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

FIRST APPAL NO. 2089 OF 2015

1. Nandabai Sunil Chaudhari,
Age; 30 years, Occupation; Household,

2. Dhanashri Sunil Chaudhari,
Age; 13 years, Occupation; Education,

3. Gaurav Sunil Chaudhari,
Age; 10 years, Occupation; Education,

4. Saurav Sunil Chaudhari,
Age; 7 years, Occupation; Education,

Applicant Nos. 2 to 4 are minors,
Through the natural legal guardian,
mother applicant No. 1.

All are resident at Tarwade,
Taluka; Chalisgaon, District; Jalgaon. **APPELLANTS**
(Original Claimants)

VERSUS

1. Kanubhai Rameshwarswaroop Agrawal,
Age; Major, Occupation; Business,
Resident of C/o; Vinayak Road Carrier,
ONGC Chokadi, Jahapur, Nijraj Road,
Surat (Gujrath) 395001.

2. The Branch Manager,
The National Insurance Company,
Baliram Peth, Jalgaon.

3. Kalabai Uttam Chaudhari,
Age; 68 years, Occupation; Nil,
Resident of Tarwade,Taluka Chalisgaon,
District; Jalgaon. **RESPONDENTS**
(Original Respondents)

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Shri. M.M.Bhokarikar, Advocate for Appellants
Shri. S.V. Kulkarni, Advocate for Respondent No. 2
Respondent Nos. 1 & 3 served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 28/11/2018
Date of Pronouncing Judgment : 04/12/2018

J U D G M E N T :

This appeal is directed against the judgment and award passed by Maharashtra Accidental Claims Tribunal, Jalgaon, (hereinafter referred to as 'MACT') in MACP No. 75 of 2008. Appellants are original claimants and respondents are original respondents. The parties are hereinafter referred to as per their original status.

2. Facts leading to the institution of this appeal are that, claimant No. 1 is the wife and claimant Nos. 2 to 4 are the children of deceased Sunil Uttam Chaudhari. On 4.12.2006, when deceased was standing by the side of the road with his motorcycle bearing No. MFW 9225, in front of Tata Tyreson Company, MIDC, Ranjangaon Ganpati, trailer No. GJ-05/YY-6333 gave dash to the road divider and to the electric pole. The electric pole fell down on the head of the deceased and on his motorcycle. The deceased succumbed to the injuries sustained in the above said accident. Accident occurred due to rash and negligent driving by the driver of the offending trailer. Therefore, claimants filed Claim Petition before MACT, Jalgaon.

3. Respondent No. 1 was proceeded ex-parte. Only respondent No. 2 Insurance Company filed written statement (Exh. 13) and denied the claim. Respondent No. 3, who is mother-in-law of claimant No. 1, has admitted the claim petition.

4. After considering the evidence placed on record by the claimants, the Tribunal awarded compensation of Rs. 4,71,000/- with interest thereon @ 7.5% per annum from the date of filing of the petition till realization of the entire amount. That award is challenged by the original claimants.

5. Heard Shri M.M. Bhokarikar, learned counsel for appellants, Shri S.V. Kulkarni, learned counsel for respondent No. 2, Insurance Company.

6. Learned counsel for claimant submits that the Tribunal considered meager notional income of the deceased, at the rate of Rs. 3,000/- per month. He submits that notional income of the deceased cannot be less than 5,000/- per month considering the occupation as a contractor.

7. Next submission of learned counsel for appellant is that the Tribunal did not consider the compensation under the head of future prospects. The Tribunal awarded less rate of interest on the

compensation amount. He has also pointed out that under conventional head meager compensation is awarded by the Tribunal.

8. Learned counsel for Insurance Company submits that from the annual income of the deceased 1/4th amount has to be deducted as per the guidelines issued by the Apex Court in **"Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr" [AIR 2009 Supreme Court 3104]**. Learned counsel for Insurance Company submits that judgment passed by the Tribunal on the ground that notional income was rightly considered, as no documentary evidence was placed before the Tribunal regarding the contractor-ship business of the deceased.

