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

FIRST APPEAL NO. 1276 OF 2006

The Oriental Insurance Co. Ltd.
Through its Divisional Manager,
Division Office, Adalat Road,
Aurangabad
.. Appellant /original Respondent no. 3

versus

1. Chandrakant s/o Shankarrao Joshi,
Age 51 years, occup.Fabrication
Business, R/o C/o N.G.Gore, C/3,
Raj Apptt., 1 floor, Samarth Nagar,
Aurangabad

2. Sau. Sudha w/o Chandrakant Joshi,
Age: 48 years, occup. Housewife,
R/o as above

3. Ku. Anuja d/o Chandrakant Joshi,
Age 14 years, Occup. Education,
R/o as above

4. Sk. Mumtazuddin s/o Bashiruddin,
Age : 50 years, Occup. Driver,
R/o Sk. Nawab Panwale,
Silk Mill Colony, Aurangabad

5. Gulabrao s/o Mahadeorao Pawar,
Age Major, Occup. Business,
R/o Dabadi, Tq. Kannad,
Dist. Aurangabad

6. Matinkhan s/o Naseerkhan,
Age major, Occup. Business,
R/o Silk Mill Colony,
Aurangabad

.. Respondents/
(Resp.No.1 to 3 are
Orig. Claimants, and
Resp.No.4,5 & 6 are
Orig.Resp.No.1,2 & 4

WITH
CROSS OBJECTION [STAMP] NO.1791 OF 2014
IN
FIRST APPEAL NO. 1276 OF 2006

1. Chandrakant s/o Shankarrao Joshi,
Age 57 years, occup.Fabrication
Business, R/o C/o N.G.Gore, C/3,
Raj Apartment, First floor,
Samarth Nagar, Aurangabad

2. Sow. Sudha w/o Chandrakant Joshi,
Age: 52 years, occup. Nil-Household
R/o as above

3. Miss Anuja d/o Chandrakant Joshi,
Age 19 years, occup. Education,
R/o as above
(Ori.claimants)

.. Appellants in Cross Appeal

versus

1. The Oriental Insurance Co. Ltd.
Through its Divisional Manager,
Division Office, Adalat Road,
Aurangabad

2. Sk. Mumtazuddin s/o Bashiruddin,
Age : 57 ye5.ars, Occup. Driver,
R/o Sk. Nawab Panwale,
Silk Mill Colony, Aurangabad

3. Gulabrao s/o Mahadeorao Pawar,
Age Major, Occup. Business,
R/o Dabadi, Tq. Kannad,
Dist. Aurangabad

4. Matinkhan s/o Naseerkhan,
Age major, Occup. Business,
R/o Silk Mill Colony,
Aurangabad

.. Respondents/
(R.-1 is appellant & R-2 to R-4 are R-4 to to R-6 in FA No.1276/06)

Mr. R. F. Totala, Advocate for appellant and respondent no. 1 in cross objection.

Mr. Ajay S. Deshpande, Advocate for respondents no. 1 to 3 in first appeal and for objectionists in cross objection.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 15th March, 2018

ORAL JUDGMENT **:**

1. Heard learned counsel for the parties.

2. Aniket Joshi who was son of claimants-respondents no. 1 and 2 and brother of respondent no 3 in the first appeal died on 07-12-2001 in a vehicular accident while riding on motorcycle bearing registration number MH 26 F 5140 as a pillion passenger. Anup Agashe was driving the motorcycle and Aniket had been traveling along with him on pillion seat. They were waiting for traffic clearance. At that time, a truck came from wrong side and had catastrophic collision with said motorcycle. Aniket suffered injury in the same and his friend who was driving motorcycle had also suffered injuries. The injured were removed to Kamal Nayan Bajaj Hospital from the spot of occurrence of incident. However, Aniket, before could receive medical treatment in Intensive Care Unit, was declared dead. His friend had been moved to *GHATI* hospital.

3. The claimants / respondents No. 1, 2 and 3 petitioned the tribunal for compensation to the tune of Rs.15,00,000/-. The Tribunal, by judgment and award dated 30-08-2006 in motor accident claim petition bearing no. 65 of 2002, awarded compensation of Rs.7,97,999/-.

