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

FIRST APPEAL NO. 1260 OF 2005

1 Smt. Kusum w/o Shriram Bhosale, Age 30 years,Occ. Household, R/o. Khadki Ghat, Tq. & Dist.Beed, At present Shahunagar, Beed. .. **Appellants** (Original claimants)

2 Milind s/o Shriram Bhosale, Age 06 years, Minor Under Guardian of his Mother Appellant No. 1.

3 Anand s/o Shriram Bhosale, Age 4 years, Minor, Under Guardian of his Mother, appellant No. 1.

4 Kum. Ashwini d/o Shriram Bhosale, Age 12 years, Minor, Under Guardian of his Mother, appellant No. 1.

VERSUS

1 Shripad s/o Shankarrao Burkule, Age 40 years, Occ. Truck Owner, R/o. Jirewadi, Tq. Parali, Dist. Beed. ..**Respondents**

2 Bhagwan s/o Babasaheb Bandle, Age 35 years, Occ. Truck Driver, R/o. Dhande Galli, Parli Vaijinath, Tq. Parli Vaijinath, Dist. Beed.

3 The National Insurance Co.Ltd., Branch Officer, Nagna Ghat Road, Nanded, Tq. & Dist. Nanded, Through Branch Manager.

4 Sow. Kausalyabai w/o Deorao Bhosale, Age 60 years, Occ. Agril. & Labour, R/o. Khadki Ghat, Tq. & Dist. Beed.

5 Deorao s/o Apparao Bhosale, Age 73 years, Occ. Agriculture & Labour, R/o. Khadki Ghat, Tq. & Dist. Beed.

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Mr. Mahesh Kale, Advocate for the Appellants.
Mr. V. N. Upadhye, Advocate, for respondent No. 3.

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CORAM : K.L. WADANE, J.

RESERVED ON : 10.08.2017.
PRONOUNCEMENT ON : 14.08.2017.

ORAL JUDGMENT :-

1 Present appeal is preferred by the original claimants against the judgment and Award passed by the Chairman of the Motor Accident Claims Tribunal Beed, on 20.08.2005 in Motor Accident Claim Petition No. 128 of 2002, by which the Tribunal has awarded

compensation amount of Rs. 8,01,000/- on all counts. Therefore, being aggrieved with the same, the present appeal is preferred for enhancement of the compensation. (Parties to the appeal are referred in their original status.)

2 Brief facts of the case are as follows :

(a) On 02.03.2002 husband of the claimant No. 1 namely Shriram Devrao Bhosale died in the motor vehicle accident. He was proceeding on his motor cycle and the driver of the offending truck bearing No. MH-23/1109 gave forceful dash to his motor cycle, due to which he died.

(b) According to the claimants the deceased was aged about 39 years at the time of accident and he was serving as a teacher in Laxmanrao Patil Middle School Jaher Nagar, Namalgaon Phata, Tq. & Dist. Beed and was getting monthly salary of Rs. 9927/- per month. Hence, they claim total compensation of

Rs. 13,00,000/- on all counts.

(c) The petition was opposed by the respondent No. 3 on the ground that the accident was occurred due to negligence of the deceased.

(d) During the pendency of the petition the parents of the deceased i.e. respondents No. 4 and 5 came to be added in the of petition.

3 I have heard the arguments of Mr. Kale, learned counsel appearing for the claimants/appellants and Mr. Upadhye, learned counsel appearing for the respondent No. 3.

4 Learned counsel appearing for the claimants/appellants has restricted his arguments on the following points.

(i) Improper deductions from the gross salary of the deceased.

(ii) Improper deduction regarding self-expenses.

(iii) Improper multiplier and addition of 50 % income for the future prospects.

5 Looking to the grounds in the appeal and the arguments advanced on behalf of both the parties and looking to the evidence on record, following points arise for my determination.

	Points	Findings.
1	Whether the deductions from the salary and deductions towards self expenses are proper ?	… No.
2	Whether the appropriate multiplier is applied ?	… No.
3	Whether the claimants/ appellants are entitled for additional compensation of 50 % on account of future prospects ?	… Yes.

