IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2135 OF 2018

1] Sharda w/o Pandharinath Bharti,
age 39 years, occ. Household,

2] Damini d/o Pandharinath Bharti,
age 19 years, occ. Education,

3] Om s/o Pandharinath Bharti,
age 17 years, occ. Education,

Appellant no.1 for herself &
for appellant no.3 minor represented
through his natural guardian
i.e. Appellant no.1

4] Ranghnath s/o Bhau Bharti,
age 73 years, occ. Nil,

5] Sakubai w/o Ranghnath Bharti,
age 68 years, occ. Nil,

All R/o Ambhore, Tq. Sangamner,
Dist. Ahmednagar ...Appellants
[Orig. Claimants]

VERSUS

The Divisional Manager,
Maharashtra State Road
Transport Corporation,
Divisional Office, Ahmednagar,
Tq. and Dist. Ahmednagar ...Respondent
[Orig. Opponent]

...

Mr. K.N.Shermale, advocate for appellants
Mr. B.S.Deshmukh, advocate for Respondent

...

FIRST APPEAL NO. 2137 OF 2018

1] Manjusha w/o Amol Shevale,
age 34 years, occ. Household,

2] Ritiesh s/o Amol Shevale,
age 10 years, occ. Education,

3] Vitthal s/o Mahadu Shevale,
age 68 years, occ. Nil,

4] Kalpana w/o Vitthal Shevale,
age 58 years, occ. Household,

Petitioner no.2 minor through his
guardian appellant no.2 mother

All R/o Maldad Road,
Vidyanagar, Sangamner,
Tq. Sangamner,
Dist. Ahmednagar ...Appellants
[Orig. Claimants]

VERSUS

1] Annasaheb s/o Nivrutti Gagare,
age 68 years, occ. S.T. Bus Driver,
R/o Vardandi Post Panodi,
Tq. Sangamner, Dist. Ahmednagar,

2] The Divisional Manager,
Maharashtra State Road
Transport Corporation,
Divisional Office, Ahmednagar,
Tq. and Dist. Ahmednagar ...Respondents
[Orig. Opponents]

...

Mr. K.N.Shermale, advocate for appellants
Mr. R.L.Kute, advocate for Respondent no.1 absent
Mr. B.S.Deshmukh, advocate for Respondent no.2

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 28.11.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 07.12.2018

J U D G M E N T :

First Appeal No. 2135 of 2018 is filed by claimants, against the judgment and award, passed by the Motor Accident Claims Tribunal, Sangamner, in Motor Accident Claim Petition No. 43 of 2014, where total compensation of Rs.33,36,431/- was awarded by the Tribunal. First Appeal No. 2137 of 2018 is filed by claimants, against the judgment and award, passed by the same Tribunal, in Motor Accident Claim Petition No. 33 of 2014, where total compensation of Rs.35,91,440/- was awarded by the Tribunal. These both appeals are filed by original claimants for enhancement of compensation.

2. These appeals arose, as a result of accidental death of the respective deceased in motor vehicular accident, dated 4.3.2014 at about 6.30 a.m. on Pune-Nashik High Way within

jurisdiction of village Chandanpuri. The name of deceased in First Appeal No. 2135 of 2018 is Pandharinath Bharti and in First Appeal No. 2137 of 2018 name of deceased is Amol Shevale. As these both claim petitions are disposed of by same Claim Tribunal on the same date in respect of one and the same motor vehicular accident, these both appeals are disposed of by this common judgment.

3. Respondent no.1 is the driver of offending Maharashtra State Road Transport Corporation (MSRTC) Bus (ST bus) and respondent no.2 is the MSRT Corporation.

4. Facts, leading to institution of these appeals, are that :-

On 4.3.2014 at about 6.30 a.m. deceased Amol Shevale and Pandharinath Bharti were passing by Pune-Nashik High Way by motor cycle No. MH-17/AA-4148 towards their school at Sarole Pathar. Both the deceased were in service in the said school as teachers. Amol Shevale was pillon rider and Pandharinath Bharti was driving the said motor cycle. When they reached on the spot of the accident at Chandanpuri ghat, the offending ST bus came from opposite direction and due to rash and negligent driving by driver of ST bus, it gave dash to the motor cycle of the deceased. In that accident, Amol Shevale and Pandharinath Bharti sustained injuries and both of them succumbed to their respective injuries. Therefore, their respective dependents filed the above said Motor Accident Claim Petitions before the Tribunal.

5. No cross-objection or cross-appeal is filed by the respondents challenging the correctness of the above said award. Therefore, in these both appeals, I have to only determine whether Tribunal paid just, reasonable and fair compensation to the dependents.