9. At the out set, I must make it clear that in the case at hand, the Insurance Company has not challenged the judgment and award passed by the Tribunal. Therefore, the point regarding the rash and negligent driving by the driver of the offending trailer need not be reconsidered. In this appeal, I have to only determine the fair and reasonable compensation amount payable to the claimants.

10. While determining the compensation, the age of the deceased plays important role. In the case at hand, the claimant has not placed on record any document to prove the age of the deceased, at the time of his death. However, inquest panchanama

(Exh. 23) shows that at the time of death, the deceased was 32 years old person. This inquest panchanama is not disputed by the Insurance Company. Therefore, it can be held that at the time of death, the deceased was 32 years old. Therefore, as per the guidelines issued by the Apex Court in **"Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr"** (supra), the multiplier '16' is applicable in the case at hand.

11. Claimant Nanda Chaudhari, though deposed that deceased was a contractor and he used to earn Rs. 20,000/- per month, but no documentary evidence, such as income tax returns filed by the deceased, is placed on record by the claimants. Therefore, at this stage, no evidence is available on record to prove the exact income of the deceased. However, after going through the postmortem notes (Exh. 34), it emerges that the deceased was well built person. Thus, considering young age of the deceased and his well built personality, even as labour, his monthly notional income can be considered at the rate of Rs. 5,000/- per month.

12. As the deceased was self employed person below the age of 40 years, as per the guidelines issued by the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70]**, addition of 40% income is to be made in the monthly income of the deceased (5,000 x 40

divided by 100) = 2000. Thus, monthly income of the deceased comes to Rs. (5,000 + 2,000) = 7,000/-. Thus, it follows that annual income of the deceased is Rs. 7,000 x 12 = 84,000/-.

13. Including respondent No. 3, in the family of the deceased there are five dependents. Therefore, from the annual income of the deceased 1/4th amount has to be deducted towards the personal expenses of the deceased i.e. (84,000 divided by 4) = Rs. 21,000/- and Rs. (84,000 – 21,000) which comes to Rs. 63,000/-. Thus, after deducting this 1/4th amount i.e. Rs. 21,000/- from the annual income of the deceased, the annual contribution by the deceased towards his family comes to Rs. 63,000/-. After applying multiplier of '16', the loss of dependency comes to Rs. (63,000 x 16) = Rs.10,08,000/-.

14. In addition to this amount the claimants are also entitled to following compensation under the conventional head as per the judgment of the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others"** (supra) :

Sr No.	Head	Amount in Rs.
1)	Loss of consortium	40,000/-
2)	Loss of estate	15,000/-
3)	Funeral expenses	15,000/-
	Total =	70,000/-

15. Thus, claimants are entitled to total following compensation under different heads :

Sr No.	Head	Amount in Rs.
1)	Loss of dependency	10,08,000/-
2)	Loss of consortium	40,000/-
3)	Loss of estate	15,000/-
4)	Funeral expenses	15,000/-
	Total =	10,78,000/-

16. As the Insurance Company did not settle the dispute regarding the compensation amount with the claimants, which compelled them to approach this Court, the claimants are also entitled to interest @ 9% per annum on the compensation amount from the date of filing of the Claim Petition, till realization of the entire amount. This compensation shall be inclusive of compensation received by the Claimants under No Fault Liability.

17. In view of this discussion, the appeal filed by the claimants deserves to be allowed to enhance the compensation and the rate of interest. Accordingly, First Appeal No. 2089 of 2015 is allowed. The judgment and award passed by the MACT, Jalgaon in MACP No. 75 of 2008 is modified to enhance the compensation to the tune of Rs. 10,78,000/- with interest thereon @ 9% per annum from the date of filing of the claim petition till realization of the entire compensation amount.

18. The compensation shall be inclusive of No Fault Liability. The claimants are also entitled to costs of the Claim Petition from respondent Nos. 1 and 2. The investment and apportionment of compensation amount shall be as directed by the Tribunal. Clause Nos. 2, 3 and 4 of the award passed by the Tribunal are confirmed.

19. The award passed by the Tribunal be modified accordingly.

20. Parties to bear their respective costs of the appeal.

21. Civil Appeal No. 2089 of 2015 is disposed of in above said terms.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/