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

FIRST APPEAL NO. 2504 OF 2016

1. Sujata Balaji Shinde
Age-29 years, Occ : Household,

2. Janhavi d/o Balaji Shinde
Age-7 years, Occ : Education
(Since minor u/g of mother-
Appellant No.1)

3. Madhavrao S/o Marutirao Shinde
Age-62 years, Occ : Nil,

4. Parvati w/o Madhavrao Shinde
Age-57 years, Occ : Nil,

All R/o Laxmi colony, Latur,
Tq. and Dist. Latur.

APPELLANTS
(Ori. claimants)

VERSUS

1. Mahadav S/o Dattu Sagar
Age-Major, Occ : Business,
R/o Manthala, Tq. Baswakalyan,
Dist. Bidar.

2. Shriram General Insurance
Company Ltd.,
Through its branch Manager,
E-8 EPIP RIICO Sitapura,
Jaipur, Rajstan.

3. Yashwant s/o Venkatrao Yemade
Age- Major, Occ : Business,
R/o Badur, Tq. Nilanga,
Dist. Latur.

4. Ifco Tokyo General Insurance
Company Ltd.,
Through its branch Manager,
Near Latur Sari Center,
Innani Building, Old Clth Lane,
Behind Latur General Stores,
Latur.

RESPONDENTS
(ORIG. RESPONDENTS)

...

Mr.Shrikishan S. Shinde, Advocate for the Appellants.
Mr.S.G. Chapalgaonkar, Advocate for Respondent Nos.2 and 4.
Mr. R.K. Ashtekar, Advocate for Respondent No.3.
Respondent No.1 served.

...

CORAM: V.L. ACHLIYA, J.
DATED : 27th July, 2018

JUDGMENT:

Being aggrieved and dissatisfied with the judgment and order dated 12th March, 2013, passed by the Member, Motor Accident Claims Tribunal, Latur in M.A.C.P. No.20 of 2011, the appellants (original claimants) have preferred this appeal.

2. Heard learned counsel for the appellants and the learned counsel appearing for the respective respondents. Perused the record and proceedings.

3. In view of the challenge raised in this appeal confines to the assessment of compensation made by the Tribunal, it is not necessary to discuss the facts in detail.

4. If we consider the facts of this case, then the fact is not in dispute that the deceased met with an accident occurred on 23rd October, 2010 and succumbed to the injuries. The ownership, insurance and involvement of vehicle in accident dated 23rd October, 2010 is not in dispute. So also there is no dispute that the deceased was serving as an Assistant Teacher with Netaji Subhash Chandra Bose Junior College at Lohara, Dist. Osmanabad. So also there is no dispute as to the age of deceased and dependency of claimants.

5. Mr. Shinde, learned counsel for the appellants submits that the Tribunal has

erred in assessing the compensation as Rs.35,44,280/- as against the claim of Rs.60,00,000/- made by the appellants-original claimants. By referring to the judgment and order passed by the Tribunal, learned counsel pointed out that the grade pay of Rs.4600/- which the deceased was receiving as a part of salary has been deducted while computing the monthly income under misconception that the same is not part of salary and forms a special allowance. It is further pointed out that while assessing the compensation, the Tribunal has failed to take into consideration the future prospects of the deceased and to add the income to the extent of 50% in the yearly income to be computed for the purpose of assessment of compensation. Learned counsel further submits that the Tribunal has also erred in deducting the amount from the monthly salary to the extent of 1/3rd towards personal expenses. By referring to overall facts of the case, learned counsel submits that the deceased was married person and having dependency of four persons. Therefore, the deduction on account of personal expenses from the salary ought to have been made 1/4th instead of 1/3rd as made while assessing the compensation to be payable to appellants.

6. By referring to the decisions in the case of **Sarla Verma and others Vs. Delhi Transport Corproation and another (2009) 6 SCC 121 and National Insurance Company Limited Vs. Pranay Sethi and others 2017 (16) SCC 680,** learned counsel submits that as the compensation assessed by the Tribunal being not in accordance with the principles laid down by the Apex Court in said two decisions, the compensation needs to be reassessed.

7. Mr.Chapalgaonkar, learned counsel for Respondent – Insurance Company submits that the claimants have adduced no evidence to prove the exact monthly salary of the deceased. It is submitted that though the deceased claimed to be serving as an Assistant Teacher and the monthly salary claimed to be Rs.34,361/-, the claimants have not produced the copies of income tax assessment orders of deceased, so as to prove the exact income of the deceased. By referring to testimony of Madhavrao Marutirao Shinde (PW-1), the witness for the appellants-claimants, learned counsel pointed out that in cross-examination, the witness has deposed that he is unable to tell the net salary as well as the income tax the deceased was paying over the yearly income received as a salary. Learned counsel submits that though the deceased is claimed to be graduate, the

birth date certificate of the deceased was not produced to show the exact date of birth of the deceased.

