IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 34 OF 2007

New India Assurance Co. Ltd.,
Divisional Manager, Jalna Road,
Beed, Through its authorized signatory,
Mr. Hiralal s/o Namdeo Vispute,
Age; 52 years, Occupation; Service,
Assistant Manager,
New India Assuance Co.Ltd.,
Resident; Aurangabad. **APPELLANT**
(Original Respondent No. 2)

VERSUS

1) Swati @ Mahananda wd/o Kondiba Tapkire,
Age; 49 years, Occupation; household,

2) Ms. Arundhati d/o Kondiba Tapkire,
Age; 28 years, Occu;ation Education,

3) Avinash s/o Kondiba Tapkire,
Age; 27 years, Occupation; Education,

4) Girish s/o Kondiba Tapkire,
Age; 23 years, Occupation; Education,

All resident of Bankatwadi, Ambejogai,
District; Beed. (Original Claimants)

5) Daut Dagdubhai Pathan,
Age; 45 years, Occupation; Truck Owner,
Resident of Takli (Haji),
Taluka Shirur, District; Pune.

6) Sultan Dagadubhai Pathan,
Age; 43 years, Occupation; Driver,
Resident of Takli (Haji), Taluka Shirur,
District; Pune. **RESPONDENTS**
(Original Claimants and
Respondent Nos. 1 & 3)

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Shri. D. Deshpande, Advocate for Appellant
Shri. S.S. Deshmukh, Advocate for Respondent Nos. 1 to 4
Respondent No. 5 served.
Respondent No. 6 dismissed.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 24.09.2018.

Date of Pronouncing Judgment : 27.09.2018.

J U D G M E N T :

This appeal is preferred by Original Respondent No. 2, The New Assurance Company Ltd., against the judgment and award passed by The Motor Accident Claims Tribunal at Ambejogai in MACP No. 87 of 2001, awarding total compensation of Rs. 15,80,000/- only with interest thereon at the rate of 7.5 % per annum from the date of petition. The respondent Nos. 1 to 4 are the Original Claimants. Respondent No. 5 is the owner of offending truck bearing No. MHJ-18-D-7339.

2. Facts leading to institution of this appeal in brief are that the Claimant No. 1 is the wife and Claimant Nos. 2 to 4 are the children of deceased Kondiba Tapkire who used to work as Deputy Engineer in Irrigation Department. On 13.7.2001 deceased Kondiba was travelling by Maruti Car No. MH-23-E-2387 from Mumbai towards Ambejogai. On that date at about 3.30 a.m. the driver of the

Maruti Car stopped it to visit toilet. However, the deceased sat in the same Car waiting for the driver. That time the offending truck came from the back side and dashed against the stationary car, resulting into serious injuries to deceased Kondiba. On 22.7.2001 deceased Kondiba succumbed to his injuries. Therefore, the Claimants filed petition for compensation alleging that the accident occurred due to rash and negligent driving by driver of the offending truck.

3. Heard strenuous arguments submitted by Mr. Dhananjay Deshpande, learned counsel for appellants and Mr. S.S. Deshmukh, learned counsel for respondent nos. 1 to 4.

4. The learned counsel for the appellants assailed the judgment and award passed by the Tribunal on the ground of quantum of compensation only. He submits that the learned Tribunal erroneously awarded compensation of Rs. 1,50,000/- under the head of loss of agricultural income due to death of the deceased Kondiba. He submits that deceased was in service as Deputy Engineer and the agricultural land was recorded in the name of Claimant No. 1 Swati Tapkire. Therefore, due to death of Kondiba, there cannot be any loss of agricultural income to the family.

5. The learned counsel for the Appellant supported the judgment of Tribunal regarding 1/3rd deductions towards personal

expenses of the deceased on the ground that Claimant No. 1 Swati being owner of agricultural land cannot be dependent of the deceased.

