IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1156 OF 2015

1. Mangal Rajendra Gosavi,
   Age : 38 Years, Occu.: Household,
   At Dhule Chandgaon, Tq. Pathardi,
   District Ahmednagar.

2. Ku. Rahul Rajendra Gosavi,
   Age : 19 years, Occu. Education,
   R/o: as above.

3. Amol Rajendra Gosavi,
   Age: 13 years.

4. Kum Priya Rajendra Gosavi,
   Age: 13 years, Occu: Education,
   Minor u/g of her real mother,
   Appellant No. 1, R/o as above. ...APPELLANTS

V E R S U S

1. Uddhav Yashwant Avhad,
   Age: Major, Occu. Business,
   R/o Yashwant Nagar, Sonai,
   Tq. Newasa, Dist Ahmednagar.

2. Kishor Balasaheb Mhase,
   Age: Major, Occu: Driver,
   R/o : Sonai Tq. Newasa,
   District Ahmednagar.

3. The New India Assurance Co. Ltd.
   Notice to be served on its
   Divisional Manager,
   Abbat Building, Behind Ashoka Hotel,
   Kings Road, Ahmednagar. …RESPONDENTS.

….

Mr. Jeevan R. Patil, Advocate holding for
Mr. G. B. Rajale, Advocate for appellants.
Respondents No. 1 and 2 – Served.
Mr. M. M. Ambhore, Advocate for respondent No. 3

….

CORAM : A.M. DHAVALE, J.

DATED : 3rd AUGUST, 2018.

ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award dated 21st April 2010, passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 420 of 2004, whereby the learned Chairman has awarded compensation of Rs. 2,50,000/- excluding '*No Fault Liability*' amount along with interest @ 7.5% per annum and proportionate costs, the original claimants have preferred this appeal for enhancement of compensation.

2. The deceased Rajendra Laxman Gosavi, husband of claimant No.1 and father of claimants No. 2 to 4 died at the age of 38 years. While he was proceeding on his motor cycle bearing No MH-17-D-4466, on 5th June, 2003, the tempo bearing No MH-10-A-1923 came from back side and gave dash to the deceased. The driver of the tempo was prosecuted by registering Crime No. I-45 of 2003 registered at Sonai Police Station, Taluka Newasa, District Ahmednagar for the offences punishable under Sections 304-A, 279, 337, 338 and 427 of the Indian Penal Code and under Sections 183, 134(B) of the Motor Vehicles Act. The tempo involved in the accident, owned by respondent No. 1, was driven by respondent No. 2 and insured with respondent No. 3-Insurance Company.

3. There is no dispute about liability of respondents No.1 to 3 on account or rash and negligent driving of respondent No. 2-driver. Only dispute is about quantum.

4. Mr. Jeevan Patil, learned counsel for appellants submits that the deceased was drawing salary of Rs.6810/- per month. The learned Chairman ought to have calculated the loss of income on the basis of gross salary. However, the learned Chairman has calculated the compensation on the net income/salary. Besides the learned Chairman has not granted any future prospects. The learned counsel relied on the Judgment in the case of ***Smt. Sarla Verma Versus Delhi Transport Corporation, (AIR 2009 SC 3104)*** and ***National Insurance Company Limited Versus Pranay Sethi, (2017) 16 SCC 680.***

5. Per contra, Mr. Ambhore, learned counsel for respondent No 3- Insurance Company argued that the learned Chairman has given reason as to why net salary has been considered. Reliance was placed by the learned Chairman on the Judgment of ***Asha and others Vs. United India Insurance Co. Ltd. (2004 ACJ 448)***. Mr. Ambhore, learned counsel fairly conceded that law has been subsequently developed in the case of ***National Insurance Co. Ltd. Vs. Indira Shrivastava and others [(2008) 2 SCC, 763]***. It has been held that gross salary, excluding compulsory deductions towards taxes have to be considered for calculating loss of

income. He submitted that there were four dependents, but one of the children of deceased has died during the pendency of petition. Therefore, number of dependents are reduced to three, therefore, multiplier should have been taken as one third (1/3).

