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

FIRST APPEAL NO. 3487 OF 2011

New India Assurance Co. Ltd.,
A Subsidiary of the General
Insurance Corporation of India
and a Company incorporated under
the Companies Act having one of its
Divisional Office at Adalat Road,
Aurangabad.
Through its Manager (Legal Hub) &
Authorized signatory
Sanjeev Ramrao Gaisamudre
Age : 52 yrs, occu.: service at
New India Assurance Co.
D.O. No.1 Adalat Road, Aurangabad. **Appellant**.

Versus

1. Sonali w/o Rahul @ Nana Patil
Age : 19 yrs, occu.: household
R/o Katgaon, Tq. & Dist. Latur.

2. Laxmibai w/o Hanmant Patil
Age : 40 yrs, occu.: household
R/o as above.

3. Hanmant Wamanrao Patil
Age 50 yrs, occu.: agri.,
R/o as above.

4. Liyakat Mohammad hanif Shaikh
Age : major, occu.: business
R/o Khaja Nagar, Solapur Road,
Osmanabad, Dist. Osmanabad.

5. Ayyub Ladlesab Shaikh
Age : major, occu.: driver
R/o as above. **Respondents**.

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Mr. A.B. Kadethankar, Advocate for the appellant.
Mr. S.S. Manale, Advocate for respondent Nos.1 to 3.
Mr. P.K. Deshmukh, Advocate for respondent No.4.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 28th November 2018.

Judgment pronounced on : 5th December 2018.

JUDGMENT.

. This appeal is directed by original respondent No.3 in Motor Accident Claim Petition No.197/2009, against the judgment and award passed by the Motor Accident Claims Tribunal, Latur. Respondent Nos.1 to 3 are the original claimants and respondent Nos.4 and 5 are truck owner and truck driver, involved in the accident.

2. In brief, the facts leading to institution of this appeal are that, on 19.03.2009, when the deceased Rahul was proceeding towards Latur by his motorcycle bearing registration No.MH-24-Q-9410, on the way the offending truck bearing registration No.MH-23-5471 came from opposite direction and due to rash and negligent driving by driver of that truck, gave dash to the motorcycle of deceased. In that accident the deceased died on the

spot and his motorcycle was also crushed. In the result, motor accident claim petition came to be filed by the dependents of the deceased.

3. After considering the evidence placed on record, the Tribunal awarded compensation of Rs.6,01,000/- with interest thereon at the rate of Rs.6% per annum.

4. Heard Mr. Kadethankar, learned Counsel for appellant / Insurance Company, Mr. S.S. Manale, learned Counsel for respondent Nos.1 to 3 (claimants) and Mr. P.K. Deshmukh, learned Counsel for respondent No.4.

5. Learned Counsel for the appellant / Insurance Company submits that the accident occurred due to contributory negligence of the deceased, and therefore, the compensation shall be apportioned equally in between the deceased and owner of offending truck. He submits that the Tribunal awarded exorbitant compensation.

6. In reply, learned Counsel for respondent Nos.1 to 3 submits that under conventional heads, meager compensation is awarded by the Tribunal. He has pointed out that the Tribunal did not consider the loss of future prospects while assessing the

income of deceased. He submits that even under the head of loss of consortium, compensation needs to be awarded to the parents and sister of the deceased. He placed reliance on the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [(2017) 16 SCC 680]**.

7. After going through the judgment and award, it emerges that though the Insurance Company has taken a plea of contributory negligence on the part of deceased, to substantiate that contention, no witness is examined by the Insurance Company. The driver of offending truck was the important witness who could have proved contributory negligence on the part of deceased. But he is not examined. Therefore, I have no hesitation to hold that the Insurance Company failed to prove contributory negligence on the part of the deceased.

8. Regarding the quantum of compensation, age of deceased plays an important role. In the case at hand, undisputedly on the date of death the deceased was 25 years old young person. Therefore, in view of the verdict in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”, (AIR 2009 SC 3104)**, multiplier of “18” will be applicable in the

case at hand.