4. Aggrieved by aforesaid award, insurer has filed present first appeal and original claimants / respondents No. 1, 2 and 3 have filed cross objection which is on stamp no. 1791 of 2014.

5. Learned counsel for appearing parties fairly state that the appeal and the cross objection are confined to quantum and computation of income and there is no serious challenge in respect of the occurrence of accident and liability to pay compensation . As such, the appeal is being given treatment accordingly and thus only quantum and its computation would be under focus in the appeal.

6. Mr. Rameshwar F. Totala, learned counsel appearing on behalf of appellant – insurer submits that consideration of income at Rs.8,000/- per month of the deceased who had been a student is on unreasonably steeper side. As a matter of fact, according to him, prevailing scenario in respect of

employment of engineers, is pretty gloomy and gives indication of that the rate has been considered on higher side. In the estimate of Mr. Totala, the rate could have been considered at Rs.6,000/- per month and computation accordingly ought to have been made. He contends that the tribunal has further erred in deducting only 1/3rd of the amount over personal expenses whereas the judgments in the cases of bachelors have tended to consider that outgoing on personal expenses should be computed at the rate of fifty per cent. He further submits, that other side may submit that there were revisions in the pay scale and that be taken into account while computing income of the deceased. However, such a submission in the face of observations in the case of *Smt. Sarla Verma vs. Delhi Transport Corporation*, reported in *(2009) 6 SCC 121* would be untenable and would be required to be discarded. Learned counsel further purports to contend that father may not be a dependent and in the circumstances, compensation may be reduced accordingly.

7. Learned counsel Mr. Totala for the appellant – insurer also purports to have a different perspective of the matter. It is his submission that the deceased was only a student and had not been really earning member of the family. It is

contended that respondents no. 1 to 3 claim is speculative and on far higher side. It is submitted that even if prospective nature of income is to be considered particularly taking into account section 163-A of the Motor Vehicles Act, 1988, going by the structure under schedule, it should have reasonable nexus with notional income under section 163-A of the Act and income of deceased should not be considered more than Rs.15,000/- per annum.

8. Countering aforesaid submissions, Mr. Ajay S. Deshpande, learned counsel on behalf of respondents-claimants-cross objectors submits that on merits, as a matter of fact, it is easily discernible that had the deceased not met with the accident and suffered injury, he would have earned by now a monthly income of about Rs.1,00,000/- and not meagre Rs.12,000/- as claimed. The family would have been saved from going through tragic and pathetic conditions in life. He submits, the claimants had been very reasonable in making the claim and have calculated earning considering that he would have earned at least as much a government employee would do in normal course. He submits that computation of income as would emerge from perusal of tribunal's judgment is far too on lower side and has been

compared with a B.Sc. second year student rather than an engineering student. He submits that although the claim petition demands compensation at the rate of Rs.12,000/- per month, an engineer around the time Aniket had met with accident had already been earning Rs.15,000/- and additionally would have received equal allowances. According to him, a just demand had been made under the petition and the same ought to have been granted. The tribunal had been in error in losing sight of prevailing circumstances around 2001 and has gauged income of the deceased only around Rs.8,000/- per month. He, therefore, requests to consider that income that could have been fetched by deceased would have been at least 15,000/- and additionally equal allowances per month and to compute compensation accordingly.

9. He purports to refer to and rely on documents in this respect tendering the same across viz; photocopy of government resolution dated 14th December, 1995, copies of extracts of Maharashtra Civil Services (Revised Pay) Rules, 1998 and Maharashtra Civil Services (Revised Pay) Rules, 2009 and applicable schedules to the same showing unrevised and revised salary/pay scale of engineers in government sectors i.e. pay scale of Rs.6500-200-10500

before 1-1-2006 and revised pay structure from 1-1-2006 i.e. Pay Band – Rs.9300-34800+Grade Pay Rs.400.

