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IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO.1805 OF 2016

1. Smt. Sunita Sanjay Chaudhari APPELLANTS
   Age - 32 years, Occ - Household

2. Chi. Devendra Sanjay Chaudhari,
   Age - 12 years, Occ - Education

3. Chi. Pankaj Sanjay Chaudhari
   Age - 9 years, Occ - Education

4. Late Ramesh Namdeo Chaudhari (Dead hence deleted)

5. Smt. Kalambai Ramesh Chaudhari,
   Age - 60 years, Occ - Household
   (Applicant No.1 is mother and natural
   guardian of applicant No.2 and 3 who are her sons)

   All R/o Sunasgaon, Taluka - Bhusawal
   District – Jalgaon,
   Appellant No.1 to 3 at present are residing
   at Bajaj Nagar, 12 H – 27, Suyog Colony
   In front of Mahadeo Temple
   Aurangabad, Taluka and District – Aurangabad

   VERSUS

1. Shri. Sunil Vasant Chaudhari RESPONDENTS
   Age – Major, Occ – Driver

2. Shri. Anil Vasant Chaudhari,
   Age – Major, Occ – Vehicle Owner

3. The Divisional Manager
   The New India Assurance Company Ltd.,
   Behind Dadhiwal Bunglow, Near Panchamukhi
   Hanuman Temple, Jalgaon,
   Taluka and District – Jalgaon

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Mr. Madhav M. Bhokarikar, Advocate for the appellants

Mr. D. P. Deshpande, Advocate for respondent No.3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th MARCH, 2018

ORAL JUDGMENT :

1. Heard learned advocates for the appearing parties.

2. This is an appeal by claimants aggrieved by decision of the Motor Accident Claims Tribunal, Jalgaon dated 16th February, 2016 in MACP No. 502 of 2010. According to the appellants – claimants, compensation as had been claimed by them of Rs.40,00,000/- with interest ought to have been granted, whereas their claim only to the tune of Rs.22,50,000/- has been granted, inclusive of no fault liability compensation and interest too has been granted only @ 7.5%.

3. Mr. Bhokarikar, learned advocate appearing for the appellants – claimants states that Sanjay Ramesh Chaudhari – husband of appellant No.1, father of appellants No.2 and 3 and son of appellants No.4 and 5 died due to injuries suffered in vehicular accident on 7th November, 2010. He was thirty seven years of age while he died and had been working as an officer with Balkrushna Tyres, earning Rs.18,000/- per month. The

Tribunal has committed an error in computing income of Sanjay only to the tune of Rs.16,000/- per month. According to learned advocate appreciation of the documents placed on record in respect of earning by deceased Sanjay is not sustainable, for, the documents particularly the documents at Exhibits-66/1 to 66/7 do clearly depict that deceased Sanjay in fact had been earning Rs.18,000/- and more per month and was taking home salary with deductions in respect of provident fund, actual canteen expenses, professional tax, some dues towards Jalgaon Janta Co-operative Bank and LIC premium. He submits that the only amount deductible from his earning after death may be outgo in respect of professional tax and in the circumstances, appreciation by the Tribunal about salary being earned by the deceased was about Rs.16,000/- per month is grossly erroneous and thus, the same requires rectification in the first appeal. He further submits that while granting compensation to the claimants, future prospects as are payable pursuant to prevailing legal position as would be evinced by a decision of five judges bench of the Supreme Court in the matter of *"National Insurance Company Limited V/s Pranay Sethi and Others"* reported in *MANU/SC/1366/2017 : 2017 (13) SCALE 12*, particularly under its operative order under paragraph No. 61 specifically clause (iii) thereunder, is due and liable to be paid to the claimants. He, therefore, submits that the award of the Tribunal would be required to be modified in tune with the salary drawn by the deceased and in view of the decision of the Supreme Court in the case of "*National Insurance Company Limited*" (*Supra*). He purports to point out that the respondents in the claim petition by their conduct do show that they have resiled to the decision rendered by the tribunal and have not filed any appeal against decision of the tribunal. He, thus, urges to allow the appeal enhancing the compensation as prayed for.

4. Mr. Deshpande, learned advocate appearing for respondent No.3, the insurer, submits that the tribunal with reference to the evidence on record which shows that the take home salary of the deceased had been around Rs.16,000/- per month has appreciated that salary earned by the deceased had been in the region of Rs.16,000/-. He, therefore, supports the order. Learned advocate purports to resist the contention with reference to decision in "*National Insurance Company Limited*" (*Supra*) stating that the same may not govern present situation. Mr. Deshpande purports to draw attention of the court to that it may not be said that there is any evidence with regard to future prospects and those have not been specifically claimed.

5. Perusal of the judgment by the tribunal depicts that while computing monthly income of the deceased it has gone by the net take home pay and does not appear to have applied its mind to the heads of deduction made from the gross salary earned by the deceased. The deductions were made in gross salary on account of provident fund contribution, actual canteen expenses, LIC premium and some amount payable to Jalgaon Janata Co-operative Bank. These were the deductions being made at source. As such, save the outgo on professional tax, rest of the amounts do form part of income earned by the deceased. In the circumstances, taking into account the very same documents at Exhibits-66/1 to 66/7, it appears that the salary earned by the deceased had been Rs.18,000/- per month. In the circumstances, there appears to be an error in appreciation of computation of salary and the same will have to be modified and brought forth in tune with the figures as depicted under documents at Exhibit-66/1 to 66/7. As such, income earned by the deceased would be required to be computed @ Rs.18,000/- per month and since the deceased was thirty seven years of age when the accident had occurred, the computation of compensation will have to be assessed accordingly.

6. Paragraph No. 61 of the decision referred to and relied on by learned advocate for the appellants in the case of "*National Insurance Company Limited*" (*Supra*) reads thus -

> " *61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
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> *(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
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> *(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> ***(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.***
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> *(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

> *(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.*
>
> *(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.*
>
> *(vii) The age of the deceased should be the basis for applying the multiplier.*
>
> ***(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."***

7. Taking into account clause (iii) of aforesaid paragraph No. 61, which requires addition of 50% of actual salary to the income of the deceased towards future prospects, since the deceased had been on permanent job and was below age of 40 years, the computation of compensation will have to be made in tune with the same.

8. In addition to aforesaid, it appears that the appellants would also be able to legitimately claim an amount of Rs.70,000/- under conventional heads, namely, Rs.15,000/-for funeral expenses, Rs.40,000/- for consortium and Rs.15,000/- for loss of estate.

9. In the circumstances, award passed by the tribunal undergoes modification in terms of aforesaid. First appeal is disposed of accordingly. Decree be drawn accordingly. Needless to refer to that claim with regard to medical expenses as granted by the tribunal remain unaffected.

[SUNIL P. DESHMUKH, J.]

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