9. The Tribunal has assessed the notional income of decease as Rs.4,000/- per month considering his age and loss of supervision on agricultural land and tractor business. Considering the young age of deceased, notional income assessed by Tribunal cannot be termed as exorbitant. Thus, the annual income of the deceased is to be assessed as Rs.48,000/-. In view of the guidelines issued by Apex Court in the case of **"Pranay Sethi"** (supra), as the deceased was self employed person below the age of 40 years, 40% amount is to be added in the annual income of the deceased, which comes to Rs. 67,200/- (48,000 + 19,200). Considering the three dependents i.e. parens and widow, in the family of deceased, as per the verdict given in the case of **"Sarla Varma"** (supra), one-third amount i.e. Rs. 22,400/ is to be deducted towards personal expenses of the deceased. Therefore, the contribution of the deceased to his family is assessed as Rs. 44,800/- (67,200 – 22,400) per annum. After applying the multiplier of "18", loss of dependency comes to Rs. 8,06,400/-.

10. After going through the judgment passed by the Tribunal, it emerges that the Tribunal awarded meager amount under the conventional heads. Therefore, in accordance with the law settled by the Apex Court in the case of **"Pranay Sethi"** (supra), the claimants are entitled to following compensation under the conventional heads :-

Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

11. Thus, the claimants are entitled to following compensation :-

Loss of dependency	:-	Rs. 8,06,400/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 8,76,400/-

(Rupees Eight Lakh Seventy Six Thousand Four Hundred)

12. Though the learned Counsel for Insurance Company raised objection that in absence of cross-objection the compensation amount cannot be enhanced, in view of the law settled by Apex Court in the case of **"Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others"**

[2015 (4) SCC 237], even in the absence of cross-objection this Court can enhance compensation while determining fair and reasonable compensation payable to the claimants. Therefore, the objection raised by learned Counsel for Insurance Company holds no water.

13. The award was passed in the year 2010. However, due to filing of appeal by Insurance Company the claimants could not get the benefit of that award. Considering this circumstance, in view of the law settled by Apex Court in the case of **"Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy" [(2011) 14 SCC 481]**, the claimants are entitled to interest at the rate of 9% per annum from the date of filing of petition till realization of compensation amount.

14. Considering the young age and lengthy life span of claimant No.1, who is the widow of deceased, out of the compensation amount, major portion shall be allotted to her than claimant Nos.2 and 3 who are the aged parents of deceased. I hold that out of compensation amount, 60% amount shall be paid to claimant No.1 Sonali Rahul @ Nana Patil and remaining compensation shall be equally paid to claimant Nos.2 and 3. The

award passed by Tribunal needs to be modified accordingly, though this appeal preferred by Insurance Company deserves to be dismissed.

15. Accordingly First Appeal No. 3487 of 2011 is dismissed. The award passed by Motor Accident Claims Tribunal, Latur in Motor Accident Claim Petition No.197/2009 is modified as under :-

"(i) Claim Petition is allowed with proportionate costs.

(ii) Respondent Nos.1 to 3 do jointly and severally pay compensation of Rs.8,76,400/- (Rupees Eight Lakh Seventy Six Thousand Four Hundred), inclusive of "no fault liability" amount, to the claimants with interest thereon at the rate of Rs.9% per annum from the date of filing of petition till its realization.

(iii) Out of this compensation amount, 60% share shall be given to claimant No.1 Sonali w/o Rahul @ Nana Patil and 20% share each be given to claimant No.2 Laxmibai w/o Hanmant Patil and claimant No.3 Hanmant Wamanrao Patil.

(iv) Out of the compensation amount payable to the claimants, 50% amount from their respective shares be invested in the fixed deposit in their respective names in any Nationalized Bank of their choice for the period of three years and the remaining amount be paid to them by issuing separate account payee cheques in their names, through the Tribunal.

(v) Deficit Court-fees, if any, be recovered from the claimants.

(vi) The award be drawn up accordingly.

16. Claimants are permitted to withdraw the compensation amount in accordance with modified award, if deposited in this Court. The deposited compensation be transmitted to Tribunal, Latur for payment and investment.

17. The parties shall bear their respective costs of the appeal. The appeal is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

vdd/