6. His last submission is that in absence of Cross-Objection, this Court cannot enhance the compensation amount. He places reliance on **"Banarsi and Ors. vs. Ram Phal" [AIR 2003 SC 1989]**, **"Sudarsan Puhan vs Jayanta Ku. Mohanty & Ors." [Civil Appeal No. 3798-3799 of 2016 decided on 20th September, 2018]**.

7. In reply learned counsel for respondent Nos. 1 to 4 submits that as at the time of death of deceased he was 50 years old person, multiplier of "13" will be applicable in accordance with law laid down by "**Smt. Sarla Varma vs Delhi Transport Corporation" [AIR 2009 Supreme Court 3104].** However, as per law laid down by the Apex Court in "**The National Insurance Company vs Pranay Sethi and Ors." [2018 (3) Mh.L.J. 70],** considering the age of the deceased as 50 years at the time of death, 15% income is to be added in the salary of deceased at the time of calculations. He submits that even the compensation awarded under the conventional heads needs to be enhanced.

8. Next submission of learned counsel for the Respondent is that only because agricultural land is recorded in the name of

Claimant No. 1 Swati, inference cannot be drawn that she has separate source of income and she is not dependent of the deceased. He submits that considering four dependents in the family of deceased only 1/4th income can be deducted from the annual income of the deceased and not 1/3rd as deducted by the Tribunal.

9. His next submission is that even compensation is to be awarded under the head of loss of agricultural income due to death of deceased as supervision on the agricultural land was adversely affected. He supports the judgment passed by the Tribunal and prays for enhancement of the compensation, though no Cross-Objection is filed by the Claimants. He placed reliance on "**Jitendra Trivedi and Ors vs Kasam Daud Kumbhar and Anr" [2015 (4) SCC 237].**

10. To ascertain loss of dependency at first, I must examine what was the exact age of the deceased at the time of death. The SSC certificate of deceased Kondiba (Exh. 42) shows that the date of birth of deceased was 15th May, 1951. He died on 22.7.2001. Therefore, on the date of his death, he was of the age 50 years and 1 month. Undisputedly, he was working as Deputy Engineer in Irrigation Department. The salary certificate of the deceased (Exh. 41) shows that at the time of death, his total monthly salary was Rs. 16,842/-. Out of this salary only Rs. 200/- are deducted towards taxes. Thus, minus taxes, the monthly salary of the deceased is Rs.

16,642/-. As per law laid down in “**Pranay Sethi” [Supra],** 15% income is to be added in the monthly salary of the deceased. Thus, the monthly income of the deceased is calculated as Rs. 16,642/- + Rs. 2,496/- = Rs. 19,138/-.

11. As ruled by the Apex Court, in “**Smt. Sarla Varma” [Supra]**, if in the family of the deceased the total dependents are four, then 1/4th income is to be deducted from the said salary towards personal expenses of the deceased. Only because 17.5 acres agricultural land is recorded in the name of Claimant No. 1, it cannot be inferred that she has separate source of income and she is not dependent on deceased. Being widow of the deceased, she will be dependent on deceased, though, in crop statement of the above said land, the name of Claimant No. 1 is recorded as possessor. Therefore, in the family of the deceased, there are four dependents. It follows that from the monthly income of deceased only 1/4th income is to be deducted towards personal expenses of the deceased. Thus, monthly contribution of the deceased to his family is calculated as Rs. 19, 138 -- Rs. 4,784 = Rs. 14,354. It follows that annual contribution of the deceased is Rs. 14,354 x 12 = Rs. 1,72,248/-. After applying multiplier of “13” the total loss of dependency of the Claimants is calculated as Rs. 22,39,224/-.