6. Heard Shri K.N.Shermale, learned counsel for the appellants and Shri B.S.Deshmukh, learned counsel for respondent no.2 Corporation in both the appeals. Learned counsel for respondent no.1 was not present at the stage of final hearing.

Learned counsel for the appellants submits that the Tribunal committed error while assessing monthly salary of deceased by deducting many allowances included in the monthly salary, which are not personal allowances of the deceased and which cannot be deducted. He submits that only income tax and professional tax can be deducted from monthly salary of the deceased while determining the income of the deceased. He placed reliance on **"National Insurance Company Limited vs Indira Srivastava and others" [AIR 2008 SC 845].** For the submission that the claimants are also entitled for additional compensation under the head of love and affection as well as loss of filial consortium. He has placed reliance on **"Megma General Insurance Co. Ltd. Vs Nanu Ram" [2018 SCC OnLine SC 1546]** and **"Vimla Devi and Others vs National Insurance Company Limited and Others"**, decided by Apex Court on 16.11.2018 in **Civil Appeal No. 11042 of 2018.**

7. Learned counsel for the Corporation

supported the judgment passed by the Tribunal.

8. Though both the deceased used to serve as teachers in the school, their monthly salary is different. Therefore, quantum of compensation in both the appeals is determined separately.

9. While determining the quantum of compensation in Motor Accident Claim Petitions, the age of the victim or deceased plays important role.

10. Further, question arises whether the installment of L.I.C. Premium, house rent allowance, G.P.F. should be deducted from the monthly salary of the deceased or not.

As rightly pointed out by learned counsel for the appellants, in **National Insurance Company Limited vs Indira Srivastava and others** (supra), the Apex Court ruled thus :

> " Section 168 uses the word "just compensation" which should be assigned a broad meaning. The term "income" has different connotations for different purposes. A Court of law,

> having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. In determining what constitutes income it cannot be lost sight that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined."

In "**Shyamwati Sharma and Others vs Karam Singh and Others" [(2010) 12 SCC 378]**, the Apex Court reiterated that from the annual income of the deceased, income tax/surcharge can be deducted while calculating his net income. However, deduction towards G.P.F., L.I.C. Premium, repayments of loans, etc. shown in the salary certificate should not be excluded from the deceased's income.

Similar view was also expressed by the Division Bench of our High Court in "**National Insurance Co. Ltd. Vs Vaishali Harish Devare and Others [2013 (1) Mh.L.J. 411]**". Thus, from the monthly income of the deceased, the deductions towards installments of Provident Fund, Loan of Credit Societies, L.I.C. premium as well as deductions shown in the column of Other Deductions should be considered as monthly income of the deceased and this amount shall not be deducted from the monthly salary while assessing the monthly income of the deceased. Thus, monthly income of the deceased is assessed as total salary minus professional tax, income tax and travelling allowance.

QUANTUM OF COMPENSATION IN
<u>FIRST APPEAL NO.2135 OF 2018</u>
<u>[M.A.C.P. NO. 43 OF 2014]</u>

11. Deceased Pandharinath Bharti was permanent teacher in the school at Sarole Pathar.

To prove the monthly salary of the deceased, the claimants have examined Shri Gunjal

(PW 3) Head Master of the school, where the deceased used to work as teacher. This witness has produced the record of monthly salary bill of the deceased for the months of January and February, 2014. As the accident occurred in the month of March, 2014, the last month salary of the deceased is relevant. However, the Tribunal did not consider the salary slip of February, 2014, for the reason that it includes some arrears paid to the deceased in that month.

On considering monthly salary of deceased in the month of February, 2014, the arrears received by deceased in that month can be easily deducted from the monthly salary to determine the correct monthly salary of the deceased. Otherwise also, in the month of January and February, except the amount of arrears of dearness allowance, no other difference is noticed by this Court. In the month of February, the total salary of Pandharinath Bharti is Rs.40,975/-. Out of this amount, Rs.5,325/- is to be deducted, as it is the amount of arrears of dearness allowance received in that month. After deducting this amount, total monthly gross salary of the deceased comes to Rs.40975-5325=35650/-.

As observed above, from this salary, deductions towards GPF contribution, credit society loan installment, L.I.C. premium and other deductions cannot be deducted. Only Professional Tax and Travelling Allowance are to be deducted from the gross salary of the deceased. From the salary slip of deceased. The amount of Professional Tax is Rs.300/- and Travelling Alloance is Rs.150/-, which are required to be deducted from the salary of the deceased as it is personal allowance of the deceased. Thus, monthly net salary of the deceased comes to Rs.35650-450=35200/-.

