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

FIRST APPEAL NO. 3196 OF 2009

1] Smt. Lata Dhanpal Godale,
age 30 years, occ. Household,

2] Nandlal Dhanpal Godale,
age 23 years, occ. Education,

3] Dheeraj Dhanpal Godale,
age 22 years, occ. Education,

4] Yashwant Dhanpal Godale,
age 20 years, occ. Education,

5] Lakhan Dhanpal Godale,
age 15 years, occ. Education,

6] Mamata Dhanpal Godale,
age 16 years, occ. Education,

(Applicant nos. 5, 6 are minor.
Applicant no.1 is the mother
of applicant nos.5 and 6
and is their natural and
legal guardian)

All are residing at Gurunanak
Nagar, Near Maroti Mandir,
Jalgaon, Dist. Jalgaon ...Appellant
[Orig.Claimants]

VERSUS

1] Shri Suresh Damarsingh Pawara,
age Major, occ. Business,
R/o Phule Nagar, Plot No.24,
Shingave, Taluka Shirpur,
Dist. Dhule,

2] United India Assurance Co.Ltd.,
2nd Floor, Mansingh Market,
Station Road, Jalgaon ...Respondents
[Orig.Opponents]

...

Shri M.M.Bhokarikar, advocate for appellants
Shri A.B.Gatne, advocate for Respondent no. 2
Shri A.B.Madke, advocate for Resp. no. 1 (absent)

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING THE JUDGMENT : 10.10.2018
DATE OF PRONOUNCEMENT OF JUDGMENT : 17.10.2018

J U D G M E N T :

Original claimants have filed this appeal for enhancement of compensation, against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 478 of 2006, whereby the Tribunal has awarded compensation to the claimants of Rs. 2,99,340/- with interest at the rate of nine per cent per annum, from the date of petition, till realization of the amount of compensation.

2. Respondent no. 1 is the owner of the offending truck and respondent no.2 is insurer of that truck bearing registration No. MH-18/S-1624.

3. Heard Shri M.M.Bhokarikar, learned counsel for appellants and Shri A.B.Gatne, learned counsel for Respondent no. 2. Learned counsel for Resp. no. 1 is absent.

4. Learned counsel for the appellants submits that the Tribunal awarded meager compensation without considering actual annual income of the deceased minus taxes and without considering future prospects. He submits that as in the family of the deceased, there are six dependents, only $1/5^{th}$ income should have been deducted towards personal expenses of the deceased. The Tribunal deducted $1/3^{rd}$ amount towards personal expenses. He submits that even under the conventional head, the Tribunal awarded only compensation of Rs. 10,000/-, which is against the settled principles of law.

His next limb of argument is that the deceased being 35 years old at the time of his death, multiplier of 16 is applicable in the case at hand.

In support of his submissions, learned counsel for the appellants relied upon the judgment in the case of (1) **"Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr." [AIR 2009 SC 3104];** (2) "**National Insurance Company Limited vs Pranay Sethi" [2018 (3) Mh.L.J. 70];** and (3) **Minu Rout and Anr. vs Satya Pradyumna Mohapatra and Ors. [AIR 2013 SC (Supp) 62].**

5. Learned counsel for respondent no.2 submits that while considering the monthly income of the deceased, all allowances shall be deducted in addition to income tax and other taxes.

His next submission is that there was contributory negligence on the part of the deceased, as the accident occurred when the deceased was overtaking one truck on the bridge. He submits that the insurance company is liable only to pay fifty per cent compensation amount out of the compensation awarded by the Tribunal. Regarding compensation under conventional head, he submits that the ratio of “**National Insurance Company Limited vs Pranay Sethi” [2018 (3) Mh.L.J. 70]** is not applicable in the present case, as in the year 2002 the law was otherwise. He placed reliance on the judgments in the case of (1) **National Insurance Co. Ltd. Vs Vaishali Harish Devare and others [2013 (1) Mh.L.J. 411]**; and (2) **National Insurance Co. Ltd. Vs Indira Srivastava and Ors. [(2008) 2 SCC 763].**

6. At the out set, I must observe that in this appeal by the original claimants for enhancement of compensation awarded by the Tribunal, in absence of Cross-objection filed by the insurance company, now it is not open for the insurance company to re-agitate the point whether there was contributory negligence on the part of the deceased or not. Otherwise also, in absence of examination of the driver of the offending truck

and in absence of his evidence, respondent no.2 cannot prove contributory negligence on the part of deceased only on the basis of recitals of the first information report. Thus, the objection raised by the learned counsel for respondent no.2 that there was contributory negligence on the part of deceased is rejected.

7. In the present appeal, I have only to decide what is just and reasonable compensation, which can be awarded to the claimants. There cannot be two opinions regarding law laid down by the Apex Court in **National Insurance Co. Ltd. Vs Indira Srivastava** (supra) that the expression "just compensation" imposed also be given its logical meaning. It cannot be a bonanza or source of profit. In considering what would be just and equitable compensation, all facts and circumstances must be taken in to consideration.

8. While determining the quantum of compensation, initially I must ascertain what was the age of the deceased on the date of his death.

