IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPAL NO. 610 OF 2014

1. Laxmibai w/o Venkat Mungade
   Age; 30 years, Occupation; Household,

2. Madhav s/o Venkat Mungade,
   Age; 10 years Occupation ;Education,
   Minor U/G of real mother i.e. the
   Claimant No. 1.

3. Maroti s/o Venkat Mungade,
   Age; 5 years, Occupation; Education,
   Minor,U/G of real mother i.e. the
   Claimant No. 1.

4. Virbhadra s/o Venkat Mungade,
   Age; 6 months, Occupation; Nil,
   Minor U/G of real mother i.e. the
   Claimant No. 1.

5. Hanmabai w/o Laxmanrao Mungade,
   Age; 75 years, Occupation; Household,

All resident of Atkali, Tq. Biloli,
District; Nanded. **APPELLANTS**
(Original Claimants)

VERSUS

1. Mohd. Abdul Aleem s/o Mohd.
   Abdul Raheem,
   Age; 40 years, Occupation; Business,

R/o; Bada Bazar, Nizamabadat
At Present Degloor, Dist; Nanded.
C/o; Raheem Construction Material
supplier shop, Municipality Complex
Lohiya Maidan, Degloor,
District; Nanded.

2. United India Insurance Company Ltd.
Through; its Branch Manager,
Branch at New Sarafa Market,
Degloor Dist, Nanded.

3. Mrs. Shakuntala w/o Hardish Awadhia
Aged; Major, Occupation; Business,
Resident of Hadasani, Taluka Hadgaon,
District; Nanded.
At presently at Sahyog Nagar,
Nanded. **RESPONDENTS**
(Original Respondents)

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Shri.A.P. Basarkar, Advocate for Appellants
Shri.S.V. Kulkarni, Advocate for Respondent No. 2
Shri B.N. Gadegaonkar h/f Mr. M.V. Ghatge, Advocate
for Respondent No. 3.

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CORAM : SUNIL K. KOTWAL, J.

DATED : 7th DECEMBER, 2018.

J U D G M E N T :

This appeal is preferred against the judgment and award passed by Motor Accident Claims

Tribunal, Biloli in MACP No. 18/2004 awarding compensation of Rs. 1,80,000/- with interest @ 6% per annum. The liability was saddled on only respondent Nos. 1 and 2, who are the owner and the insurer of the offending truck bearing No. AP-25/T-5583. Respondent Nos. 3 and 4 who are the owners and insurer of jeep involved in the accident are exonerated. Appellants are the original claimants and respondent Nos. 1 to 4 are original respondents (hereinafter parties will be referred in accordance with their status in their original proceeding).

2. Against the award passed by the Tribunal, no Cross Appeal or Cross Objection is filed by the owner or insurer of the offending truck. Therefore, in this appeal I have only to consider the fair and reasonable compensation payable to the claimants.

3. Heard, Shri A.P. Basarkar, learned counsel for appellants and Shri S.V. Kulkarni, learned

counsel for respondent No. 2 Insurance Company.

4. Learned counsel for respondent No. 3 is present, but he has no arguments, as he is already exonerated.

5. Learned counsel for appellants submits that, at the time of accident, the deceased was 35 years old and he used to earn Rs. 4,000/- per month by working as Cook in Shivshakti Hotel. He submits that the Tribunal considered notional income of the deceased without considering the loss of future prospect and awarded meager compensation. He has pointed out that even multiplier of '17' is wrongly applied by the Tribunal and the Tribunal wrongly deducted 1/3rd amount from the annual income towards personal expenses of the deceased. He has also pointed out that under the conventional head, proper compensation is not awarded.

6. Shri.S.V. Kulkarni, learned counsel for Respondent No. 2 supported the judgment and submits that reasonable compensation is awarded by the Tribunal.

7. While determining the compensation, the age of the deceased plays important role. Postmortem notes (Exh. 43) shows that on the date of death, the deceased was 35 years old. Therefore, in view of law settled by the Apex Court in "**Smt. Sarla Verma Vs. Delhi Transport Corporation" [(2009) Supreme Court Cases 3104]**, the multiplier of '16' is applicable in the case at hand.