It follows that annual income of the deceased comes to Rs.35200x12=422400/-.

From the Form No. 16 in respect of the deceased submitted to the Income Tax Department for the assessment period 1.4.2012 to 31.3.2014, it emerges that he has paid income tax of Rs.8,520/-. This amount is to be deducted from the annual income of the deceased. After deduction of this amount net annual salary of the deceased comes to Rs.422400-8250=414150/-.

As, at the time of death, deceased was 43 years old in permanent service as teacher, in accordance with the law laid down by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra), 30 per cent addition is to be made in the salary income of the deceased towards loss of future prospect, which comes to Rs.414150+124245=538395/-.

As in the family of the deceased, number of dependents is 5, as per law settled by Apex Court in **Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.**,1/4th amount is to be deducted towards personal expenses of the deceased. Thus, annual contribution of the deceased to his family comes to Rs.538395-134599=403796/-.

Undisputedly, the deceased was 43 years old. Therefore, in view of law settled by Apex Court in "**Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.**" **[2009 (5) Mh.L.J.**

775], multiplier of 14 is applicable. Thus loss of dependency comes to Rs.403796x14=5653144/-.

In addition to this, the claimants are entitled to following compensation under conventional heads in accordance with law laid down by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others.**

Loss of consortium	: Rs.40000/-
Loss of Estate	: Rs.15000/-
Funeral Expenses	: Rs.15000/-

After the accident, on 4.3.2014, the deceased was initially treated in the Hospital of Dr. Tambe at Sangamner and from there he was shifted to Wockhardt Hospital at Nashik where he succumbed to his injuries on 13.3.2014.

The claimants have filed bill issued by Wockhardt Hospital, which shows that the claimants paid total amount of Rs.3,31,596/- at Wockhardt Hospital, Nashik. In addition to this, Tambe Hospital, Sangamner has charged bill of Rs.11,620/- towards treatment of deceased. Claimants have also filed bills of medicine of

Rs.4523+910=5433/- as also ambulance charges bill of Rs.6,000/-. Thus, total medical expenses including transportation charges comes to Rs.331596+23053=354649/-. Thus claimants are also entitled to compensation of Rs.354649/- under the head of Medical Expenses and Transportation Charges.

Thus, the claimants are entitled for following total compensation under different heads : -

Loss of Dependency	: Rs. 5653144/-
Loss of consortium	: Rs. 40000/-
Loss of Estate	: Rs. 15000/-
Funeral Expenses	: Rs. 15000/-
Medical Expenses and Transportation charges	: Rs. 354649/-
Total	: Rs. 6077793/-

Thus, in view of the discussion as above, by allowing this appeal compensation amount payable to the claimants deserves to be enhanced to the tune of Rs.6077793/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the amount, inclusive of compensation received under no fault liability.

QUANTUM OF COMPENSATION IN FIRST APPEAL NO.2137 OF 2018 [M.A.C.P. NO. 33 OF 2014]

12. In this Claim Petition, deceased Amol Shewale was also teacher, who used to serve at Sarole Pathar in Baleshwar School. He was in permanent service.

To prove the monthly salary of the deceased, the claimants have examined Shri Jeevan Gunjal (PW 2) Head Master of the school. He has proved monthly salary slip of the deceased Amol Shevale (Exhs. 58 and 59). No doubt, in cross-examination of this witness, it has been brought on record that after deduction in the month of February, the deceased received net salary of Rs.19,849/-. However, after going through the monthly salary slip of deceased Amol Shevale for the month of February, 2014, it emerges that in the month of February, 2014, Amol Shevale received total salary of Rs.38,606/- including arrears of dearness allowance of Rs.5,016/-. This amount of arrears of dearness allowance is to be deducted from the monthly salary of Amol Shevale. Thus, after deducting this amount, total monthly gross salary of the deceased comes to Rs.38606-5016=33590/-.

As observed above, from this salary deductions towards GPF contribution, credit society loan installment, L.I.C. premium and other deductions cannot be deducted. Only amount of Professional Tax, Travelling Allowance and income tax is to be deducted from the gross salary of the deceased.

From the salary slip, it emerges that following taxes are deducted from the salary of the deceased.

Professional Tax	Rs.300/-
Travelling Alloance	Rs.150/-

Thus, after deducting amount of Rs.450/-, net monthly salary of the deceased comes to Rs.33590-450=33140/-.

It follows that annual income of the deceased comes to Rs.33140x12=397680/-.

The statement of income tax issued by

Baleshwar School shows that no income tax was deducted from the salary of the deceased, as it was not payable.