The birth certificate of the deceased is not placed on record. However, on the basis of postmortem notes (Exh.31), it can be ascertained that on the date of death, the deceased was 35 years old person. Therefore, in view of guidelines issued by the Supreme Court in **Sarla Verma** (supra), proper multiplier applicable is 16.

9. To prove the monthly income of the deceased, claimants have examined Damodhar Kunwar (PW 2), the employee of Jalgaon Municipal Corporation. This witness has proved the pay slip of deceased, who used to work as, Safai Kamgar in Jalgaon Municipal Corporation. The date of accident is 20.3.2006. The pay slip (Exh.52) is of the month of February, 2006, which is the last pay of the deceased. This pay slip shows that the total salary of the deceased is Rs.7135/- including basic pay, dearness allowance, house rent allowance, washing allowance and vehicle allowance. Out of these different allowances, in view of law settled by the Division Bench of our High Court, in **National Insurance Co. Ltd. Vs Vaishali Harish**

Devare (supra), the amounts which were paid to the deceased by way of perks should be taken into consideration for computation of monthly income if the perks were for the benefit of the family of the deceased. However, the allowances which were meant only for his personal benefit cannot be taken into consideration. Income tax will have to be deducted from the income while arriving at the income for determining multiplicand. In **National Insurance Co. Ltd. Vs Indira Srivastava** (supra), the Supreme Court held that :

> " Section 168 uses the word "just compensation" which should be assigned a broad meaning. The term "income" has different connotations for different purposes. A Court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. In determining what constitutes income it cannot be lost sight that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire

> family. If some facilities are being provided whereby the entire family stands to benefit, the same, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined."

10. Thus, washing allowance of Rs.45/- and vehicle allowance of Rs.75/- needs to be deducted from the monthly pay of the deceased. In addition to these personal allowances of the deceased, professional tax of Rs.175/- shall be deducted from the monthly salary of the deceased. Thus, total deduction from the monthly pay of the deceased is Rs.45+75+175=295. Thus, after total deductions, monthly salary of the deceased is assessed as Rs.7135-295=6840/-.

The deceased was 35 years old permanent employee of Jalgaon Municipal Corporation. In view of guidelines issued by Larger Bench of the Apex Court in **National Insurance Company Limited vs Pranay Sethi** (supra), there shall be addition of 50 per cent actual salary of the deceased, which is assessed as Rs.3420/-. Thus, monthly income of the deceased is assessed as Rs.6840+3420=10260/-. Annual income of the deceased is assessed as Rs.10260x12=123120/-.

As there are six dependents in the family of deceased, as per the guidelines issued by the Apex Court in **Smt. Sarla Verma and Ors. Vs Delhi Transport Corporation** (supra), 1/5th income is to be deducted towards personal expenses of the deceased, which is assessed as Rs.24624/-. Thus annual contribution of the deceased to his family is assessed as Rs.123120-24624=98496/-.

Applying multiplier of 16 to this multiplicand, loss of dependency is assessed as Rs.98496x16=1575936/-. The claimants are entitled to compensation of Rs.1575936/- under the head of loss of dependency.

11. After going through the judgment passed by the Tribunal, it emerges that the Tribunal has erroneously deducted 1/3rd income towards personal expenses of the deceased and even the Tribunal has wrongly assessed the annual income of the deceased as Rs.31860/- by treating his monthly salary as

Rs.2655/-. In addition to these mistakes, the Tribunal has awarded meager compensation under conventional head i.e. Rs.2000/- for funeral expenses, Rs.2500/- for loss of estate and Rs.5500/- for loss of consortium.

12. In **National Insurance Company Limited vs Pranay Sethi** (supra), the Apex Court has fixed the amount of compensation payable to the dependents under conventional head as, Rs.40000/- towards loss of consortium, Rs.15000/- towards loss of estate and Rs.15000/- towards funeral expenses. Thus, the claimants are also entitled to compensation of Rs.70000/- under the head of conventional head.

13. My conclusion is that, the appellants are entitled to total following compensation under different heads.

Loss of dependency	:	Rs.1576936/-
Loss of Consortium	:	Rs. 40000/-
Loss of Estate	:	Rs. 15000/-
Funeral Expenses	:	Rs. 15000/-
Total	:	Rs.1646936/-

Thus, the appellants are entitled for total compensation of Rs.1646936/- with interest at the rate of nine per cent per annum from the date of filing of petition till realization of compensation amount, inclusive of compensation received by the appellants under Section 140 of the Motor Vehicles Act.

14. I hold that this appeal deserves to be allowed. Accordingly, First Appeal No. 3196 of 2009 is allowed. The judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 478 of 2006 is modified to enhance compensation to the extent of Rs.1646936/- (Rs.Sixteen Lac Forty Six Thousand Nine Hundred Thirty Six Only) with interest of nine per cent per annum from the date of filing of petition till realization of compensation amount, inclusive of compensation received by the appellants under Section 140 of the Motor Vehicles Act. Apportionment of compensation as directed by the Tribunal is confirmed. Parties to bear their respective costs of the appeal. Deficit court fee,

if any, be recovered from the appellants, as per rules.

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

dbm