IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 288 OF 2017

1) Mr. Salim Ahmed Tadavi,
Age; 50 years, Occupation; Labour,

2) Mr. Kalim Salim Tadavi,
Age; 25 years, Occupation; Labour,

Both R/o Waghoda Bk. Taluka Raver,
District Jalgaon. **APPELLANTS**
(Original Claimants)

VERSUS

1) Mr. Ajmal Chand Qureshi,
Age; Major, Occupation; Business,
Residence; Kumbhar Wada,
At and Post; Savada,
Taluka Raver, District; Jalgaon.

2) The Branch Manager,
The National Insurance Company Ltd.,
Residence of 299, Baliram Peth,
Dadhiwala Bungalow,
Saibaba Market, Jalgaon,
District Jalgaon. **RESPONDENTS**
(Original Opponents)

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Shri M.M. Bhokarikar, Advocate for Appellants
Shri N.E. Deshmukh, Advocate for Respondent No.1 absent
Shri V.R. Mundada, Advocate for Respondent No 2

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 24.8.2018.
Date of Pronouncing Judgment : 30.8.2018.

JUDGMENT :

This appeal filed by the original claimants, is directed against the the judgment and award, passed by the Member, Motor Accident Claims Tribunal, Jalgaon, in M.A.C.P. No. 363 of 2013, awarding total compensation of Rs. 6,90,000/- with interest at the rate of 7.5 per cent per annum from the date of petition. Respondent No. 1 is the owner and the respondent no.2 is the Insurance Company.

2. Undisputedly, the accident occurred on 4.10.2013 when the deceased Jarina Tadavi was traveling by Ape Rickshaw bearing No. MH-19/V-1586 (offending vehicle), resulting in to her death. It is also not disputed that on the date of the occurrence of accident, the offending vehicle was insured with respondent no. 2 and the driver of the Ape rickshaw did held valid driving license to drive the same. No cross objection is filed by respondents to challenge the award passed by the learned Tribunal. Only original claimants have challenged award for enhancement of compensation amount. Therefore, discussion is restricted only regarding the quantum of just compensation.

3. Mr. Bhokarikar, learned counsel for the appellants submits that learned Tribunal wrongly considered monthly income of the deceased at the rate of 3,000/- p.m. on the basis of "**Lata Wadhwa and others v. State of Bihar" (AIR 2001 SC 3218)**. He submits that **Lata Wadhwa**'s case was decided on 16.8.2001 and in that case a mishap occurred on 3.3.1989 which resulted into the death of deceased. While assessing monthly income of deceased house wife at the rate of 3,000/- p.m. the court considered minimum wages of labours in the year 1989.

4. According to Mr. Bhokarikar, the learned counsel, after the passage of more than 23 years, definitely, there is hike in the minimum wages of non graduate, unskilled labour. Therefore, considering the hike in the minimum wages of unskilled labour on the date of accident i.e. on 4.10.2013, there should be reasonable hike in the notional monthly income of deceased. He prays for enhancement of compensation without deducting 1/3rd income towards personal expenses of deceased. He placed reliance on "**Shriram General Insurance Company Limited v. Shree Krishan @ Pappu and Ors." (2015 (1) ACC 503)**, "**Royal Sundaram Alliance Insurance Co. Ltd. v. Manmeet Singh and Ors." (2013 (2) AICJ 358)**, "**Praveen Kumar v. Gurpreet Singh" (2018 (1) R.C.R. (Civil) 907)**,

and "**Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others" (2014 (4) AICJ 65)**.

5. In reply, the learned counsel for respondent no. 2 submits that compensation awarded by learned Tribunal is just and proper and there should not be any enhancement. He has pointed out that the pecuniary compensation under the head of loss of consortium, funeral expenses and for love and affection has been granted than the permissible limit laid down by the Larger Bench of Apex Court in "**National Insurance Company Limited Vs Pranay Sethi and Ors." (AIR 2017 SC 5157)**. He has also drawn my attention towards the recent case of "**Laxmidhar Nayak v. Jugal Kishore Behera" (2018 AIR (SC) 204)**, wherein Apex Court calculated notional income of a woman agricultural labour at the rate of 4,500/- p.m. and after deducting 1/3rd amount towards personal and living expenses awarded the compensation.

6. In the case at hand, the accident occurred on 4.10.2013 and at the relevant time of the accident the age of the deceased was 40 years as mentioned in the Post Mortem Notes (Exh. 34). According to the appellants, the deceased was house wife and in addition to domestic work of house wife she used to earn Rs. 5,000/- p.m. by doing tailoring work. Unfortunately, no

documentary evidence was placed before the Tribunal to prove income from tailoring work.

7. However, it cannot be ignored that for such small scale house hold business of tailoring work, neither accounts are maintained by house wives, nor receipts are issued by them. The version of appellant (AW 1) should have been accepted when nothing could be elicited in his cross-examination. Otherwise also when the deceased acquired skill of tailoring, she can be termed as skilled labour. In the case of **Laxmidhar Nayak v. Jugal Kishore Behera** (supra), Apex Court considered the income of a woman agricultural labour at the rate of 4,500/- who died in the year 1991, in motor vehicle accident.

