

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

FIRST APPAL NO. 1895 OF 2017

United India Insurance Co. Ltd.
Through it's Divisional Manager
and authorised representative &
signatory, Newasa Divisional office,
Hotel Karam Building, Opposite S.T.
Stand, At & Post & Taluka; Newasa
Newasa 422605; District; Ahmednagar. **APPELLANT**
(Original Respondent No. 3)

VERSUS

1. Sangita Sanjay Tawale,
Age; 35 years,
Occupation; Household,
2. Prathmesh Sanjay Tawale,
Age; 11 years, Occupation; Education,
3. Vedant Sanjay Tawale,
Age; 5 years, Occupation; Nil,
4. Subhadrabai Namdeo Tawale,
Age; 66 years, Occupation; Nil,

Respondent nos. 2 and 3 being minor
through N/G Res. No. 1.
Respondent nos. 1 to 4-Resident of
Newasa, Taluka; Newasa,
District; Ahmednagar.

5. Dilip Namdev Bhoge,
Age; Major, Occupation; Agril,
Resident; Kharwandi, Tqluka; Newasa,
District; Ahmednagar.
6. Dnyandeo Devichand Wature,
Age; Major, Occupation; Driver,
Resident; Kharwandi, Taluka; Newasa,
District; Ahmednagar.

RESPONDENTS

(Nos. 1 to 4 Original
Claimants and Nos. 5 & 6
Original Respondent Nos. 1 & 2)

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Shri. A.B. Gatne : Advocate for Appellant
Shri. Ram B. Deshpande : Respondent Nos. 1 to 4
Respondent Nos. 5 & 6 Served.
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 5.10.2018

Date of Pronouncing Judgment : 10.10.2018

J U D G M E N T :

This appeal is directed by the Insurance Company against the judgment and award passed by the Motor Accident Claims Tribunal, Newasa (Hereinafter referred to as "the Tribunal" for the sake of brevity) in Motor Accident Claims Petition No. 401 of 2014, awarding compensation of Rs. 48,90,000/- with interest thereon @ 6% per annum from the date of filing of application till realization of compensation amount.

2. The appellant is the original respondent No. 3. Respondent No. 1 is the registered owner and respondent no. 2 is the driver of the Bolero Jeep bearing registration No. MH-12-EG-9144 (Hereinafter referred to as the 'offending vehicle').

3. Facts, in nut shell are that the deceased Sanjay, who was running the cable net work at Newasa was making survey of the site along with one Avinash Chavan. When the deceased was passing by the side of the Kukana – Newasa road, the offending

vehicle came from back side and gave dash to him. In that accident, deceased sustained serious injuries, therefore he was taken to the hospital. However, on the same day, he succumbed to these injuries. Therefore, his dependents filed claim petition before the Tribunal for grant of compensation. After considering evidence placed on record, the Tribunal awarded above said compensation, which is challenged by the appellant/Insurance Company.

4. Heard Shri. A.B. Gatne, learned counsel for the appellant and Shri Ram Deshpande, learned counsel for respondent nos. 1 to 4 original claimants.

5. The learned counsel for appellant assails the judgment and award passed by the Tribunal on two grounds. First ground is that involvement of the offending vehicle in accident is not proved by the claimants and the second ground is regarding exorbitant compensation alleged to be awarded by the Tribunal.

6. The learned counsel for appellant submits that though incident occurred on 4.2.2014, the FIR was lodged on 9.2.2014 i.e. after 5 days from the date of accident and the delay in lodging the FIR is not explained by the claimants. He submits that on account of non examination of the Investigating Officer, the source of information regarding involvement of the offending vehicle in the said

accident has been not brought on record by the claimants. He submits that involvement of the offending vehicle is not established.

7. The next submission of the learned counsel for the appellant is that while assessing the loss of dependency, the average income of the deceased for last 3 to 5 years should have been considered by the Tribunal. According to the learned counsel, the income tax should be deducted from the annual income of the deceased and from the compensation. He placed reliance on **“Shyamwati Sharma and Others vs Karam Singh and others” [(2010) 12 Supreme Court Cases 378],**

“We however make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards FPF, life insurance premium, repayments of loans, etc. should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased”

8. His next objection is that the school leaving certificate of the deceased shows that on the date of accident, deceased was above the age of 40 years and therefore, towards the future prospects as per the verdict of the Larger Bench of The Apex Court in **“National Insurance Company Ltd. vs Pranay Sethi and others” [2018 (3) Mh.L.J. 70],** only 25% amount can be added in the annual income of the deceased while assessing the loss of dependency.

9. His next submission is that as deceased was above the age of 40 years the multiplier of "14" will be applicable in view of **"Smt. Sarla Varma and Ors Vs Delhi Transport Corporation and Anr," [AIR 2009 (SC) 3104]**.