8. By referring to the evidence of Ankush Nivruti Shinde (PW-2) examined on behalf of the appellants-claimants, learned counsel pointed out that though the salary certificate produced at Exhibit-61, the deductions made on account of income tax, has not been shown. Similarly, the amount of Rs.4600/- is shown as other allowance payable to the deceased. In the cross examination, the witness (PW-2) has deposed that in the month of November, 2010, monthly salary of the deceased was Rs.32,170/-. However, the deceased was actually paid Rs.25,538/- as a salary in the month of November, 2010. He has further deposed that the deceased used to pay the income tax of entire financial year from the salary to be payable in the month of

February and March of the assessment year. He has deposed that he has not brought the record in respect of income tax deducted and paid from the salary of the deceased. In this background, learned counsel submits that the compensation assessed by the Tribunal is proper and calls for no interference.

9. I have carefully considered the rival pleadings, oral and documentary evidence adduced as well as the reasons and findings recorded by the Tribunal. In my view the assessment of compensation made by the Tribunal is improper and not in accordance with law laid down by Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others (supra)**.

10. The appellants-claimants had filed petition claiming compensation of Rs.60,00,000/- with future interest @ 12%. As

discussed, the fact is not in dispute that the deceased died in motor vehicle accident, which was occurred on 23rd December, 2010. Appellant No.1 is wife of deceased, appellant no.2 is the minor son of the deceased, who was aged 5 years at the time of incident, and the appellant nos.3 and 4 are the mother and father of the deceased.

11. The deceased was working as Assistant Teacher with Netaji Subhash Chandra Bose Junior College and claimed to be receiving monthly salary of Rs.34,361/-. By taking into consideration the fact that the deceased was 30 years of age and due for retirement in 2037, the claimants have claimed the compensation on account of pecuniary and non-pecuniary loss as Rs.60,00,000/-.

12. The claimants have examined

Madhavrao Marutirao Shinde (PW-1) and further examined Ankush Nivruti Shinde (PW-2), the senior clerk in Netaji Subhash Chandra Bose Junior College to prove the income of the deceased. Besides producing and proving the salary certificates, the witness has also produced the copy of the service book of the deceased.

13. If we consider the evidence of PW-1 examined on behalf of the claimants then he has categorically deposed that the deceased was serving as Professor in Netaji Subhash Chandra Bose Junior College, Lohara and his monthly salary was Rs.34,361/-. In cross-examination, PW-1 has admitted that he is not in a position to tell the net salary of his deceased son as well as the income tax the deceased was paying towards the salary which he was receiving from his employer.

14. Ankush Shinde (PW-2), who is examined to prove the income of the deceased has deposed that the deceased was working as Professor with Netaji Subhash Chandra Bose Junior college w.e.f. 16.06.2003 and he was permanently employed in the said institution. He further deposed that the last drawn salary of the deceased was Rs.34,361/-. He has tendered the salary certificate issued under the signature of the Headmaster of the said institution. The salary certificate produced at Exhibit-61 issued on 11.01.2011 reveals that the deceased was receiving Rs.34,361/- as a gross salary and after making the deduction of Rs.5,000/- towards G.P.F., Rs. 1432/- towards L.I.C. and Rs.200/- towards professional tax, the deceased was receiving take home salary as Rs.27,729/-.

15. If we consider the service book of

the deceased produced at Exhibit-62, then it reveals that the date of birth of the deceased was recorded as 05.06.1979. His educational qualification has been recorded as B.A., M.A., B.Ed. The deceased joined the services as an Assistant Teacher w.e.f. 16.06.2003. He was confirmed in service w.e.f. 12.06.2006 in the pay scale of Rs.7225-11050. The order dated 06.11.2009 forming the part of service book reveals that the pay of the deceased was revised w.e.f. 16.06.2003 to 01.06.2009. On 01.06.2009 his revised salary shown to be in the pay scale of Rs.7225-11050. On implementation of the recommendation of 6th Pay Commission, the pay scale of the deceased was revised and fixed in the pay scale of Rs.9300-34800 with grade pay of Rs.4600/- w.e.f. 01.01.2006. As per the pay fixation made on the recommendation of 6th Pay Commission, on 1st July, 2009, the deceased was receiving the pay of Rs.16,700/- with grade pay of Rs.4600/-. On 01.07.2009, the deceased was receiving Rs.21,370/- as a pay excluding the dearness allowance. If we consider the revised pay of the deceased as Rs.21,370/- on 01.07.2009 then considering the fact that the deceased died on 23.10.2010 and entitle to receive the yearly increment, the monthly pay the deceased can be accepted as reflected in the salary certificate at Exhibit-61.

