**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1797 OF 2010

1. Smt. Jyoti wd/o Narayan Kavrani,
Age: 52 Years, Occu: Housewife,
R/o Plot No.58, Lokmat Nagar,
New Town Centre, Opp. MGM Hospital,
Cidco, Aurangabad.

2. Rakesh S/o Narayan Kavrani,
Age: 30 years, Occu: Business,
R/o as above.

3. Pinky d/o Narayan Kavrani,
Age: 27 years, Occu: Student,
R/o as above.

4. Seema d/o Narayan Kavrani,
Age: 22 years, Occu: Student,
R/o as above.

5. Smt. Meera Uttamchand Kavrani,
Age: 77 years, Occu: Household,
R/o as above. ..Appellants

Versus

1. Khan Naseem s/o Rahim Khan
Age: Major, Occu: Business,
R/o Silk Mill Colony,
Railway Station Road,
Aurangabad.

2. Shaikh Samsher Khan s/o Akbar Khan,
Age: 52 years, Occu: Driver,
R/o Naigaon Tq & Dist. Aurangabad.

3. The New India Assurance Col Ltd.,
Through its Manager,
Near Chunilal Asaram Petrol Pump,
Adalat Road, Aurangabad. ..Respondents

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Mr. S.R. Deshpande, Advocate for Appellants.
Mr. M.R. Deshmukh, Advocate for Respondent No.3.

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CORAM : P.R. BORA, J.
RESERVED ON : 27th SEPTEMBER, 2018.
PRONOUNCED ON : 01st OCTOBER, 2018.

JUDGMENT:-

. The claimants in Motor Accident Claim Petition No. 464 of 2008 have preferred the present appeal seeking enhancement in the amount of compensation awarded in the said petition decided on 14.05.2010 by the Motor Accident Claims Tribunal at Aurangabad.

2. The claimants had preferred the aforesaid petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Narayan Uttamchand Kavrani in a road accident happened on 03.04.2008 having involvement of a truck bearing registration No. MH-19-Z-2495 owned by respondent no.1 and insured with respondent no.3. It was the contention of the appellants that deceased Narayan was dashed by the aforesaid truck while he was proceeding on his Bajaj Scooter towards Central Naka. It was alleged by the appellants that the accident happened because of the sole negligence of the driver of the offending

truck. Deceased Narayan was stated to be 55 years old on the date of accident. As contended by the appellants, deceased Narayan was runnning a cloth shop in the name of Narayan Cloth Stores and was also running the other proprietary concern in the name as M/s. Radha Swami Enterprises. The appellants had stated the monthly income of deceased to be Rs. 1,61,000/-. The appellants had claimed themselves to be the dependents of deceased Narayan. The appellants had claimed the compensation of Rs 34,20,000/- jointly and severally from the owner, driver and insurer of the offending truck i.e. respondent nos. 1 to 3.

3. The petition filed by the appellants was resisted by the respondents on various grounds. Respondent nos. 1 and 2 though had accepted the involvement of the offending truck in occurrence of the alleged accident, had denied that the accident happened because of the negligence of respondent no.2 i.e. driver of the said truck. Respondent nos. 1 and 2 had also denied the income as was stated of the deceased. Respondent no.3-insurance company had raised the defence of breach of policy

condition by the insured alleging that the driver of the offending truck was not holding valid and effective driving licence on the date of accident. On other counts also, the claim petition was resisted by the insurance company.

4. In order to substantiate the contentions raised in the petition. One of the claimants namely Rakesh Narayan Kavrani testified before the Court. The appellants also filed on record the certified copies of the police papers pertaining to the alleged accident and the income tax returns of deceased Narayan. The respondents did not adduce any oral or documentary evidence.

5. The Tribunal after having assessed the oral and documentary evidence brought on record before it held the appellants entitled for the total compensation of Rs. 7,98,000/- inclusive of NFL compensation. Respondent nos. 1 to 3 were directed to jointly or severally pay the said amount of compensation to the appellants with interest thereon at the rate of 7 ½ % p.a. from the date of petition till realization. Dissatisfied with the amount of compensation awarded by the Tribunal, the

appellants have preferred the present appeal seeking enhancement in the amount of compensation as has bee awarded by the Tribunal.

