IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 647 OF 2007

National Insurance Co. Ltd.,
having its Registered Office
at 3, Middleton Street, Kolkata,
Branch Office at Latur and
Divisional Office at Hazari
Chamber, Station Road,
Aurangabad. **Appellant**.

Versus

1. Manik Gangaram Vajirwad
Age : 50 yrs, occu.: labour
R/o Takalgaon, Tal.Ahmedpur.

2. Padminbai w/o Manik Vajirwad
Age : 45 yrs, occu.: household
R/o Takalgaon, Tal.Ahmedpur.

3. Bheema Manik Vajirwad
Age 17 yrs, occu.: student
(being minor, under guardianship
of respondent Nos.1 & 2)
R/o Takalgaon, Tal.Ahmedpur.

4. Janabai d/o Manik Vajirwad
Age : 12 yrs, occu.: student
(being minor, under guardianship
of respondent Nos.1 & 2)
R/o Takalgaon, Tal.Ahmedpur. **Respondents**.

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Mr. R.C. Bora, Advocate holding for
Mr. P.P. Bafna, Advocate for the appellant.
Mr. S.S. Manale, Advocate for respondent Nos.1 to 4.
Mr. H.I. Pathan, Advocate for respondent Nos.5 & 6.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 29th November 2018.
Judgment pronounced on : 5th December 2018.

JUDGMENT.

. This appeal is directed by original respondent No.3 / Insurance Company of the offending vehicle, against the judgment and award passed by the Motor Accident Claims Tribunal, Udgir Camp at Ahmedpur in in Motor Accident Claim Petition No.6/2005. Respondent Nos.1 to 4 are the original claimants and respondent Nos.5 and 6 are owner and driver of the offending vehicle.

2. Facts leading to institution of this appeal are that, on 06.10.2004 the deceased Sham was travelling by offending auto rickshaw bearing registration No.MH-24-J-196. Within the jurisdiction of village Mankhed Fata, the driver of offending rickshaw lost control due to rash and negligent driving resulting into turning over of the auto-rickshaw by the side of the road. In this accident deceased Sham sustained injuries. Though he was shifted to the hospital, he succumbed to those injuries, and therefore, his parents and unmarried brother and sister have filed motor accident claim petition before the Tribunal.

3. Insurance Company filed written statement (Exh.20) and denied all allegations in the claim petition. It raised objection that on the date and time of accident driver of rickshaw did not hold valid and effective driving licence.

4. After considering the evidence placed on record by the claimants, the Tribunal awarded total compensation of Rs.6,36,000/-, inclusive of no fault liability amount. However, after deducting the amount of Rs.50,000/- towards no fault liability received by claimant, the Tribunal passed award for the compensation of Rs.5,86,000/- with interest thereon at the rate of Rs.6% per annum from the date of filing of petition.

5. Heard Mr. R.C. Bora, learned Counsel for appellant / Insurance Company, Mr. S.S. Manale, learned Counsel for respondent Nos.1 to 4 (claimants) and Mr. H.I. Pathan, learned Counsel for respondent Nos.5 and 6.

6. Learned Counsel for the appellant / Insurance Company submits that the Tribunal has awarded exorbitant compensation while considering notional income of deceased as Rs.4,500/- per month, though salary certificate filed by the claimants is not proved by examining the author of that

certificate. His submission is that as the deceased was bachelor, in view of the judgment of Apex Court in the case of **"Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104)**, there shall be deduction of 50% amount from the annual income of deceased towards personal expenses of the deceased.

7. The next submission of the learned Counsel for the appellant is that, claimant No.1, who is the father of deceased, cannot be a dependent as he used to earn income by doing labour work. He submits that exorbitant compensation is awarded under the head of transportation charges and loss of estate. He has pointed out that compensation is awarded under the head of mental agony, though not permissible under law. He prays for reduction of compensation awarded by the Tribunal. He placed reliance on the cases of **"Donat Louis Machado and others Vs. L. Ravindra and others" [(1998) 8 Supreme Court Cases 633]** and "**Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another" (AIR 2002 SC 4182)**.

