IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1426 OF 2017

1] Pappu s/o Laxmanrao Rathod
age 35 years, occ. Labour,
R/o Achler, Tq. Lohara,
Dist. Osmanabad,

2] Raju s/o Laxmanrao Rathod,
age 33 years, occ. Labour,
R/o Achler, Tq. Lohara,
Dist. Osmanabad ...Appellants

VERSUS

1] Vijay s/o Bapurao Kudale,
age Major, occ. Business,
R/o Survey No.77, B-4,
Sadguru Hight, Mundhawa,
Pune
(owner of Pick Up No.
MH-12/DT-9804) ...Respondents

…

Mr. V.S.Undre, advocate for appellants
Respondent nos. 1 and 2 served.

...

CORAM : SUNIL K.KOTWAL, J.

DATED : SEPTEMBER 27, 2018

ORAL JUDGMENT :

This appeal is directed by original claimants who are dependents of deceased Laxman

Gemu Rathod (hereinafter referred to as 'the deceased'), who died in motor vehicle accident on 11.5.2013, due to dash given by Truck bearing No. MH-12/DT-9804 (offending vehicle), against the judgment and order, passed by the Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No. 325 of 2013.

2. Respondent no.1 is owner of the offending vehicle and respondent no.2 is insurer of the offending vehicle.

3. Heard Mr.V.S.Undre, learned counsel for the appellants. None appeared for respondent nos. 1 and 2, though served.

4. Learned counsel for the appellants submits that though as per postmortem report, age of the deceased is noted as 55 years, the Tribunal has applied wrong multiplier, holding that as per inquest panchanama, the deceased was 59 years age. His next submission is that even notional income of the deceased is erroneously fixed at the rate of

4,000/- per month when by way of evidence income of the deceased is proved as 7,000/- per month. His next submission is that no compensation towards future prospects, as ruled by this Court in "**National Insurance Co. Ltd. Vs Pranay Sethi and Ors." [2018 (3) Mh.L.J. 70]** is granted by the Tribunal. He prays for enhancement of compensation.

5. After going through the judgment, passed by the Tribunal, it reveals that the Tribunal held that as per inquest panchanama (Exh.27), age of the deceased was 59 years, and therefore, multiplier of 8 would be applicable. However, after going through the inquest panchanama (Exh.27), it becomes absolutely clear that in column 4 of inquest panchanama, age of Amrut Bhimrao Chavan, who identified the dead body, is shown as 59 years. However, the age of the deceased in column no.6 is mentioned as 55 years. Even in postmortem notes (Exh.28) age of the deceased is noted as 55 years. When the age of the deceased is 55 years, as per

the verdict of “**Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.” [AIR 2009 SC 3104]** proper multiplier applicable in the case at hand is 11.

6. So also, regarding monthly income of the deceased, the Tribunal disbelieved the evidence of Amrutrao Bhimrao Chavan (PW 2), who is employer of the deceased only on the ground that record has not been maintained regarding payment of monthly salary of Rs.7,000/- per month to the deceased. However, Amrut Chavan (PW 2) has categorically deposed before Tribunal that the deceased used to work as labour in his agricultural land, for the salary of Rs.7,000/- per month. Therefore, question of maintaining record of payment of such salary by small agriculturist like Amrut (PW 2)does not arise. The Tribunal has erroneously disbelieved the evidence of Amrut Chavan (PW 2) in respect of monthly salary of the deceased as Rs.7,000/- per month. I hold that on the basis of evidence of Amrut (PW 2) who is employer of deceased, claimants have proved that income of deceased is Rs.7,000/-

per month.

7. Similar view is already taken by this Court in the case of "**Royal Sundaram Alliance Insurance Co. Ltd. Vs Smt. Varsha Rajendra Pache and ors.**" **[2017 (6) Mh.L.J. 308].**

8. In view of law settled by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi** (supra), deceased being fixed salary labour of the age of 55 years, 10 per cent income is to be added towards future prospects. Therefore, monthly income of the deceased is assessed as Rs.7000+700=7700/-. Thus annual income of the deceased is assessed as Rs.7700x12=92,400/-.

9. As per law laid down by Apex Court in the case of **Sarla Verma** (supra), there being only two dependents in the family of the deceased, $1/3^{rd}$ income is to be deducted from his annual income. Thus, loss of dependency is calculated as Rs.61,600/-. If multiplier of 11 is applied to

this multiplicand, the loss of dependency is assessed as Rs.6,77,600/-.

10. As ruled by Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi** (supra) under the conventional head, compensation of Rs.15,000/- is to be awarded for loss of estate and Rs.15,000/- towards funeral expenses. Thus, petitioners are entitled for total compensation under different heads as under :

Loss of dependency	:	Rs. 6,77,600.00
Loss of estate	:	Rs. 15,000.00
Funeral expenses	:	Rs. 15,000.00
Total	:	Rs. 7,07,600.00

11. The petitioners are also entitled to interest on this compensation amount at the rate of nine per cent per annum, from the date of filing of petition, till its realization. This compensation amount shall be inclusive of the compensation under no fault liability.

12. In view of above discussion, this appeal deserves to be allowed to enhance the compensation to the extent of Rs.7,07,600/- inclusive of no fault liability. The petitioners are also entitled for interest at the rate of nine per cent per annum from the date of filing of petition, till its realization. Appeal is allowed in above said terms. Award passed by the Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No. 325 of 2013 be modified accordingly. Parties to bear their own costs. Deficit court fee be recovered from the appellant.

[**SUNIL K.KOTWAL, J.**]

dbm