6. Shri S.R. Deshpande, the learned counsel appearing for the appellants submitted that though the concrete evidence in the form of income tax returns of deceased Narayan was placed on record by the appellants, the Tribunal failed in appreciating the said evidence and wrongly held the income of deceased Narayan to be Rs. 12,000/- per month. The learned counsel invited my attention to the income tax returns of three years filed by the appellants on record. The learned counsel submitted that having regard to the income of deceased Narayan as shown in the income tax returns, the monthly income must not have been held by the Tribunal less than Rs. 15,000/-. The learned counsel further submitted that while deducting $1/3^{rd}$ amount of total income of deceased Narayan for determining the amount of compensation, the Tribunal has lost sight of the fact that five persons were depending upon the income of deceased Narayan. In such circumstances according to the learned counsel, not

more than 1/4th of the total income of deceased Narayan could have been deducted by the Tribunal towards the personal and living expenses of deceased Narayan.

7. The learned counsel further submitted that while considering the income of deceased Narayan for the purpose of determining the amount of dependency compensation, the Tribunal did not take into account the future prospects of deceased Narayan. The learned counsel further submitted that the Tribunal has also grossly erred in awarding inadequate compensation towards the non-pecuniary damages. The learned counsel further submitted that having regard to the age of deceased Narayan, the appropriate multiplier in the instant matter was 11 whereas, the Tribunal has applied the multiplier of 8.

8. For all above reasons, the learned counsel prayed for adequate enhancement in the amount of compensation awarded to the appellants by the Tribunal vide the impugned judgment.

9. Shri M.R. Deshmukh the learned counsel

appearing for the respondent-insurance company opposed the submissions advanced on behalf of the appellants. He submitted that the Tribunal has infact awarded the compensation on higher side and contrary to the evidence on record. The learned counsel further submitted that in absence of any such contention raised by the appellants that the two shops which were being run by deceased Narayan were closed down after his death, it must have been presumed by the Tribunal that the businesses were continued even after the death of Narayan and as such there was no loss of income.

10. The learned counsel further submitted that two of the income tax returns filed on record by the appellants were submitted after the death of Narayan. Relying on the judgment of this Court in the case of "**Oriental Insurance Company Limited Vs. Smt. Ramilaben wd/o Jayantilal Patel and Ors, 2017(3) ALL MR 223**" the learned counsel submitted that the income tax returns filed after the death of deceased should have been excluded from consideration.

11. The learned counsel further submitted

that except appellant no.1 i.e. widow of deceased Narayan, none of the other appellants was depending upon the income of deceased Narayan. In the circumstances, according to the learned counsel, while determining the amount of compensation, the Tribunal must have deducted 1 ½ of the total income of deceased Narayan. The learned counsel submitted that the Tribunal has granted just and adequate compensation under the other heads and no case is made out for any enhancement in the said amount of compensation. The learned counsel, therefore, prayed for adequate reductions in the amount of compensation awarded by the Tribunal.

12. I have given due consideration to the submissions advanced by advocate Shri Deshpande, the learned counsel appearing for the appellants and Shri M.R. Deshmukh, the learned counsel appearing for the respondent-insurance company. I have also perused the impugned judgment and the oral as well as documentary evidence brought on record by the parties.

13. First objection as has been raised by the appellants is in respect of the income of deceased

Narayan, as has been considered by the Tribunal while determining the amount of dependency compensation. The impugned judgment shows that the Tribunal has held the income of deceased at Rs. 12,000/- per month. According to the appellants, on the basis of the income tax returns of deceased Narayan placed on record by them, the Tribunal must have held the income of deceased Narayan to the tune of Rs. 15,000/- per month.

14. The learned counsel invited my attention to the income tax returns placed on record for the assessment year 2005-2006, 2006-2007 and 2007-2008. The learned counsel taking me through the income tax returns so placed on record, submitted that income of deceased Narayan for the assessment year 2007-2008 was Rs. 1,92,300/- and the same must have been considered by the Tribunal while determining the amount of dependency compensation.