10. His next objection is that under the conventional heads, exorbitant compensation has been awarded and the compensation cannot be above Rs. 70,000/-, in view of guidelines settled by the Apex Court in **Pranay Sethi (supra)**.

11. The learned counsel for respondent Nos. 1 to 4 supports the judgment passed by the Tribunal on the ground that the age of the deceased was 35 years on the date of accident and therefore, 40% amount is to be added to the annual income of the deceased towards the loss of future prospects.

12. His next submission is that in the cross-examination of the claimants, the involvement of offending vehicle is not challenged. There is no cross-examination on the point of deduction of income tax.

13. He submits that while assessing the income of the deceased his annual income of the last year before his death shall be considered and not his past income. He points out that on the

compensation awarded by the Tribunal, this court cannot deduct income tax.

14. However, he fairly concedes that on the conventional heads the compensation may be reduced as per the verdict by the Larger Bench of the Apex Court. According to the learned counsel for the respondents the delay in lodging the FIR is explained by the claimants in the FIR itself, as the claimants and other relatives were busy in medical treatment of the deceased and after his death, in the last rites of the deceased.

15. It is settled principle of law that the procedure under the motor accident claims cases is summary inquiry under Section 169 of the Motor Vehicles Act, 1988, therefore, the Rules of the Evidence Act and the Rules of pleadings are not strictly applicable. It is also settled principle of law that initial burden lies on the claimants to prove their case on the basis of preponderance of probabilities. A strict proof like in criminal trials is not at all required for the inquiry under Section 169 of the Motor Vehicles Act.

16. While assessing the evidence placed on record, it emerges that the claimants have placed on record oral evidence of Sangeeta Tawade (PW 1) and the documentary evidence in the form of certified copy of FIR, spot panchanama, postmortem report

prepared by police during the investigation of accidental death of the deceased. Postmortem notes reflect that the cause of death of the deceased is due to hemorrhagic shock due to compound fracture of right lower limbs due to road traffic accident. The postmortem was conducted on 4.2.2014 at 11.00 p.m. i.e. on the date of death of the deceased. Thus, there is no question of fabrication in the postmortem report of the deceased.

17. Even the certified copy of the FIR dated 9.2.2014, clearly indicates that it was filed by Avinash Vishwanth Chavan and it is a part of the pleading of the claimants, therefore, in view of law settled by the Apex Court in “**National Insurance Company Limited vs Rattani and Others**” [2009 (3) Mh.L.J. 754], the FIR can be read in the evidence, without its formal proof. So also, in “**United India Insurance Company Limited vs Sayaji Shinde**” [2009 (3) Mh. L.J. 539], this court has taken view that the certified copies of the FIR or panchanama and inquest panchanama being public documents can be read in evidence without additional proof.

18. The FIR clearly indicates that the registration number of the offending vehicle and its description is specifically mentioned by the informant who was one of the eye witness. From the recitals of the FIR, it becomes clear that delay of five days in lodging the FIR is explained in the FIR itself on the ground that after the accident the

deceased was taken to Ahmednagar for medical treatment, where he succumbed to the injuries and after his death all the formalities of postmortem were performed by the police. As the claimants and their other relatives were under shock due to sudden death of the deceased, the delay in lodging the FIR has been caused. Thus, obviously, the delay in lodging FIR is not at all fatal, to view it with suspicion. Even in the spot panchanama, the registration number of the offending vehicle is specifically mentioned. Therefore, in view of these documentary evidence along with oral evidence of the claimant, the involvement of the offending vehicle, in the aforesaid accident is sufficiently proved by the claimants to discharge their burden. No evidence has been brought on record by the Insurance company in rebuttal to falsify these documents. Even in the cross-examination of the claimant (PW 1), no question is asked for the delay in lodging the FIR.

19. On the other hand, it is suggested that due to horn blowing by the jeep, deceased suddenly fell on the road and thereby accident occurred. Thus, in the cross-examination of the claimant Sangeeta (PW 1), the Insurance Company has admitted the involvement of the offending vehicle in the above said accident. In the circumstances, I hold that claimants have duly proved involvement of the offending vehicle in the above said motor vehicular accident. The objection raised by the learned counsel for

the appellant is rejected.

20. Regarding the quantum of compensation, it is absolutely correct that the Tribunal awarded exorbitant compensation under the conventional heads relying on “**Rajesh vs Rajbir Singh**” [2013 ACJ 1403].

21. However, the verdict of this authority is not good law as held by the Larger bench of the Apex Court in **Pranay Sethi (Supra)**. Therefore, in accordance with the guidelines laid down by the Apex Court in **Pranay Sethi (supra)**, the claimants are entitled for compensation of Rs. 40,000/- for loss of consortium, Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses.