16. If we consider the judgment and award passed by the Tribunal, then the Tribunal has accepted the case of the appellants that the deceased was working as Assistant Teacher and his monthly salary was Rs.34,361/-. However, the Tribunal has treated the amount of Rs.4600/- shown in the salary certificate as other allowance and

Rs.400/- as vehicle allowance as the incentive and not forming part of the regular salary. By deducting the amount of Rs.4600/- as special allowance and Rs.400/- as a vehicle allowance, the Tribunal has worked out the net monthly salary of deceased as Rs.29,361/- and assessed the yearly income of deceased as Rs.3,50,332/-. After deducting Rs.2400/- towards the professional tax and Rs.20,000/- as income tax, assessed the annual income loss as Rs.3,29,932/-.

17. In my view the deductions of Rs.4600/- per month made from the salary of the deceased was improper and contrary to law. While assessing the evidence, the Tribunal has failed to take into consideration the revised pay scale of the deceased w.e.f. 01.06.2006 as per service book produced at Exhibit-62. With effect from

01.01.2006, the pay scale of the deceased shown to be revised in the revised pay scale of 9300-34800 with grade pay of Rs.4600/-. On 01.07.2009, the revised pay of the deceased was fixed as 16,770 with grade pay of Rs.4600/- = Rs.21,370/-. Since the grade pay being part of the payment of salary of the deceased, the same cannot be treated as a allowance personal in nature to be payable to the deceased. In that view, the contention of learned counsel for the appellants that the Tribunal has erred in deducting the amount of Rs.4600/- grade pay from the salary needs to be accepted.

18. Similarly, the contention of learned counsel for the appellants that the deduction made as 1/3rd of the yearly income of the deceased towards personal expenses of the deceased was improper needs to be accepted in

the light of principles laid down by the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi (supra).** It is admitted position that the deceased died leaving behind the Appellant Nos.1 to 4, who were entirely dependent upon that the income of deceased. Thus at the time of death of deceased, there were four dependents who were entirely dependent upon the income of the deceased. Considering the dependency of the deceased as four persons, the Tribunal ought to have deducted the amount to the extent of 1/4th amount towards the personal expenses of the deceased from the yearly income of the deceased for the purpose of assessing the compensation. In that view, the deduction made to the extent of 1/3rd from the total income of the deceased towards personal income is not sustainable in law.

19. It is an admitted position that the deceased was working as an Assistant Teacher and that too on permanent basis. While computing the compensation, the Tribunal has overlooked the future prospects of the deceased. At the time of accident, the deceased was in permanent job and his age was 31 years. Thus considering the decision rendered by the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others (supra),** the Tribunal ought to have added 50% of actual salary of the income of the deceased towards future prospects. However, no such addition on account of future prospects has been made by the Tribunal while awarding the compensation. In that view also, the award needs to be modified.

20. Thus considering the overall facts

of the case, the compensation as assessed by the Tribunal needs to be reassessed. In the light of overall facts the compensation to be payable to appellants-claimants deserves to be reassessed and to be computed as under :-

Gross Monthly Salary	Rs.34,361/-
Deduction of Vehicle Allowance	(34361-400) Rs.33961/-
Annual Income	(33961x12) = Rs.4,07,532/-
Deduction towards professional tax and income tax	(407532-26000) = Rs.3,81,532/-
1/4th deduction towards personal expenses (4 dependents)	(381532-95883) = Rs.2,85,649/-
50% additional towards future prospects	(285649+143425) = Rs.4,29,074/-
Multiplier of `16' (Age of deceased 31 years old)	(429074 x 16) = 68,65,184/-
Addition of non-pecuniary heads	6865184 + 70000 = 69,35,184/-
TOTAL	**Rs.69,35,184/-**

21. Thus in view of the discussion made as above and conclusion to which I arrived the appeal deserves to be partly allowed and the judgment and award passed by the Tribunal

needs to be modified accordingly. Hence the following order :-

ORDER

i) The Appeal is partly allowed.

ii) The clause (3) to (7) of the Award passed by the Tribunal are modified as under :-

(a) Respondent Nos.1 and 2 do jointly or severally pay an amount of Rs.69,35,184/- (Rs.Sixty Nine Lakh Thirty Five Thousand One Hundred Eight Four Only) (inclusive of N.F.L. amount) to the appellants with simple interest at the rate of 6% p.a., from the date of petition till realisation of awarded amount.

(b) Out of awarded amount, an amount of Rs.7,50,000/- (Rs.Seven Lakh Fifty thousand only) each be paid to appellant Nos.3 and 4.

(c) After payment of the above amount to appellant nos.3 and 4 remaining amount be distributed equally amongst appellant nos.1 and 2.

(d) Out of the compensation amount, the share of appellant no.2 be deposited in Fixed deposit in the name of appellant no.2 in any Nationalized Bank till appellant no.2 attains the age of majority.

(e) The amount deposited by Respondent No.4 i.e. Insurance Company during pendency of appeal shall be adjusted towards the amount to be payable as per the award modified in appeal.

(f) Additional court fees as per the award modified shall be paid by the appellants.

(g) Rest of the award passed by the Tribunal, except as modified above, is maintained.

(iii) Modified award be drawn accordingly.

(iv) The parties to bear their respective costs.

[V.L. ACHLIYA]

JUDGE

SGA