department has considered the taxable income of the deceased Pralhad, those returns were submitted on 20.11.1995 i.e. one month after death of deceased Pralhad. Furthermore, for the accounting year 1.4.1994 to 31.3.1995 no documents are placed on record to substantiate the contentions that there was steady rise in the income of deceased Pralhad. So far as accounting period of 1.4.1994 to 31.3.1995 is concerned, deceased Pralhad was alive at that time and no explanation whatsoever is submitted as to why income tax returns of said accounting period has not been placed on record. It thus appears that compared to the assessment year 1993-1994 vide exh.57 almost double the income has been shown vide exh.47 in the assessment year of 1995-1996 and said returns are also submitted after death of deceased Pralhad.

7. In both the cases V.Subbulakshmi and others Vs. S.Lakshmi and another and the oriental Insurance Company Ltd., Khan Market Nagpur Vs. Smt. Samilaben wd/o of Jayantilal Patel and others in FA No.589/2004 (supra) relied upon by the learned counsel for respondent-insurer the Supreme Court as well as this

Court declined to rely upon the income tax returns as those returns were submitted after death of deceased.

8. I do not find any fault in the finding recorded by the Tribunal while accepting the income of deceased vide Exh.57 at Rs.28,310/-. However, the Tribunal has not made any addition in the income of deceased Pralhad towards future prospects. In view of the ratio laid down by the Supreme Court in the aforesaid cases relied upon by the learned counsel for the appellants-claimants 1)-Darshana Ganesh Kanavaje and others Vs. Maharashtra State Road Transport reported in 2013 (6) Mh.L.J. 779, 2)-Sarla Verma & Ors vs Delhi Transport Corp.& Anr reported in (2009) 6 SCC 121 and 3)-Rajesh and others Vs. Rajbir Singh and others reported in reported in (2013) 9 Supreme Court Cases 54, 30% addition of income is required to be made towards future prospects. Further, in view of the number of dependency, the Tribunal ought to have considered deduction of 1/4th of the amount instead of 1/3rd towards personal and living expenses of deceased

Pralhad. After 1/4th of deductions from the income of deceased Pralhad, annual loss of income comes to Rs.21,233/- and after addition to the extent of 30% towards future prospects, loss of income per annum comes to Rs.27,603/-. Relevant multiplier would be '16' and as such the appellants-claimants are entitled for the compensation of Rs.4,41,648/- towards loss of future income/dependency.

9. So far as compensation under non-pecuniary heads are concerned, Tribunal has not awarded any compensation under loss of consortium. The appellant-claimant no.1-widow was 28 years of age at the time of accidental death of her husband. Thus, she is entitled for an amount of of Rs.1.00 lac towards loss of consortium. Claimant nos. 2, 3 and 4 are the minor claimants aged about 7, 5 and 2 years respectively at the time of death of their father and, as such, they are entitled for Rs.50,000/- each for loss of love and affection. The appellants-claimants are also entitled for an amount of Rs.50,000/- towards loss of Estate. The

appellants-claimants are also entitled for an amount of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards expectation of life.

10. Thus, break up of compensation under various heads awardable to the appellant-claimants which can be broadly categorized is as under :-

1	Loss of future income/dependency (As against Rs.3,20,858/- awarded by the Tribunal)	Rs.4,41,648/-
2	Loss of consortium	Rs.1,00,000/-
3	Loss of love and affection to claimant nos. 2 to 4 (Rs.50,000/- each) (as against Rs.10,000/- awarded by the Tribunal)	Rs.1,50,000/-
4	Loss of Estate (as against Rs.10,000/- awarded by the Tribunal)	Rs.0,50,000/-
5	Funeral Expenses (as against Rs.6,000/- awarded by the Tribunal)	Rs.0,25,000/-
6	Expectation of Life	Rs.0,50,000/-
	TOTAL	Rs.8,16,648/-

11. The appellants-claimants are entitled for the total compensation of Rs.8,16,648/- (Rs. Eight lacs sixteen thousand six hundred and forty eight only). Thus, the judgment and Award passed by the tribunal requires modification. Hence, following order.

O R D E R

1. Appeal is hereby partly allowed with

proportionate costs.

2. The judgment and Award passed by the Member, Motor Accident Claims Tribunal, Beed dated 27.7.2000 in MACP No. 204/1995 is hereby modified in the following manner :-

a] Respondent Nos.1, 3 and 5 jointly and severally do pay an amount of Rs.8,16,648/- (Rs. Eight lacs sixteen thousand six hundred and forty eight only) to the claimants with interest @ 9% p.a. from the date of petition till realization of the entire amount.

3. Rest of the judgment and award stands confirmed.

4. Award be drawn up as per the above modifications.

5. If any amount is paid as per the judgment and Award passed by the tribunal, the same shall be the part of the award after modification.

6. Deficit Court fees, if any, shall be paid within a period of four weeks from the date of this order.

aaa/-

7. Appeal is accordingly disposed of. Pending civil application, if any, also stands disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-