IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPAL NO. 1355 OF 2017

M/s. Shriram General Insurance
Company Limited,E-8, EPIP,
RIICO Industrial Area,
Sitapur, Jaipur (Rajasthan State)

Through its Branch Manager/
Authorised Signatory, Aurangabad. **APPELLANT**
(Original Respondent No. 2)

VERSUS

1. Shriram Namdeo Ajbe,
Age; 54 years, Occupation; Agrilriculturists,

2. Shalan Shriram Ajbe,
Age; 49 years, Occupation; Household,

3. Shivhari Shriram Ajbe,
Age; 19 years, Occupation; Education,

4. Sugriv Kisan Sangle,
Age; 39 years, Occupation; Transport,

All residence of Sarola, Taluka Jamkhed,
District; Ahmednagar. **RESPONDENTS**
(Respdt. Nos. 1 to 3 Orig. Claimants)
(Respdt. No. 4 – Orig. Respdt. No.1)

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Shri. S.G. Chapalgaonkar, Advocate for Appellant
Shri.V.V. Tarde, Advocate for Respondent Nos. 1 to 3
Shri S.N.Gaikwad, Advocate for Respondent No. 4

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 07/12/2018
Date of Pronouncing Judgment : 12/12/2018

JUDGMENT :

This appeal is directed by Original Respondent Nos. 2 in MACP No. 435 of 2013 against the judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar awarding compensation of Rs. 16,82,2000/- in favour of Claimants. Respondent Nos. 1 to 3 are Original Claimants. Claimant Nos. 1 and 2 are the parents and Claimant No. 3 is brother of deceased Shridhar @ Balaji Shriram Ajbe. Respondent No. 4 is owner of offending dumper.

2. Facts leading to the institution of this appeal, in brief, are that on 18.4.2013, in the agricultural land at village Kolgaon, Tq.Karmala, District; Solapur, when unloading of silt was going on, which was loaded in the offending dumper, the trolley of the dumper suddenly fell down, when the deceased was checking the hydraulic system of the dumper by sitting on fuel tank. The deceased

was sandwiched in between heavy trolley and the fuel tank and sustained serious injuries. Though he was hospitalized, he succumbed to the injuries. Therefore, claimants filed motor accident claim petition against respondent No. 1 owner of dumper, respondent No. 2 insurer and respondent No. 3 the driver of the dumper involved in the accident.

3. Heard Shri S.G. Chapalgaonkar, learned counsel for appellant Insurance Company, Shri V.V. Tarde, learned counsel for respondent Nos. 1 to 3 Claimants and Shri S.N. Gaikwad, learned counsel for respondent No. 4 owner of the dumper.

4. Learned counsel for appellant submits that in this appeal, only quantum of compensation is disputed by the Insurance Company. He submits that the learned Tribunal has erroneously assessed notional income of the deceased, who was just 18 years old at the time of accident, as Rs. 7,000/- per month and added 100% amount towards loss of future prospect. His next objection is that, even under conventional head, exorbitant compensation of Rs. 1,70,000/- is awarded, though as per law settled by the

Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others" [2018 (3) Mh.L.J. 70],** under conventional head, at the most compensation can be awarded to the extent of Rs. 70,000/- under different heads. He submits that as the deceased was bachelor, under the conventional head only 30,000/- can be awarded. Out of annual income, 50% income is to be deducted towards personal expenses of the deceased. He prays for reduction of the compensation awarded to the claimants.

5. Learned counsel for respondents supported the judgment and award passed by the Tribunal, on the ground that notional income @ 7,000/- per month of the deceased as considered by the Tribunal is just and proper, since the deceased was Wrestler, who has bright future in Wrestling. He has pointed out that the rate of interest on compensation amount needs to be enhanced @ 9% per annum. He placed reliance on **"Sushila wd/o Subhash Mendhe and another vs National Insurance Company Ltd." [2018(3) Mh. L.J. 311]**.

6. In the case at hand, the age of the deceased at

the time of his death was 18 years is not disputed. The Secondary School Certificate of the deceased shows his date of birth as 8.7.1994. Therefore, obviously, on the date of accident on 18.4.2013 the deceased was 18 years young person. The other certificates issued by the Zilla Parishad, Beed and the Mahrashtra State Wrestling Council show that the deceased participated in Taluka Wrestling Competition as well as even the State Wrestling Competition. Thus, it can be gathered that the deceased was sportsman, who had bright career in wrestling.

7. No doubt, claimant Shriram Namdeo Ajbe (PW 1) in his evidence tried to make out the case that deceased used to earn Rs. 30,000/- per month with the help of Poclain and J.C.B. machines. However, from his cross-examination, it emerges that the deceased did not maintain any account of the said business and this witness has no evidence to prove income of the deceased out of this business. Even the testimony of Ramesh Ajbe (PW 2), who posed himself as business partner of the deceased in Poclain business, falls short to prove the income of the deceased out of the said business, because from his cross-

examination, it emerges that there was no partnership agreement in between the deceased and this witness and no receipts were issued by the deceased regarding the receipt of his share in the profit of the business. Even this witness did not file any account extract of the income of his business. This witness has also admitted that in his income tax return, he has not shown that deceased shared investment in Poclain business. At last, Ramesh (PW 2), admits that except his words, he cannot bring on record any document to prove the income of the deceased, out of the said partnership business. For the same reason even, testimony of Mahadev Shinde (PW 3) cannot be relied on. The Tribunal rightly refused to accept the case of the claimant regarding the income of deceased as Rs. 30,000/- out of Poclain and JCB business.