10. Mr. Deshpande, learned advocate appearing for objector claimants contends that for a graduate engineer, in government employment lowest post had been of Assistant Engineer. In 2001, a graduate engineer had a pay scale of Rs.6500-10500 and used to get gross salary of Rs.13,000/- per month. He refers to Government Resolution of 14th December, 1995, which according to him prescribes pay scale to the post of Assistant Engineer, which is an entry level post for graduate engineer. He places reliance on copies of extracts of Maharashtra Civil Services (Revised Pay), Rules, 1998 and 2009 whereunder, according to him, a graduate engineer appointed around 2001 would have fetched salary of more than 19,000/- per month and from 1st January, 2006, his pay scale would have been in the band of Rs.9300-34,800 plus Grade Pay of Rs.4400/- per month. He purports to reiterate that having regard to that Aniket had been an extra-ordinary student and talented person, in private sector, he would have earned much more than pay scale referred to above. He submits that as such the demand made under the claim petition had been far too on lower side and has been rather

unreasonably less, while the surrounding circumstances indicate that a graduate engineer in government employment would have in all certainty at least earned around Rs.20,000/- per month and more. He, therefore, submits that while the demand itself had been unreasonably less, proper pay scale be considered and earning of Aniket be treated accordingly.

11. He further submits that there was absolutely no reason to apply multiplier of only 12. He submits that, as a matter of fact, going by schedule II to the motor vehicle Act, a proper multiplier applicable is 18. However, the tribunal has not even applied mind to the same. He, therefore, submits that proper multiplier of 18 be applied and computation be made accordingly. He purports to submit that the tragedy suffered by the family has no ends. The father after death of the son had immediately suffered two consecutive road accidents incapacitating him from running business. Additionally, he suffered malignancy and has undergone surgery thereafter and, in fact, earlier also he had to undergo a bypass surgery. Mother of the deceased as well has been advised bypass surgery and for want of funds the family is not in a position to have a proper medical treatment.

12. Mr. Deshpande submits that the family of the claimants as a whole is passing through a very appalling and pathetic situation and is in dire need of compensation as claimed however, receipt of the same is getting prolonged. He submits, father being not dependent is not the case of appellant at all nor was his case hitherto either before the tribunal or before this court. As such, such a submission by appellant would not be required to be taken into account.

13. The other leg of submissions on behalf of respondents – cross objectors is, while there is no dispute over that deceased had been a talented student, rather an extra-ordinary student, there were far more than reasonable chances of his bright career and future, not only for himself but also for his family members. He submits, deceased had secured admission by virtue of his merit and talent in a government engineering college, admissions to which are not easy to come by unless one stands high in merit. It is being submitted that it is not the case that deceased had been a student of any private engineering college. The deceased, in all probability would have secured job in prospering private sector organization earning a higher salary or for that matter, a financially sound public sector undertaking getting more

remuneration than the ones in government employment. However, taking a very practical view the claimants have toned down their demand under the claim before tribunal.

14. It is being submitted that while taking into account salary earned by a talented engineer, the tribunal has not considered that earning of the deceased ought to have been considered as that of an engineer rather than a science student of second year as referred to in impugned order. This consideration, according to respondents – claimants has drastically reduced quantum of proper prospective earning of the deceased, resulting into further reduction in compensation.

15. He goes on to submit that reference to the judgment in the case of *"Prema V/s MPSRTC"* (*Supra*) to consider salary earned by Aniket, in the circumstances has been rendered of little relevance.

16. The tribunal has granted compensation in aggregate of Rs.7,97,000/- taking into account income of deceased at Rs.8,000/- per month and has further reduced applicable multiplier to 12. The tribunal has deducted 1/3rd of the amount towards personal expenses and has computed

compensation accordingly and has paid Rs.5,000/- towards funeral. There does not appear payment of compensation on loss of love and affection.

17. The tribunal appears to have considered while computing income of deceased Aniket, that he would have reasonaly earned annual Rs.1,00,000/- i.e. Rs.8,000/- per month and had thereafter deducted one third amount towards personal expenses of the deceased. The tribunal, further went on to consider that Aniket would have started earning in or about five years and as such, purported to apply multiplier of twelve. Circumstances, with regard to computation of income @ Rs.8,000/- per month appears to have been considered on the background of a decision in the case of *"Prema and Another V/s Madhya Pradesh State Road Transport Corporation"* reported in 2001 ACJ 674, whereunder the deceased had been a boy of twenty years and a meritorious student of B.Sc. Second year and had a pilot licence and a fixed compensation @ Rs.5,42,000/- had been arrived at. One may have to note that though this is a reported decision, copy of the same has not been made available. Presumably, the case was dealing with event long prior to 2001.

