IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 255 OF 2007

1] Meenatai Subhash Kadu,
age 42 years, occ. Household,

2] Rahul Subhash Kadu,
age 21 years, occ. Education,

3] Nikhil Subhash Kadu,
age 17 years, occ. Education,

All R/o Tisgaonwadi,
Tq. Rahata, Dist. Ahmednagar ...Appellants
[Orig.Applicants]

VERSUS

1] Rajendra Chandamal Tathed,
age Major, occ. Transport/
Contractor R/o Manori,
Tq. Rahuri, Dist. Ahmednagar,

2] The Branch Manager,
National Insurance Co.,
Rai Chamber, Kothala Stand,
Ahmednagar ...Respondents
[Orig.Opponents]

...

Mr. V.V.Tarde holding for
Mr. V.H.Dighe, advocate for appellants
Mr. S.L.Bhapkar, advocate for respondent no.1
Mr. S.V.Kulkarni, advocate for respondent no.2

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CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING
THE JUDGMENT : 25.09.2018
DATE OF PRONOUNCEMENT
OF JUDGMENT : 01.10.2018

J U D G M E N T :

This appeal is preferred by the original claimants against the judgment and award, passed by the Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 926 of 1999.

2. Respondent no.1 is owner and respondent no.2 is insurer of offending Truck No. MH-17/C-6561.

3. Facts, leading to the institution of this appeal, in brief, are that on 29.6.1998 when deceased Subhash Kadu was traveling by State Transport Bus No. MH-20/D-1661 towards Nashik, the offending Dumper/Truck came from front side and gave sliding dash on the back portion of the ST Bus resulting into slicing of body of the Bus. In that accident, deceased Subhash Murlidhar Kadu (hereinafter referred to as, 'the deceased') died on the spot. Therefore, the claimants, who are the only dependents of the deceased, filed claim petition for compensation under Section 166 of the Motor Vehicles Act.

4. After considering the evidence placed on record, the Tribunal awarded compensation of Rs.5,55,000/- including amount of no fault liability. That award is challenged by claimants claiming enhancement of compensation.

5. Learned counsel for the claimants submits that the deceased was owner of agricultural land having good income. In addition to this, the deceased was running small scale industry of supplying bottle caps. However, without considering the earning capacity of the deceased in proper manner, the Tribunal assessed notional income of the deceased at the rate of Rs.4,500/- only and awarded meager compensation.

6. Next submission of learned counsel for the appellants is that the Tribunal did not consider the future prospects of the deceased, though at the time of death he was below the age of 40 years. He submits that under conventional head less compensation is awarded by the Tribunal. He points out that no compensation was awarded under

the head of loss of consortium and loss of estate. Relying on the case of “**Sushila wd/o Subhash Mendhe and anr. Vs National Insurance Co. Ltd.” [2018 (3) Mh.L.J.311]**, he submits that notional income of the deceased can be assessed at the rate of Rs.9,000/- per month.

7. Learned counsel for the respondent did not dispute the age and appropriate multiplier applied by the Tribunal. His objection is that when there was no evidence regarding actual income of the deceased, the Tribunal rightly assessed his monthly income as Rs.4,500/-. However, he fairly states that in view of the judgment of the Larger Bench of the Supreme Court in the case of “**National Insurance Company Ltd. Vs Pranay Sethi and others” [2018 (3) Mh.L.J. 70]**, compensation under conventional head needs to be enhanced.

8. For determining the compensation under the head of loss of dependency, the age of the deceased at the time of death is material. From

the Secondary School Certificate of the deceased (Exh.48), it becomes clear that the date of birth of deceased is 6.2.1959. He died on 29.6.1998. Therefore, on the date of death, the deceased was above age of 39 but below age of 40. Therefore, in view of legal position settled by the Apex Court in the case of **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr." [AIR 2009 SC 3104]**, proper multiplier applicable in the case at hand is 15.