12. The learned Tribunal has awarded compensation of Rs.

1,50,000/- towards loss of agricultural income due to lack of supervision on account of death of deceased. No doubt, family of the deceased is owner of 17.5 acres, however it cannot be ignored that the deceased used to work as Deputy Engineer in Irrigation Department at Beed. Therefore, it is impossible to accept that the deceased was supervising the agricultural operations in the land owned by his family. Certainly, such responsible officer would depute servant or trustworthy supervisor to look after the agricultural operations in the field. Therefore, due to death of deceased, there cannot be loss of agricultural income due to lack of supervision. In the circumstances, no compensation can be awarded to the claimants under the head of loss of agricultural income to the family due to the death of the deceased.

13. Claimants have also filed bills of the medicine purchased for treatment of the deceased and other medical expenses. Those prescriptions and cash memos issued by medical shops are also placed on record at (Exh. 43/1 to 43/46). On calculations this medical expenditure is to Rs. 2,57,509/-. Therefore, Claimants are also entitled to compensation of Rs. 2,57,509/- under the head of medical expenditure.

14. In addition to this, as held by the Apex Court in **Pranay Sethi [Supra]** the Claimants are also entitled to compensation of Rs.

40,000/- towards loss of consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

15. Thus, the Claimants are entitled to following compensation under different heads :

a)	Loss of dependency	Rs. 22,39,224/-
b)	Medical expenses	Rs. 2,57,509/-
c)	Loss of consortium	Rs. 40,000/-
d)	Loss of estate	Rs. 15,000/-
e)	Funeral expenses	Rs. 15,000/-

	Total =	Rs.25,66,733/- (Rs. Twenty Five Lac, Sixty Six Thousand, Seven Hundred and Thirty Three Only).
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16. Question may arises whether in absence of Cross-Objection such enhanced compensation can be awarded or not. However, as rightly pointed out by learned counsel for respondents, in view of "**Jitendra Trivedi vs Kasam Daud Kumbhar" (Supra)**, in terms of Section 168 of Motor Vehicles Act, the Courts/Tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. Though, Claimants have not filed Cross-Appeal or Cross-Objection, as it is obligatory on the part of Courts/Tribunals to award just and

reasonable compensation, it is appropriate to increase the compensation. Thus, even in absence of Cross-Objection in this appeal preferred by the Insurance Company, the compensation awarded by the Tribunal can be enhanced to the extent of Rs.25,66,733/- (Rs. Twenty Five Lac, Sixty Six Thousand, Seven Hundred and Thirty Three Only). The Claimants are also entitled to interest on this compensation at the rate of 9% per annum from the date of filing of Claim Petition till its realization. This compensation shall be inclusive of No Fault Liability under Section 140 of the Motor Vehicles Act.

17. Learned counsel for appellants has drawn my attention to the Judgment of the Apex Court in **"Shivawwa and Ors. Vs The Branch Manager, National India Insurance Co. Ltd., and Ors." [(2018) 5 SCC 762**], this case is distinguishable on facts that in that matter Claimant challenged the order of the High Court exonerating the Insurance Company from its liability. Neither in that appeal prayer was made to enhance compensation nor in the appeal before the High Court Claimants made any attempt to ask for enhanced compensation amount. Considering those circumstances, the Apex Court declined to enhance the compensation. The case **"Sudarsan Puhan vs Jayanta Ku. Mohanty & Ors." [Supra]** is also distinguishable because in this case the ratio is that even in appeal under Section 173 of Motor Vehicles Act the High Court is under

legal obligation to decide all issues arising in the case both on facts and law after appreciating entire evidence. In **“Banarasi & Ors. Vs Ram Phal” [Supra]**, the Apex Court was considering dispute in the suit for specific performance of the agreement. It was not appeal under Section 173 of the Motor Vehicles Act. Therefore, the ratio of this case is also distinguishable.

18. In the result, the appeal preferred by Original Respondent No. 3 Insurance Company deserves to be dismissed. However, the award passed by Tribunal in MACP No. 87 of 2001 is modified in above said terms. The deficit Court fees be recovered from the Claimants. Parties to beat their respective costs of the appeal. Appeal is disposed of in above said terms.

(SUNIL K. KOTWAL)
JUDGE

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