18. There is no dispute in respect of that Aniket had been a talented and bright student taking education for degree of bachelor of engineering in Government Engineering College at Aurangabad. It is further not disputed that seats in / admission to government engineering colleges around the time, Aniket had been taking education had to be earned on merits. Admissions to government engineering colleges then were not easier to come by unless student held merit. Further, Aniket appears to have passed National Talent Search examination. One has to consider that around the period 2001, importance of engineering courses had not been in as diffused state for talented students as is contended to be appearing now by learned advocate for the appellant / insurer. Situation fifteen years before for engineers had not been as bleak or gloomy as contended by the learned advocate.

19. Thus, the submissions on behalf of the claimants that since Aniket had been a bright student and had even brighter chances of earning more joining private sector, claimants have restricted their claim to consider that Aniket would have easily earned as much as a person appointed as engineer in government department carry lot of force. Going by the pay scales, which are being relied on, it would not be

incongruous to consider that Aniket would have easily earned a sum of Rs.15,000/- per month.

20. The decision of the Supreme Court in the case of *“National Insurance Company Limited v/s Pranay Sethi”* reported in *2017 online SC 1270*, particularly conclusions, under clause (iv) of paragraph No. 64, reads, thus:

> " ***64***. *In view of the aforesaid analysis, we proceed to record our conclusions :*
>
> *(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

21. As such, income may have to be computed keeping in view aforesaid clause (iv) from paragraph no. 64 of aforesaid judgment in *National Insurance Company Limited.*

22. Further, it would also be relevant to refer to that in the case of *Sarla Verma V/s Delhi Transport Corporation and Another,(2009) 6 SCC 121* the supreme court has in paragraphs no. 30 and 31 referred to the considerations which may weigh in respect of

deductions towards personal and living expenses of deceased.

23. In paragraph No. 42 of the judgment in the case of *"Sarla Verma* (supra), it has been observed that multiplier to be used should be as mentioned in column 4 under table under paragraph No. 40 of said judgment.

24. In view of the aforesaid, it would have to be appropriately considered that multiplier of 18 would be applicable as a proper multiplier, pursuant to the table appearing under paragraph No.40 of the judgment. In the process, multiplier gets reduced by one from 19 as referred to under the schedule to Motor Vehicles Act.

25. It may also have to be referred to that in the judgment in *National Insurance Company Limited v/s Pranay Sethi, 2017 online SC 1270* conclusions under paragraph no. 64, there is clause (viii) reading thus;

> *" 64. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The*

aforesaid amounts should be enhanced at the rate of 10% in every three years. ''

26. Having regard to aforesaid clause (viii) of paragraph no. 64 of the judgment in the case of *“National Insurance Company Limited”*, the amounts under these heads will have to be considered and payment of compensation on those heads would have to be brought in tune with said figures.

27. Thus, computation of income and application of multiplier and compensation on non pecuniary heads would undergo modification in tune with relevant observations in decisions of the Supreme Court in the cases of *National Insurance Company* and *''Sarla Verma''* (*supra*), and accordingly award of the motor accident claims tribunal, Aurangabad passed in motor accident claim petition no. 65 of 2002 on 30-08-2006 stands modified.

28. Computation of income of deceased Aniket and multiplier to be applied, and compensation on non pecuniary heads, in the circumstances, shall have to be worked out with reference to aforesaid decisions, namely, " *National Insurance Company* " and *''Sarla Verma''* (supra).

29. As such, the appeal is dismissed.

30. Cross objection is partly allowed as above and the claimants/cross-objectors would be under obligation to bear and pay court fees in proportion of enhancement, if any, in compensation granted.

SUNIL P. DESHMUKH,
JUDGE

2

pnd/-