22. Regarding the loss of dependency, firstly, it shall be considered, as to what was the age of the deceased on the date of accident ? The Tribunal held that at the time of death, the deceased was 35 years old and accordingly multiplier of “16” was made applicable, while determining the loss of dependency. So also, as per ratio of **Smt. Sarla Varma (supra)**, the Tribunal added 30% income in the annual income of the deceased under the head of loss of future prospects. However, the School Leaving Certificate of the deceased is on record, which clearly shows that the date of birth of the deceased is 1.6.1974 and not as 12.9.1978. The accident

occurred on 4.2.2014. Thus, on the date of death, the deceased was below the age of 40 years and above the age of 39 years. Therefore, as per the guidelines laid down by the Apex Court in **Sarla Varma (supra)**, which is also approved by the Larger Bench of the Apex Court in **Pranay Sethi (supra)**, the proper multiplier applicable in the case at hand is "15". So also in view of guidelines of the Apex Court in **Pranay Sethi (supra)**, when the deceased was self employed and below age 40 years for the loss of future prospects, 40% amount is to be added in the annual income of the deceased while assessing the loss of dependency. As there are four members in the family of the deceased who are dependents, 1/4th amount is to be deducted towards personal expenses of the deceased.

23. Now question arises, what would be the annual income of the deceased. According to the claimants, the deceased used to run cable net work business. The certificate (Exh. 25) shows that on 29.6.1998 the Collector of District, Ahmednagar issued required permission to the deceased to run the cable net work business at Newasa. The claimant has also filed and proved copies of the income tax return submitted by the deceased for the assessment year 2012-13, which shows that the gross income of the deceased for the year 2012-13 was Rs. 3,04,575/-. Net income tax with interest paid by the deceased is Rs. 3,445/-. Thus, by deducting the income tax, the total net income of the deceased for the year 2012-13 is Rs.

3,01,130/-. In addition to this, the claimants have also filed receipts of entertainment tax paid to the Government of Rs. 2,100/- per month. Thus, deceased has paid entertainment tax of Rs. 25,200/- for the year 2012-13. If this tax is deducted from the annual income of the deceased his annual income is assessed as Rs. 3,01,130 – 25,200 = 2,75,930/-. If 40% amount is added towards the future prospects of deceased, the total annual income of the deceased is assessed as Rs. 2,75,930 + 1,10,372 = Rs. 3,86,302/-. Thus, after 1/4th deduction towards personal expenses of deceased, it is assessed as Rs. 3,86,302 – 96,575 = Rs. 2,89,727/-. After applying the multiplier of “15”, the annual income of the deceased is assessed as Rs. 2,89,727 x 15 = Rs. 43,45,905/-. Thus, loss of dependency is assessed as Rs. 43,45,905/-.

24. In addition to this, the claimants are entitled to compensation under the conventional heads i.e. Rs. 40,000/- for consortium, Rs. 15,000/- for the loss of estate and Rs. 15,000/- for funeral expenses. Thus, claimants are entitled to following compensation under different heads.

Sr.No.	Particulars of Heads	Amount in Rupees.
1)	Loss of dependency.	43,45,905/-
2)	Loss of consortium	40,000/-
3	Loss of estate	15,000/-
4)	Funeral expenses	15,000/-
	Total	44,15,905/-

25. Claimants are entitled to total compensation of Rs. 44,15,905/- (Rs. Fourty Four Lac Fifteen Thousand Nine Hundred and Five only) with interest thereon at the rate of 9% per annum from the date of filing of the petition till realization of the compensation amount. This compensation shall be inclusive of compensation received under the no fault liability. However, the Tribunal has awarded total compensation of Rs. 48,90,000/- with interest at the rate of 6% per annum from the date of filing of the application/petition. Therefore, this appeal deserves to be partly allowed to reduce the compensation to the extent of Rs. 44,15,905/-. Before parting with the judgment, I must make it clear that this Court cannot deduct any income tax from the compensation amount. That contention of the appellant cannot be accepted.

26. Accordingly, First Appeal No. 1895 of 2017 is partly allowed. The award passed by the Motor Accident Claims Tribunal, Newasa in MACP No. 401/2014 be modified to reduce total compensation to the extent of Rs. 44,15,905/- (Rs. Forty Four Lac Fifteen Thousand Nine Hundred and Five Only) inclusive of compensation received under no fault liability. Thus, claimants are also entitled for interest on this compensation amount at the rate of 9% per annum from the date of filing of the petition till realization of the compensation amount. Out of compensation amount deposited in this Court, the amount of the share of Original Claimants in

accordance with modified award, with proportionate accrued interest thereon, be paid to respondent nos. 1 to 4/Claimants. Remaining amount be refunded to the appellant Insurance Company. Parties shall bear their respective costs of the appeal. Other operative part of the award of the learned Tribunal regarding apportionment and investment as well as recovery of deficit Court fees is confirmed as it is. Appeal be disposed of in above said terms.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/