6 **<u>Points No. 1 to 3</u> :**

Mr. Kale Learned counsel appearing for the appellants/claimants submits that, the learned Tribunal has made improper deduction from the gross salary of the deceased. It is come on record by way of oral evidence of the Headmaster of the school that the deceased Shriram was working as Assistant Teacher and his pay and allowances are like:

<u>Gross Salary</u> :

Basis Pay	:	Rs. 6,725/-
D.A.	:	Rs. 2,791/-
House rent allowance	:	Rs. 336/-
Travelling Allowance	:	Rs. 75/-
	Total	Rs. 9,927/-

<u>Deductions</u>

G.P.F. Subscription	:	Rs. 1,500/-
G.P.F. Advance	:	Rs. 950/-
Professional Tax	:	Rs. 175/-
Postal saving	:	Rs. 100/-
L.I.C.	:	Rs. 1,282/-
	Total	Rs. 4,007/-

7 Mr. Kale, learned counsel appearing for the claimants has relied upon the observations in <u>*Sarla Verma (2009) 6 SCC 121*</u> and <u>*Rajesh and others Vs. Rajbir Singh and others, reported in 2013 (9) Supreme Court Cases 54*</u>. I have considered the observations of the two authorities in regards to the computation of the compensation, application of the multiplier and the proper deductions, depending upon the number of the dependents.

8 Mr. Kale, learned counsel has rightly argued that the deductions towards GPF subscription, GPF advance, postal saving and LIC premium was not required to be deducted, because, that amount has to come to the deceased in future. Therefore, from the record it appears that, the learned Tribunal has made improper deduction. The proper deduction in this matter is appears to be only professional tax of Rs. 175/-. Thus looking to the proper deductions, it appears that the net salary of the deceased was Rs. 9,752/- per month.

9 There is no dispute between the parties that the deceased was serving in the school as a teacher and his services were permanent. Therefore, a salaried person has future prospects in the form of promotions, increments. Therefore, in view of the law laid down in the *Sarla Verma's case reported in (2009) 6 SCC 121* the claimants are entitled to the addition of 50 % of the salary towards loss of future prospects. Hence, total loss of income comes to Rs. 14,628/- per month.

10 Mr. Upadhye, learned counsel, appearing for the Insurance Company/respondent No. 3 has strongly argued that, there is no pleadings on record that the deceased was having future prospects nor the claimants have claim a particular amount under particular head.

11 I have perused the pleadings of the claimants in the petition under section 166A of the Motor Vehicles Act. It is true that, there is no specific pleadings to that effect. However, the rule of proof or pleading has not strictly to be applied to the matters relating to compensation under section 166 of the Motor Vehicles Act. If the claimants are statutorily entitled for certain amount of compensation, then it has to be granted to them.

12 In regard to the deductions from the salary towards self expenses, the learned Tribunal has deducted $1/3^{rd}$. However, as per the law laid down in *Sarla Varma's case*, if the deceased is married, having 4 to 6 dependents, then the permissible deduction is

$1/4^{th}$. Herein the present case the claimants No. 1 to 4 and respondents No. 4 and 5 are the dependents. Hence, permissible deduction towards self expenses is to the extent of $1/4^{th}$. Hence, if $1/4^{th}$ is deducted from the income of the deceased it comes to Rs. 10,971/- per month and Rs. 1,31,652/- per year. Appropriate multiplier applicable in the present case is of **15**. Because, at the time of death of the deceased his age was 39 years. Therefore, as per the *Sarla Varma's case*, the appropriate multiplier to the person between age group of 36 to 40 is **15**. Hence, compensation comes to Rs. 19,74,780/-. In addition to that the claimants are entitled for the compensation on account of loss of consortium, loss of love and affection, funeral expenses etc., to the tune of Rs. 2,00,000/-.

13 In view of the above, the total compensation amount comes to Rs. 21,74,780/- to which the claimants are entitled together with 6 % interest from the date of petition, till its realization. Hence, points No. 1 to 3 answered accordingly and pass

following order.

ORDER

1. The appeal is allowed.
2. The respondents No. 1 to 3 shall jointly and severally do pay compensation of Rs. 21,74,780/- (Rs. Twenty one Lakh Seventy Four Thousand Seven Hundred and Eighty only) to the appellants and respondents No. 4 and 5, together with interest at the rate of 6 % per annum from the date of petition till its realization.
3. The appeal is disposed of with no order as to costs.

(K.L. WADANE, J.)

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