8. Therefore, in the present case, considering the date of death of the deceased in the year 2013 and the hike in the labour wages, due to passage of number of years, certainly income of a woman agricultural labour cannot be considered merely at the rate of 4,500/- on applying principle of **Laxmidhar Nayak v. Jugal Kishore Behera** (supra). There shall be some reasonable hike in the notional income of women labour. Thus, considering the ratio of **Laxmidhar Nayak v. Jugal Kishore Behera** (supra), I hold that the Tribunal committed error while calculating the monthly income of deceased at the rate of

Rs.3,000/- p.m. relying on the case of **Lata Wadhwa** (cited supra). The Tribunal failed to consider that in **Lata Wadhwa**'s case the accident occurred in the year 1989 and the rate of minimum wages of the labourers prevailing at that time was considered by the Apex Court while assessing the income of house wife at the rate of Rs. 3,000/- p.m.

9. While assessing the notional monthly income of deceased as housewife, who also runs Small Scale Tailoring business, I must consider multifarious services rendered by a housewife in the family. On account of her services, the family members can save expenses towards labour charges for day to day house keeping, stitching of clothes of family members, day to day cooking etc. In addition to this, service rendered by housewife to her children and husband cannot be counted in terms of money. However, after death of such housewife, the members of the family certainly sustains substantial financial loss. Therefore, taking into consideration the skill of tailoring acquired by the deceased and her other services rendered towards the petitioners, I hold that the notional monthly income of deceased is to be calculated at the rate of Rs. 5,000/- per month.

10. For assessing the loss of dependency sustained by

the petitioners, initially the annual income of the deceased is to be calculated. Considering the notional income of deceased at the rate of Rs. 5,000/- per month, her annual income would be Rs.60,000/- (5000 x 12). As per recent verdict of the Larger Bench of the Supreme Court in the case of "**Pranay Sethi**" (cited supra), the deceased being self employed woman of the age of 40 year, 25 % income is to be added towards future prospectus. Thus, total income of deceased is calculated as Rs. 60,000/- + Rs. 15,000/- = Rs. 75,000/-.

11. Though, learned Advocate for the appellants submits that in the case of housewife 1/3rd amount cannot be deducted towards personal expenses of housewife, I find no substance in the same. The above cited authorities of Delhi High Court and Punjab High Court relied by learned counsel for appellants are of no help to him, for the simple reason that the case of **"Sarla Varma and Others vs. Delhi Transport Corporation and Another" [(2009) 6 SCC 121]** is the last verdict of the Apex Court on the point of deductions towards personal expenses of deceased, which is also approved by Larger Bench in **National Insurance Company v. Pranay Sethi (Supra)**. In "**Sarla Varma vs. Delhi Transport"** (Supra), the Apex Court has fixed the rate of deduction towards personal expenses of the deceased on the basis of number of dependents in the family of the

deceased. It must be noted that in this case the Supreme Court has not given any exemption from deduction when the victim is housewife. Thus, in view of law laid down by the Apex Court in above-said case, from the annual income of deceased 1/3rd amount is to be deducted towards personal expenses of the deceased. Thus, after deducting 1/3rd amount from the annual income of deceased of Rs. 25,000/-, her available income is Rs.50,000/- per annum. Deceased was aged about 40 years at the time of her death. Therefore, multiplier of "15" is applicable in view of law laid down by the Apex Court in the case of "**Sarla Varma Vs Delhi Transport Corporation**" (supra). Applying multiplier of "15" the loss of dependency is calculated as Rs.50,000/- x 15 = Rs. 7,50,000/-.

12. In addition to loss of dependency, the trial Court has awarded an amount of Rs. 1,00,000/- under the head of consortium, Rs. 25,000/- towards funeral expenses and Rs.25,000/- for loss of love and affection. Learned counsel for respondent No.2 relied on the ratio of **"Pranay Sethi"** (Supra) for reducing the non pecuniary damages. Because in this appeal for enhancement of compensation, just compensation is to be determined, despite non filing of Appeal or Cross Objection by Insurance Company, the above said exorbitant non pecuniary damages need to be reduced as per the ratio laid down by the

Larger Bench of Apex Court in “Pranay Sethi” (Supra). Therefore, non pecuniary damages are to be reduced as Rs. 40,000/- for loss of consortium, Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses respectively.

13. Thus, petitioners are entitled the following compensation under different heads.

1)	Loss of dependency	= Rs. 7,50,000/-
2)	Loss of consortium	= Rs. 40,000/-
3)	Funeral expenses	= Rs. 15,000/-
4)	Loss of estate	= Rs. 15,000/-

	Total =	Rs. 8,20,000/-
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14. In the result, appeal deserves to be allowed to enhance compensation awarded by the Tribunal. Hence the following order :

<u>ORDER</u>

(i) Appeal is allowed with costs.

(ii) Respondent Nos. 1 and 2 do jointly and severally pay total compensation of Rs. 8,20,000/- (Rupees Eight Lakh and Twenty Thousand Only) to the both appellants, inclusive of compensation of Rs. 50,000/- (Rupees Fifty Thousand Only) granted under “no fault liability”, with interest thereon at the rate of

Rs. 9% per annum from the date of filing of the petition.

(iii) Appellants shall pay deficit Court fee as per rules.

(iv) Award be modified and drawn accordingly.

(SUNIL K. KOTWAL)
JUDGE

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