15. The submissions so made on behalf of the appellants were resisted by the learned counsel appearing for the respondent-insurance company. The learned counsel Shri Deshmukh appearing for the insurance company submitted that in the petition

itself, the appellants had stated the monthly income of deceased Narayan around Rs. 13,000/- per month and Rs. 1,61,000/- p.a. The learned counsel further brought to my notice that in his testimony before the Court, PW-1 Rakesh has reiterated that deceased was having yearly income of Rs. 1,61,000/-. In the circumstances according to the learned counsel, the appellants are estopped from contending that the Tribunal has not appropriately considered the income of deceased Narayan.

16. The learned counsel further submitted that the income tax return of the year 2007-2008 relied upon by the appellants cannot be taken into account since, the same was filed after the death of deceased Narayan. The learned counsel relied upon the judgment of this Court in the case of "**Oriental Insurance Company Limited Vs. Smt wd/o Jayantilal Patel and Ors, 2017 (2) Mh.L.J. 822**" to support his contention. The learned counsel invited my attention to the observations made and the conclusion recorded by the Court in Para 7 of the said judgment to the effect that the income tax returns filed after the death of deceased are to be

excluded from consideration.

17. The learned counsel further pointed out that even according to the income tax return relied upon by the appellants, the income of deceased Narayan could not have been taken more than taken by the Tribunal. The learned counsel submitted that the rent from the house property was also shown to be income in the income tax returns submitted of deceased Narayan. The learned counsel submitted that the income tax return filed after the death of deceased Narayan clearly demonstrates that the said income had continued even after the death of Narayan and as such the same cannot be said to be loss for the appellants because of the death of deceased Narayan.

18. I have carefully perused income tax returns filed on record by the appellants. Though it was contended by Shri Deshmukh, the learned counsel appearing for the insurance company that the said income tax return, since it is filed after the death of deceased Narayan ought to be excluded from consideration, I am not convinced with the submissions so made. It is not in dispute that the

last income tax return i.e. of assessment year 2008-2009 though was submitted after the death of deceased Narayan, the fact remains that it was in respect of the income of deceased Narayan for the year ended on 31.03.2008 i.e. prior to his death. Deceased Narayan met with an accident on 03.04.2008 and died on the same day. In the circumstances, it was obvious that the income tax return for the said period was liable to be submitted by the family members of deceased Narayan i.e. the present appellants. Since, the said return pertains to the total income of deceased Narayan in his lifetime, I see no reason to discard or keep out of consideration the same.

19. In the said income tax return, the total gross income of deceased Narayan is shown to be 1,92,300/-. Based on the income as shown in the said income tax return, it was urged by the learned counsel appearing for the appellants that the dependency compensation of the appellants shall be assessed on the said income. The said contention of the appellants also however, cannot be accepted. The perusal of the last income tax return for the

assessment year 2008-2009 shows that in the said year, the rental income from house property to the extent of Rs. 36,000/- was received to deceased Narayan deducting the amount of Rs. 10,800/- from it towards repairs etc. The net income under the said head was shown to be Rs. 25,000/-. The income from business i.e. from two shops is shown to be Rs. 1,60,435/-. The amount of Rs. 6,623 is shown to have been earned by way of interest. The interest earned on the National Savings Certificate cannot be considered as the loss of income for the reason that even after the death of Narayan, the interest on National Savings Certificates had continued. As such, considering the evidence placed on record by the appellants themselves, the maximum income could have been considered of deceased Narayan to the tune of Rs. 1,60,435/-.

20. Though the learned counsel for the appellants contended that the entire said amount must be held to be loss and the dependency compensation requires to be assessed on the said amount, the said contention is also difficult to be accepted. Nothing is brought on record to show

that after the death of Narayan, the income which he was earning from two businesses is completely stopped. On the contrary, the evidence of PW-1 shows that the shop being run in the name and style as 'Seema Collection' was being run prior to death of deceased Narayan by his son Rakesh, who is one of the appellant. There is every reason to believe that though to some extent the income may have adversely affected because of death of Narayan, the entire income from the shops cannot be said to be the loss to be considered for assessment of the dependency compensation.