6. The points for my determination and findings thereon are as follows :-

Nos.	Points		Findings
1	Whether the learned Chairman has not granted just and reasonable compensation to the claimants ?	..	In the affirmative.
2	What order ?	..	The appeal is partly allowed. Compensation enhanced to Rs.**14,13,700**/-

7. As per the evidence on record, the deceased was aged 38 years, who was working as clerk in the Ahmednagar District Central Co-operative Bank. As per the salary certificate, he was permanent employee since 22-04-1990 till his death i.e. 05-09-2004. His salary certificates for the month of April- 2003 (Exhibits-46 and 48) shows that he was getting total salary of Rs. 6810/- as follows :-

Nos.	**Particulars**		**Amount**
01.	Basic Pay	–	Rs. 319/-
02.	Fixed Dearness Allowance	-	Rs. 790/-
03.	Index Dearness Allowance	-	Rs. 5,139/-
04.	House Rent Allowance	-	Rs. 312/-
05.	Medical Allowance	-	Rs. 250/-
		Total …. :-	Rs. 6,810/-

All parts of the salary under different heads are part of the salary itself and not part by way of any allowance to meet his personal expenses in connection with his employment. Therefore, the entire salary was required to be considered. Only deduction permissible was of professional tax of Rs. 175/-. The salary would be reduced to Rs.6635/-. There were heavy deductions towards PF contribution, LIC, society loan, FID Insurance. These deductions are not compulsory made in connections with tax liability. Therefore, these deductions cannot be taken into consideration. I, therefore, hold that salary of the deceased should have been taken into consideration as Rs.6635/- p.m. Besides, the deceased was aged 38 years and was permanent employee. Therefore, as per *Sarla Varma and Pranay Sethi's cases (Supra)*, he is entitled for enhancement of salary by 50% towards future prospects. Therefore, his monthly salary would be Rs.9953/-.

8. The deceased was having wife and three children. One of the children has expired during the pendency of petition. However, we have to take into consideration his existence on the date of death of deceased. There were four dependents in the family of deceased. As per Sarla Varma's case, deductions towards personal expenses should be *one forth* (1/4), therefore loss of income of the claimants is @ Rs.7465/- per month i.e. Rs. 89,580/- per annum. The relevant multiplier for the age of

38 years was '15'. Therefore, the compensation payable on account of loss of salary income was Rs. 13,43,700/-.

9. As per *Pranay sethi's* case, the claimants are entitled to further amount of Rs.40,000/- towards consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, total amount comes Rs. 14,13,700/-. It shall be inclusive of '*No Fault liability*' amount. The rate of interest from the year 2003 till this date was decreased. It would be an appropriate to award interest @ 9% p.a. The learned Chairman erred in considering only net income of Rs. 1895/- per month and not taking into consideration the future prospects. Hence, I answer point No.1 in the affirmative. Applicant No. 2 – Rahul aged 12 years, applicant No.4 Priya aged 6 years have become major. Applicant No.4 Priya is still unmarried. Another son i.e. applicant No.2 namely Amol expired. Considering the facts, I make apportionment and direct to invest the amount as per final order. Hence, the order :-

<u>O R D E R</u>

(a) The appeal is partly allowed with proportionate cost.

(b) The Judgment and Award dated 21st April 2010, passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 420 of 2004, is hereby set aside and modified as follows :-

(i) Respondents No.1 to 3 do jointly and severally pay to the claimants - appellants compensation of Rs.14,13,700/- inclusive of amount of "No Fault Liability' already paid along with interest @ 9% p.a. from the date of petition.

(ii) The apportionment and investment of compensation shall be as follows :-

Claimant's Name	Compensation Amount		Investment be made in any Nationalized Bank for a period
	Awarded	Invested	
Rahul Rajendra Gosavi	2,00,000	1,50,000	One year
Priaya Rajendra Gosavi	5,00,000	5,00,000	Till her marriage
Mangal Rajendra Gosavi	7,13,700	2,00,000	One year
		3,00,000	Three years

(iii) The amount paid earlier will have to be deducted from the dues payable and there shall be similar adjustment of interest payable.

(iv) The deficit court fees, if any, be recovered from the amount payable to the appellants-original claimants prior to disbursement of the compensation amount in their favour.

(v) An award amounting to decree be drawn up accordingly.

[A.M. DHAVALE]
JUDGE

MTK.