IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 360 OF 2005

1. Smt. Sharmila Dharmendar Zawar
age 31 years, occ. hosuehold

2. Sham Dharmendar Zawar
age 8 years, (Minor thorugh
Natural Guardian appellant no. 1.)

3. Shriram Gangadhar Zawar
age 68 years, occ. nil

4. Sau. Pushpa Shriram Zawar
age 63 years, occ. household

5. Vinay Shriram Zawar
age 25 years, occ. education

6. Pankaj Shriram Zawar
age 31 years, occ. education

All r/o 411, Jayakisanwadi
Jalgaon Appellants

Versus

1. Indrakumar Narendrakumar
age 43 years, occ. driver
r/o House No. 44, Uttamnagar
New Delhi

2. Abhivan J. Arya
age 42 years, occ. transport
business
r/o 1. A/226, Pandhararo road
New Delhi
2. D/2/2 Sahajadar Road,
New Delhi.

3. The Oriental Insurance Co. ltd.
Faridabad 5 E/1-A, railway road

Faridabad 121 001

Respondents

Mr. P.V. Gujarathi, advocate holding for Mr. A.G. Talhar, advocate for appellant.
Mr. V.S. Malte, advocate for respondent no. 3.

CORAM : M.S. SONAK, J.
DATE : 13th FEBRUARY, 2018

ORAL JUDGMENT :

1. Heard Mr. Gujarathi, learned counsel for appellants and Mr. Malte, learned counsel for respondent no. 3- insurance company.

2. This appeal challenges the judgment and award dated 06.12.2004 made by the Motor Accident Claims Tribunal, Jalgaon, on the ground that it awards inadequate compensation to the appellants/claimants.

3. Mr. Gujarathi, learned counsel for appellants submits that the income tax return upon which, the tribunal has relied, does not reflect correct position as regards the salary of deceased Dharmendar, on account of whose death in a motor accident, the claim arose. He submits that as per the document at Exh. 65, which is a TDS return filed by Dharmendar's employer, the gross salary of Dharmendar was R. 34,052/- per annum. He submits that in the income tax return, Rs. 24,000/- is indicated as against salary because standard deduction of Rs. 11,349.53 was then available to the appellant apart from deduction of Rs. 390/- towards entertainment allowance. He submits that even these two figures are prominently reflected in the document at Exh. 65,

which evidence, has not at all been taken into consideration by the tribunal. He submits that the tribunal has also not made any addition towards future prospects. He submits that income tax returns for the next two years were produced on record and they reflect an income of Rs. 54,000/- and Rs. 92,000/- per annum. He submits that in any case, in terms of decision of the Constitution Bench of the Hon'ble Supreme Court in the case of National **Insurance Company Ltd. Vs. Pranay Sethi and others**, 2017(6) BCR 791, an addition of atleast 40% is required to be made towards future prospects, taking into consideration the fact that the age of deceased Dharmendar at the time of his demise was 28 years. He submits that the tribunal has applied incorrect multiplier of 15 and infact, the correct multiplier, both in terms of the decision of Hon'ble Supreme Court in the case of **Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009(5) Mh.L.J. 775 as well as **Pranay Seth** (supra), ought to have been 17. He submits that there is no appropriate compensation paid towards non-pecuniary damages. He submits that there is no compensation paid towards loss of love and affection. For all these reasons, he submits that compensation amount awarded by the tribunal is required to be considerably enhanced.

4. Mr. Malte, learned counsel for respondent no. 3 - insurance company submits that the tribunal has very correctly taken into consideration the income tax return of the year 1994-1995, which was the last income tax return filed by the deceased prior to his demise in the accident. He submits that as per this income tax return at Exh.61, the income towards salary was Rs. 24,000/- and the income from business and profession was Rs. 6,446/-. This

means that gross income of the deceased at the time of his demise was only Rs. 30,446/-.

5. Mr. Malte submits that the two additional returns for the subsequent two years were filed on behalf of the deceased after his demise in the accident. He submits that such return can never be taken into consideration, as, at that stage, the claimants were interested in inflating the income of the deceased. For these reasons, Mr. Malte submits that there is no warrant to interfere with the impugned award and this appeal may be dismissed.

6. Upon due consideration of the rival contentions and upon perusing the record as well as impugned judgment and order, it is clear that the deceased Dharmendar was 28 years old at the time of his demise. As regards his income from salary, the tribunal has only relied upon Exh. 61 which is the acknowledgment issued by the income tax department with regard to income tax return for the year 1994-1995. There is no dispute that this income tax return was filed before demise of the deceased. The tribunal has however, ignored the documentary evidence at Exh. 65 which is infact, the TDS certificate issued by the employer of the deceased J.B. Chemicals and Pharmaceuticals Ltd. This TDS certificate indicates that the gross salary of the deceased was Rs. 34,052/-. In this TDS certificate, there is a reference of standard deduction of Rs. 11,349.53 and deduction towards entertainment allowance of Rs.390/-. As contended by Mr. Gujarathi, the reason why in the income tax return, there is reference to income from salary as Rs.24,000/- is because, this figure is computed after making standard deduction and deduction towards entertainment

allowance. Taking this circumstance into consideration, the income of the deceased will have to be taken at Rs. 34,952/- and not merely Rs.24,000/- under the head of salary.

