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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2069/2008

M/s New India Assurance Co.Ltd.
...Appellant..

Versus

Kamalbai Kautik Pandit & five others.
...Respondents...

.....

Shri V.N. Upadhye, Advocate for appellant.
Shri V.A. Shinde, Advocate for respondent nos.1 to 4.
Respondent nos.5 & 6 served.

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CORAM: M.S. SONAK, J.

DATE: 12.02.2018

ORDER :

- 1] Heard learned counsel for the appellant.
- 2] The challenge in this appeal is to the judgment and award dated 11.2.2008 made by the Motor Accident Claims Tribunal at Aurangabad.
- 3] Learned counsel for the appellant has fairly stated that this appeal is restricted to the excess compensation of Rs.2,30,000/- awarded by the Tribunal to the claimants. He submits that there is absolutely no evidence on record as regards the income of the deceased and, therefore, the Tribunal erred in treating the income

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of the deceased at Rs.4,000/- per month. He submits that at the highest, by way of default, the income could have been treated at Rs.3,000/- per month. He submits that if this reduction is made, consequently the ultimate compensation figure of Rs.6,11,000/- will have to be reduced by Rs.2,03,000/-. On this ground, the learned counsel submits that the impugned award may be modified and the compensation amount may be reduced by Rs.2,03,000/- together with proportionate interest.

4] Even the submission of learned counsel for the appellant is accepted and the income by way of default is taken as Rs.3,000/- per month, in this case, since the deceased was 28 years at the time of accident and demise, an addition of 40% will have to be made towards future prospects. This is in terms of the law laid down by the Constitution Bench in the case of *National Insurance Co.Ltd. v. Pranay Sethi* [**2017 (6) BCR 791**]. This means that, to the amount of Rs.3,000/- per month, an addition of Rs.1200/- will have to be made and the income of the deceased will have to be taken as Rs.4120/- per month. In this case, the Tribunal has taken the income of the deceased at only Rs.4,000/- per month. This is

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sufficient to sustain the ultimate award of Rs.6,11,000/-.

5] Upon perusing the award, it is seen that the Tribunal has awarded towards non-pecuniary damages, compensation of Rs.25,000/- for consortium and Rs.10,000/- towards funeral expenses. No award has been made towards loss of love and affection and towards children, who are aged 8, 6 and 3 years at the time of the demise of their father. No compensation has been awarded towards loss of estate. In terms of *Pranay Sethi* (supra), minimum of Rs.70,000/- was required to be awarded.

6] For the aforesaid reasons, there is no case made out to interfere with the impugned judgment and award in this appeal. The appeal is, therefore, dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)