8. No doubt, except the bare contention of the claimant (PW 1), no other evidence has been brought on record by the Claimant to prove the monthly income of the deceased. However, in "**Lata Wadhwa and others v. State of Bihar" [AIR 2001 SC 3218]**, the Apex Court considered the notional income of the

house wife, who died in the year 1989 @ Rs. 3,000/- per month. In the case at hand, the deceased died on 1.12.2003. Thus, considering the time gap between the date of death in the matter of "**Lata Wadhwa and others v. State of Bihar**" (supra) and the present matter, certainly, there must be hike in the wages of the labourers. Therefore, the notional income of the deceased cannot be less than 4,000/- per month. I hold that notional income of the deceased is Rs. 4,000/- per month. Thus, if as per the verdict of the Apex Court in "**National Insurance Company Ltd. vs Pranay Sethi and others**" **[2018 (3) Mh.L.J. 70]**, when the deceased was below the age of 40 years and self employed, 40% income is to be added in monthly income of the deceased. Thus, if 40% income i.e. Rs. 1600/- is added in the monthly income of the deceased, his income comes to Rs. 5,600/- per month. It follows that his annual income is Rs. (5600 x 12) Rs. 67,200/-.

9. In the family of the deceased the number of dependents are five, therefore, in accordance with the law settled by the Apex Court in “**Smt. Sarla Verma Vs. Delhi Transport Corporation**” (supra), $1/4^{th}$ amount is to be deducted from this annual income towards the personal expenses of the deceased i.e. Rs. (67,200 - 16,800) comes Rs.50,400/-. After applying multiplier of '16' the loss of dependency comes to (50,400 x 16)Rs. 8,06,400/-.

10. In addition to this, as per the guidelines issued by the Apex Court in “**National Insurance Company Ltd. vs Pranay Sethi and others**” (supra), under the conventional head the claimants are entitled as under : -

Loss of consortium :	Rs. 40,000/-
Loss of estate :	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 70,000/-

11. Thus, the claimants are entitled for total following compensation under different heads :

Loss of dependency :	Rs. 8,06,400/-
Loss of consortium :	Rs. 40,000/-
Loss of estate :	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 8,76,400/-

12. The claimants are also entitled to interest on this compensation amount @ 9% per annum from the date of filing of the petition till realization of the amount. This compensation shall be inclusive of compensation received under No Fault Liability.

13. Claimant No. 5 being old aged mother of the deceased, considering her short span of remaining life, out of compensation amount, only amount of Rs. 1,00,000/- shall be paid to her with proportionate interest. The remaining compensation shall be equally apportioned in between the claimant Nos. 1 to 4.

Claimant Nos. 2, 3 and 4 being minor, compensation of their share shall be invested in fixed deposit in any nationalized bank through their mother Claimant No. 1, till they attain majorit. Quarterly accrued interest shall be paid to them through their mother Claimant No. 1. Premature withdrawal shall not be permissible and the concerned bank may be informed accordingly.

14. Compensation of the share of claimant No. 1 Laxmibai shall be paid to her by separate account payee cheque through the Tribunal.

15. In view of this discussion First Appeal No.610 of 2014 is allowed. Award passed by the Motor Accident Claims Tribunal, Biloli in MACP No. 18 of 2004 is modified to enhance the compensation to the extent of Rs. 8,76,400/- (Rs. Eight Lacs Seventy Six Thousand and Four Hundred Only) with interest @ 9% per annum from the date of filing of the petition

till its realization. This compensation shall be inclusive of compensation received under No Fault Liability. Respondent Nos. 1 and 2 are jointly and severally liable to pay this compensation to the claimants. Out of compensation amount, only amount of Rs. 1,00,000/- shall be paid to claimant No. 5 with proportionate interest by separate account payee cheque through the Tribunal. The remaining compensation shall be equally apportioned in between the claimant Nos. 1 to 4. Claimant Nos. 2, 3 and 4 being minor, compensation of their share shall be invested in fixed deposit in any nationalized bank through their mother Claimant No. 1, till they attain majority. Quarterly accrued interest shall be paid to them through their mother Claimant No. 1. Premature withdrawal shall not be permissible and the concerned bank may be informed accordingly. Compensation of the share of claimant No. 1 shall be paid to her by separate account payee cheque, through the Tribunal.

16. Parties to bear their respective costs of the appeal.

17. Appeal is disposed of in above said terms.

18. Deficit court fees if any be recovered from the claimants.

[**SUNIL K.KOTWAL, J.**]

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