7. There is no dispute that deceased Dharmendar also had a medical shop and was earning income from the same. In the return at Exh. 61, the income declared under this heading is Rs.6,446/- per annum. Therefore, this will have to be added to the salary income and the yearly income of deceased Dharmendar can be safely taken as Rs. 40,496/-, which can be rounded off to Rs. 41,000/-.

8. The tribunal has made no addition towards future prospects. Though Mr. Malte is right in his submission that normally, income tax return filed after the demise should not be taken into consideration in a matter of this nature, even if, the returns for the subsequent years are excluded on this ground, an addition of 40% is due in terms of decision of the Constitution Bench of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Besides, in this case, there is evidence as regards educational qualification of the deceased and there is also evidence that the deceased, apart from his duty as medical representative, was also carrying on business. Accordingly, with the addition of 40% towards future prospects, the yearly income of the deceased can be taken at Rs. 57,400/-, which can be rounded off to Rs. 58,000/- per annum. The tribunal has correctly deducted 1/3rd of the amount towards self-expenses of the deceased. Therefore, if the same deduction is maintained, the dependency comes to Rs. 38,667/- per annum. The tribunal has erred in adopting multiplier of 15 and infact, in terms of decisions

of the Hon'ble Supreme Court in the case of **Sarla verrma** (supra) and **Pranay Sethi** (supra), taking into consideration the age of deceased as 28 years at the time of his demise, the correct multiplier should be 17. This means that the amount towards dependency would be 38,667 x 17 = Rs. 6,57,339/-.

9. Towards funeral expenses and loss of consortium, further amount of Rs. 70,000/- is required to be added. Besides, in this case, compensation is due and payable at the rate of Rs. 25,000/- each for appellants 2, 3 and 4 i.e. minor son of deceased Dharmendar and parents, towards loss of love and affection. This means that further amount of Rs. 75,000/- is required to be added taking the total figure to Rs. 8,02,339/-.

10. In this case, there is no dispute that deceased was 28 years of age at the time of his demise and his son Sham was hardly three months old. His widow Sharmila was 23 years old and his parents were 60 and 55 years respectively. Though Dharmendar's brothers had also applied for compensation, there is no award made in their favour since they could not have been regarded as dependents on deceased. There is also evidence on record that deceased was a qualified person and had infact proceeded to New Delhi for attending interview. This is where he expired in a road accident with a bus which was stated to be travelling in high speed. Taking all this into consideration this aspect, compensation of Rs. 8,02,339/- is required to be rounded off to Rs. 8,05,000/- and this is the just compensation amount payable in the facts and circumstances of the present case.

11. It is pointed out that consequent upon demise of Dharmendar, appellant no. 1 Sharmila has re-married. Learned counsel for the parties have placed for my consideration the decision of the Hon'ble Supreme Court in the matter of **Anju Mukhi and another Vs. Satish K. Bhatia and others**, (2010) 15 Supreme Court Cases 630 in which, it is held that a widow, after re-marriage, need not be paid any additional compensation.

12. Taking the aforesaid decision into consideration, though the compensation amount is enhanced to Rs. 8,05,000/- and even interest component ordered by the tribunal is not interfered with, some modification is warranted in the matter of apportionment of compensation between the claimants.

13. There is no dispute that the originally awarded compensation of Rs. 3,70,670/- inclusive of compensation paid for 'No Fault Liability' has already been withdrawn by the appellants as per the directions in the impugned judgment and award dated 06.12.2004. Instead of re-working the same, it will be appropriate if, a direction is made to pay further amount of Rs. 50,000/- each to the parents of the deceased, from out of the compensation amount now enhanced and, the balance portion of the enhanced compensation together with interest which will be accrued thereon, is paid to Sham, the minor son of the deceased who, by now, has attained majority.

14. Though the balance amount is directed to be paid to Sham, the same need not be paid in lumpsum. At present stage, 50% of such compensation amount which is now due and payable to him

will be deposited in a Nationalised Bank in Fixed Deposit for a period of atleast three years so that such amount is available to Sham after three years. The balance amount can be paid to Sham forthwith.

15. The award of the tribunal is modified to the extent indicated in this judgment and order.

16. The respondent no. 3 - insurance company is directed to re-compute the compensation amount payable in terms of the present order and to deposit the re-computed compensation amount before the tribunal within a period of eight weeks from today. Upon deposit, the appellants i.e. appellant nos. 2, 3 and 4 are permitted to withdraw/appropriate compensation amount as directed in this order.

17. Appeal is partly allowed. There shall be no order as to costs.

18. All concerned to act upon authenticated copy of this order.

(M.S. SONAK, J.)

dyb