21. After having considered the evidence as aforesaid, it does not appear to me that the Tribunal has committed any error in assessing the dependency compensation by holding the monthly income of deceased to the tune of Rs. 12,000/-, which annually comes to Rs. 1,44,000/-. There is however substance in the further issue raised by the learned counsel appearing for the appellants that the Tribunal did not consider the future prospects of deceased while quantifying the amount of compensation. The learned counsel relied upon

the judgment of the Hon'ble Apex Court in the case of **"Smt Sarla Verma and Ors Vs. Delhi Transport Corporation and Anr"** and the subsequent judgment of the Hon'ble Apex Court in the case of **"National Insurance Company Limited Vs. Pranay Sethi"** to support his contention that the future prospects of the deceased must be considered while assessing the amount of compensation.

22. The learned counsel for the insurance company was fair enough in submitting that in view of the law laid down by the Hon'ble Apex Court, the future prospects need to be considered. As laid down in the case of 'Pranay Sethi', an addition of 10% of the existing income has to be made if deceased was self-employed and was in the age group of 50 to 60 years. As such, the income of deceased Narayan for the purpose of working out the dependency compensation has to be held Rs. 1,58,400/- p.a. (12000 x 12 = 1,44,000 + 14,400 = 1,58,400/-). I deem it appropriate to round it to Rs. 1,60,000/- p.a.

23. The Tribunal while calculating the amount of compensation has deducted 1/3rd of the total

income of deceased towards his personal and living expenses. According to the appellants, the Tribunal could not have deducted more than $1/4^{th}$ of the amount towards personal expenses of the deceased having regard to the number of dependents. The said submissions was opposed by the learned counsel for the insurance company. It was contended that appellant no.2 Rakesh was admittedly of the age 28 years and was independently running the cloth shop and as such cannot be held the dependent on the income of deceased Narayan.

24. It was also contended that two daughters namely Pinky and Seema both were major and as such they also cannot be considered to be dependent upon the income of deceased Narayan. In the circumstances according to the learned counsel, $1/3^{rd}$ of the total income as was deducted by the Tribunal was correct. I am, however, not convinced with the submissions so made. In absence of any contrary evidence, claimants no. 3 and 4 namely Pinky and Seema who are unmarried daughter of deceased, are to be held dependents of the deceased. The widow and mother of deceased

Narayan both are to be held to be depending upon the income of deceased Narayan.

25. Thus, the number of dependents on the income of deceased Narayan was four and as such in view of the law laid down in the case of 'Sarla Verma', no more than 1/4th of the total income of deceased can be deducted while determining the amount of dependency compensation. Thus from the income of Rs. 1,60,000/-, the amount of Rs. 40,000/- is liable to be deducted towards the personal expenses of deceased Narayan and the dependency compensation has to be assessed on the balance amount of Rs. 1,20,000/-.

26. The Tribunal has applied the multiplier of 8, while arriving at the amount of compensation. Having regard to the age of deceased Narayan, the appropriate multiplier as laid down in the case of 'Sarla Verma' would be of 11. By applying the said multiplier. The dependency compensation comes to Rs 13,20,000/- (Rs. 1,20,000 X 11 = Rs. 13,20,000).

27. The Tribunal has awarded the sum of Rs. 30,000/- to the appellants towards non-pecuniary

damages i.e. towards funeral expenses, loss of love and affection and loss of consortium etc. In view of the judgment of the Hon'ble Apex Court in the case of 'Pranay Sethi', appellants are entitled for consolidated compensation of Rs. 70,000/- towards non-pecuniary damages. The appellants are thus found entitled for the total compensation of Rs. 13,90,000/- (13,20,000 + 70,000 = 13,90,000).

28. In the facts and circumstances of the case and having considered the evidence which has been brought on record, it appears to me that aforesaid would be the just and fair compensation payable to the appellants. In the result, the following order is passed:

ORDER

i) The appellants are held entitled for the enhanced compensation of Rs. 5,92,000/-.

ii) Respondent nos. 1 to 3 shall jointly and severally pay the aforesaid amount of enhanced compensation to the appellants with interest thereon at the rate of 9% p.a. from the date of filing of the appeal till its realization.

iii) 90% of the enhanced compensation together with the interest thereon shall be remitted in favour of the appellant no.1 Smt Jyoti widow of Narayan Kavrani and 10% with interest thereon shall be paid to appellant no.5 Smt Meera Uttamchand Kavrani.

iv) The appeal thus stands partly allowed with proportionate costs.

v) The award be drawn accordingly.

(P.R. BORA, J.)

Mujaheed//