9. From the evidence of claimant Meenatai Kadu (PW 1) it emerges that the deceased was agriculturist as well as he used to run small scale industry in the stile "Gajanan Metal Caps and Samarth Traders" for supply of bottle caps and other material to the sugar factory. In support of her contention, the claimants have filed copy of annual statement of Baburao Bapuji Tanpure Co-operative Sugar Factory, Shivajinagar, Rahuri (Exh.54) and certificate issued by Dr. Vithalrao Vikhe Patil Cooperative Sugar Factory, which indicates that the deceased used to run industry in

the style, “Gajanan Metal Caps and Samarth Traders”. Even the notice issued by Pravara Cooperative Bank to the deceased shows that the deceased was the Proprietor of Samarth Traders. Certificate issued by Pravara Phale Bhajipala Utpadak and Prakriya Kharedi Vikri Shetkari Sahakari Sanstha Ltd. Loni Khurd (Exh.57) shows that in between 1991 to 1997 deceased sold out grapes of worth Rs.2 Lac to Rs.73,000/- through the said society. Even 7/12 extracts (Exh.52/1 and 2) shows that the deceased used to take yield of sugar cane, grapes from his agricultural land.

10. The above material on record is certainly sufficient to hold that the deceased was multi facet personality and he had source of income from the agricultural land as well as from his small scale industry. As no income tax return is filed by the claimants, the exact annual income of the deceased cannot be ascertained. However, the Apex Court in “**Jagdish vs Mohan and others**” **[(2018) 4 SCC 571]** assessed the notional income of carpenter at the rate of Rs.6,000/- per month. Therefore, in

the case at hand notional income of the deceased from various sources cannot be less than Rs.10,000/- per month. So also, as the deceased was below age of 40 years at the time of his death, in view of law settled by Apex Court, deceased being self-employed person, 40 per cent income is to be added in his monthly salary. Thus, monthly income of the deceased is assessed as Rs.10,000+4000=14000/-. Thus, annual income of the deceased is assessed as 14000x12=168000/-.

11. In the family of the deceased, undisputedly there are three dependents. Therefore, in accordance with the settled law by Apex Court in **Smt.Sarla Verma** and **National Insurance Co. Ltd. Vs Pranay Sethi** (supra), 1/3rd amount is to be deducted towards personal expenses of the deceased. The 1/3rd amount towards personal expenses comes to Rs.56000/-. Thus actual annual income of the deceased is 168000-56000=112000/-.

12. After applying multiplier of 15, loss of

dependency is assessed as Rs.112000x15=1680000/-. In addition to this, as per law settled by the Apex Court in the case of **National Insurance Co. Ltd. Vs Pranay Sethi** under conventional head the appellants are also entitled to Rs.40000/- for loss of consortium, Rs.15000/- for loss of estate and Rs.15000/- towards funeral expenses. Thus, the appellants are entitled to total compensation as under :

Loss of dependency	: Rs.1680000.00
Loss of consortium	: Rs. 40000.00
Loss of Estate	: Rs. 15000.00
Funeral Expesnces	: Rs. 15000.00
Total	: Rs.1750000.00

(Rs.Seventeen Lac Fifty Thousand only

13. The petitioners are entitled to total compensation of Rs.17,50,000/- with interest thereon at the rate of nine per cent per annum from the date of filing of petition till deposit of the amount. This compensation shall be inclusive of compensation awarded to the claimants under no

fault liability.

14. Before parting with the judgment, I must make it clear that the ratio of the judgment in the case **Sushila Mendhe vs National Insurance Company Limited** (supra) is not applicable in the case at hand due to distinguishing facts that in that case employer of the deceased was examined and his evidence was relied by the Court to assess the monthly income of the deceased as nine per cent per annum. In the case at hand, question of examining of employer by claimants does not arise.

15. However, as observed above, the appellants/claimants are entitled to total compensation of Rs.17,50,000/- with interest thereon at the rate of nine per cent per annum from the date of filing of petition till its realization. It follows that this appeal deserves to be allowed.

16. Accordingly, appeal is allowed. The compensation awarded by the Motor Accident Claims

Tribunal, Ahmednagar in Motor Accident Claim Petition No. 926 of 1999 is enhanced to the extent of Rs.17,50,000/- (Rs. Seventeen Lac Fifty Thousand Only) with interest at the rate of nine percent per annum from the date of filing of petition till deposit of the amount. This compensation shall be inclusive of compensation received by the claimants under no fault liability. Award passed by the Tribunal be modified in above said terms. Deficit court fee be recovered from the appellants/claimants. Claimants are at liberty to withdraw the compensation amount deposited in this Court after the period of appeal is over. Appeal is disposed of in above terms. No costs.

[**SUNIL K.KOTWAL, J.**]

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