As, at the time of death, deceased was 35 years old, in accordance with the law laid down by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra), 50 per cent addition is to be made in the salary income of the deceased. Thus, annual income of the deceased comes to Rs.397680+198840=596520/-.

As, in the family of the deceased, number of dependents is 4, as per law settled by Apex Court in **Smt. Sarla Verma and Ors. vs Delhi Transport Corporation and Anr.**, $1/4^{th}$ amount is to be deducted towards personal expenses of the deceased. Thus, annual contribution of the deceased to his family comes to Rs.596520-149130=447390/-.

As the deceased was 35 years old, multiplier of 16 is applicable in the case at hand. Thus loss of dependency comes to

Rs.447390x16=7158240/-.

In addition to this, the claimants are entitled to following compensation under conventional heads in accordance with law laid down by Apex Court in **National Insurance Company Ltd. Vs Pranay Sethi and others.**

Loss of consortium	: Rs.40000/-
Loss of Estate	: Rs.15000/-
Funeral Expenses	: Rs.15000/-

Thus, the claimants are entitled for following total compensation under different heads : -

Loss of Dependency	: Rs.7158240/-
Loss of consortium	: Rs. 40000/-
Loss of Estate	: Rs. 15000/-
Funeral Expenses	: Rs. 15000/-
Total	: Rs.7228240/-

Thus claimants are entitled to total compensation of Rs.7228240/- inclusive of compensation received under no fault liability. Claimants are also entitled to interest on this compensation at the rate of nine per cent per annum from the date of filing of petition till realization of the amount.

Before parting with the judgment, I must make it clear that though appellants placed reliance on **Megma General Insurance Co. Ltd. Vs Nanu Ram** (supra) and **Vimla Devi and Others vs National Insurance Company Limited and Others** (supra), to claim higher compensation under conventional heads, it is suffice to say that in above cases, Apex Court probably exercised powers under Article 142 of the Constitution of India, which this Court does not possess. This Court is bound by judgment of Larger Bench in **National Insurance Company Ltd. Vs Pranay Sethi and others** (supra). Thus, as prayed by appellants higher compensation cannot be granted under conventional heads.

In view of above discussion, by allowing this appeal compensation amount payable to the claimants deserves to be enhanced to the tune of Rs.7228240/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the amount, inclusive of compensation received under no fault liability.

13. Accordingly, I pass following order.

" (i) First Appeal Nos. 2135 of 2018 is allowed.

(ii) The award passed by the Motor Accident Claims Tribunal, Sangamner, in Motor Accident Claim Petition No. 43 of 2014, is modified to enhance the compensation to the tune of Rs.6077793/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the amount, inclusive of compensation received under no fault liability.

(iii) Appellant nos. 4 and 5 being in advance age, considering their short remaining life span, out of the compensation amount, only Rs.One Lakh each be paid to appellant nos. 4 and 5 by separate account payee cheques through the Tribunal.

(iv) Remaining compensation amount shall be equally apportioned in between appellant nos. 1 to 3.

(v) Share of appellant no.3 minor shall be invested in fixed deposit in any Nationalized Bank for the period of three year through his natural guardian appellant no.1.

(vi) Out of the share of appellant nos. 1 and 2, half amount be invested in fixed deposit in any Nationalized Bank for the period of three years.

(vii) Premature withdrawal is not permissible. Concerned Bank be informed accordingly."

" (i) First Appeal No. 2137 of 2018 is allowed.

(ii) The award passed by the Motor Accident Claims Tribunal, Sangamner, in Motor Accident Claim Petition No. 33 of 2014, is modified to enhance the compensation to the tune of Rs.7228240/-

with interest at the rate of nine per cent per annum from the date of filing of petition till realization of the amount, inclusive of compensation received under no fault liability.

(iii) Appellant nos. 3 and 4 being in advance age, considering their short remaining life span, out of the compensation amount, only Rs.One Lakh each be paid to appellant nos. 3 and 4 by separate account payee cheques through the Tribunal.

(iv) Remaining compensation amount shall be equally apportioned in between appellant nos. 1 to 2.

(v) Share of appellant no.2 minor shall be invested in fixed deposit in any Nationalized Bank till he attains majority, through his natural guardian appellant no.1.

(vi) Out of the share of appellant no. 1, half amount be invested in fixed deposit in any Nationalized Bank for the period of three years.

(vii) Premature withdrawal is not permissible. Concerned Bank be informed accordingly."

14. The parties to bear their respective costs of appeal.

15. Both the appeals are disposed of in above said terms.

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

dbm