8. No doubt, the deceased was well built 18 years old Wrestler. However, only on the basis of that qualification, the notional income of the deceased cannot be assessed at the rate of Rs 7,000/- per month. The notional income assessed by the Tribunal appears to be exorbitant. I hold that considering additional qualification of the deceased

as Wrestler and his education after 12th Standard, his notional income can be assessed at the rate of Rs. 6,000/- per month. Thus annual notional income of the deceased is assessed as (6,000x12) Rs. 72,000/-.

9. Taking into consideration, the legal position settled by the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others"** (supra), 40% income is to be added in the notional income of the deceased towards loss of future prospect. After adding the amount of 40%, the annual income of the deceased is assessed as (72,000+ 28,800) Rs.1,00,800/-.

10. As the deceased was bachelor, from his annual income half of the amount is to be deducted towards the personal expenses of the deceased. Thus, the annual contribution of the deceased towards his family comes to (1,00,800 – 50,400) Rs. 50,400/-.

11. For the age of 18 years, the multiplier of '18' is applicable in view of law settled by the Apex Court in **"Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr" [AIR 2009 Supreme Court 3104]**. Thus, the loss of

dependency is assessed as (50,400x18) Rs. 9,07,200/-.

12. After going through the judgment passed by the Tribunal, it emerges that relying on **“Rajesh vs Rajbir Singh” [(2013) 9 SCC 54]**, the Tribunal added 100% income towards the loss of future prospect and awarded compensation of Rs. 50,000/- towards funeral expenses, Rs.1,25,000/- towards loss of love and affection. However, in view of law settled by the Larger Bench of the Apex Court in “**National Insurance Company Ltd. vs Pranay Sethi and others”** (supra), the case of **“Rajesh vs Rajbir Singh”** (supra), is not a good law. In the case of “**National Insurance Company Ltd. vs Pranay Sethi and others”** (supra), the Apex Court held that under conventional head, compensation can be awarded at the rate of Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses and Rs. 40,000/- towards loss of consortium. In the case at hand, as the deceased was unmarried, compensation cannot be awarded under head of loss of consortium. Therefore, under conventional head, the claimants are only entitled for compensation of Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate. Thus, the claimants are entitled for following total compensation under different heads :

Sr. No.	Particulars	Amount in Rs.
1)	Loss of dependency	9,07,200
2)	Loss of estate	15,000
3)	Funeral expenses	15,000
	Total	9,37,200

13. It is to be noted that compensation cannot be awarded to the Claimants under the head of medical expenses, as the claimant Shriram (PW 1) deposed in his Examination-in-Chief that the deceased died on the way to Karmala for medical treatment. Therefore, my conclusion is that at the most, the claimants are entitled to total compensation of Rs. 9,37,200/- (Rs. Nine Lac Thirty Seven Thousand and Two Hundred Only). On this amount the Claimants are also entitled for interest at the rate of 9% per annum from the date of filing of the petition till realization of the compensation amount. However, deceased being brother of the claimant No. 2, mother, shall be only the dependent of the deceased. The only claimant No. 2 is entitled to compensation. The claimant No. 1 father and claimant No. 3 brother of deceased, cannot be considered as dependents.

14. Before parting with the judgment, it is suffice to say that the ratio in **"Sushila wd/o Subhash Mendhe and another vs National Insurance Company Ltd."** (supra), relied on by the claimants is distinguishable on the fact that in that case the employer of the deceased was examined who had proved the monthly wages of the deceased at the rate of 9,000/- per month. Thus, in view of this discussion, I hold that this appeal deserves to be partly allowed.

15. Accordingly, First Appeal No. 1355 of 2017 is partly allowed.

The award passed by the Motor Accident Claims Tribunal, Ahmednagar in MACP No. 435 of 2013 is modified to reduce the quantum of compensation to the tune of Rs. 9,37,200/- with interest thereon at the rate of 9% per annum from the date of filing of the claim petition till realization of the compensation amount. Compensation is payable only to the claimant No. 2 Sau. Shalan Shriram Ajbe. Award be modified accordingly.

Parties shall bear their respective costs of the appeal.

If the compensation amount is deposited by the appellant/Insurance Company in this Court, the same be transmitted to the Motor Accident Claims Tribunal, Ahmednagar for its payment to claimant No. 2, in accordance with the modified award.

The excess amount of the compensation shall be refunded to the appellants Shriram General Insurance Company Ltd. i.e. Original Respondent No. 2.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/