8. Learned Counsel for the claimants submits that undisputedly the deceased was 20 years old at the time of his

death, and therefore, multiplier of "18" is applicable in view of the law laid down in the case of **"Sarla Varma"** (supra).

9. His next contention is that as the family of deceased consists of the parents, one unmarried sister and minor brother, as per the law laid down by the Apex Court in the case of **"Sarla Varma"** (supra), there can be only one-third deduction towards personal expenses of the deceased. Contention of the learned Counsel for claimants is that the notional income at the rate of Rs. 4,500/- per month is just and proper as the deceased used to work as Cutter in Saw Mill, as a skilled worker. He submits that the Tribunal did not consider the loss of future prospects while assessing the income of deceased. He supported the judgment passed by Tribunal and claims enhancement of compensation under the head of loss of consortium. He placed reliance on the case of **"Magma General Insurance Co. Ltd. Vs. Nanu Ram" (2018 SCC Online SC 1546)**.

10. It is to be noted that at the appellate stage though the Insurance Company has taken a defence of contributory negligence, in fact after going through police papers placed on record, it emerges that no other vehicle is involved in the accident

and there cannot be contributory negligence by the deceased, who was travelling by auto-rickshaw as a passenger. Therefore, the case of "**Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another"**, relied by learned Counsel for the appellant, is certainly distinguishable as in that case the Apex Court was considering the point of contributory negligence.

11. In this appeal, main contest is on the point of quantum of compensation awarded by the Tribunal. According to Insurance Company, notional income at the rate of Rs. 4,500/- per month considered by the Tribunal is exorbitant. However, it cannot be ignored that on the date the date of deceased was 20 years old young boy. Father of deceased Manik Vajirwad (PW-1) categorically deposed before the Court that the deceased used to work as a Cutter in New Chhatrapati Saw Mill at Ahmedpur. This version is also supported by salary certificate issued by the above-said Saw Mill. No doubt, this salary certificate is not duly proved by examining author of that certificate, to prove monthly income of deceased at the rate of Rs.6,000/- per month. However, in motor accident claim petition the provisions of Evidence Act are not strictly applicable. Therefore, this certificate can be

considered only to hold that the deceased was earning his livelihood by working as a Cutter, who is a skilled labourer. In the case of **"Lata Wadhwa Vs. State of Bihar" (AIR 2001 SC 3218)**, the Apex Court considered notional income of a housewife, who died in the year 1989, at the rate of Rs. 3,000/- per month. Thus, in the year 2005 notional income of the deceased, who was a skilled labourer, can certainly be held more than Rs.3,000/- per month. Therefore, notional income considered by Tribunal at the rate of Rs.4,500/- per month cannot be treated as exorbitant income, but it is just and reasonable. I hold that the Tribunal has rightly considered notional income of deceased at the rate of Rs. 4,500/- per month as a skilled labourer.

12. Though claimant No.1 has admitted in his cross-examination that he used to earn Rs.100/- per day by doing labour work, considering this meager income it cannot be said that he was not dependent on deceased whose contribution to the family was much more than claimant No.1. So also, because the claimant (PW-1) admitted in his cross-examination that the deceased used to take education, it cannot be held that he had no source of income. An ambitious person can complete his

education even while working and earning his livelihood. Therefore, the education of deceased cannot be a hurdle to hold that he used to earn by working as Cutter in the Saw Mill.

13. In the case of **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [(2017) 16 SCC 680]** the Apex Court held that if deceased is self employed person below the age of 40 years, there shall be addition of 40% of his income in his actual income while assessing the income of deceased. Therefore, while assessing income of deceased at the rate of Rs. 4,500/- per month, if 40% amount is added towards loss of future prospects, his monthly income comes to Rs. 6,300/- (4,500 + 1,800) per month. It follows that annual income of deceased is Rs.75,600/- (6,300 x 12).

14. Though in the case of **"Donat Louis Machado and others Vs. L. Ravindra and others"** the Apex Court held that in the case of death of a bachelor there can be deduction of two-third amount from the income of deceased towards personal expenses of deceased, this ratio cannot be considered in the case at hand, for the reason that the Apex Court in the case of **"Sarla Varma"** (supra) ruled that even in the case of deceased, who died

as a bachelor, if his family is larger including non earning sister and brother, there can be only one-third deduction from his income towards his personal expenses. This view is approved by Larger Bench of Supreme Court in the case of **"Pranay Sethi"** (supra) Thus, from the above-said annual income of deceased only one-third amount i.e. Rs.25,200/- is to be deducted towards personal expenses of the deceased. Thus, annual contribution of deceased towards his family comes to Rs.50,400/- (75,600 – 25,200).

15. As the deceased was 20 years old young person, in accordance with law settled by Apex Court in **"Sarla Varma"** (supra), multiplier of "18" is applicable in the case at hand. Thus, loss of dependency comes to Rs.9,07,200/- (Rupees Nine Lakh Seven Thousand Two Hundred).

16. In addition to this compensation under the head of loss of dependency, the claimants are also entitled to following compensation under the conventional heads as ruled by the Apex Court in the case of **"Pranay Sethi"** (supra) :-

Loss of Estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

17. Though learned Counsel for the claimants claim compensation under the head of loss of consortium relying on the case of **"Magma General Insuranc Co. Ltd."** (supra), in that case the Apex Court awarded compensation under the heads of loss of love and affection and loss of filial consortium for parents and brother and sister, under the powers conferred by Article 142 of Constitution of India. This Court cannot exercise powers under Article 142 of Constitution of India. This Court is expectd to follow the judgment of Larger Bench of Supreme Court in the case of **"Pranay Sethi"** (supra). Therefore, ratio of above Authority is not applicable in the case at hand and compensation cannot awarded to the claimants under the head of loss of consortium.

18. Thus, the claimants are entitled to following compensation under different heads :-

Loss of dependency	:-	Rs. 9,07,200/-
Loss of Estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 9,37,200/-

(Rupees Nine Lakh Thirty Seven Thousand Two Hundred)

19. Due to filing of this appeal, for about 10 years the

claimants could not take the benefit of awarded amount and they have to face this litigation. Considering these circumstances, in view of the law laid down by the Apex Court in the case of **"Municipal Council of Delhi Vs. Association of victims of Upahaar Tragedy" [(2011) 14 SCC 481]**, the claimants are also entitled to interest on this compensation amount at the rate of 9% per annum from the date of filing of claim petition till deposit of compensation amount.

20. As ruled by the Apex Court in the case of **"Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others" [2015 (4) SCC 237],** though the claimants have not filed cross-objection, while assessing fair and reasonable compensation, this Court can enhance compensation payable to the claimants.

21. Thus, my conclusion is that the appeal preferred by Insurance Company deserves to be dismissed with costs and the award passed by Tribunal deserves to be modified.

22. Accordingly, First Appeal No.647 of 2007 is dismissed with costs. Judgment and award passed by the Motor Accident Claims Tribunal, Udgir Camp at Ahmedpur in Motor Accident

Claim Petition No.6/2005 is modified to enhance the compensation to the tune of Rs.9,37,200/- with interest thereon at the rate of Rs. 9 % per annum from the date of filing of petition till realization of compensation amount. This compensation shall be inclusive of the amount received under the head of “no fault liability” by the claimant.

23. The compensation shall be equally apportioned amongst claimant Nos.1 to 3 and their respective shares shall be paid to them by issuing account payee cheques in their respective names, through the Tribunal.

24. If the compensation is deposited by Insurance Company in this Court, the same be transmitted to Motor Accident Claims Tribunal, Ahmedpur for its disbursement in accordance with modified award.

25. The parties shall bear their respective costs of the appeal. The appeal is disposed of in above-said terms.

(SUNIL K. KOTWAL)
JUDGE

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