

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

FIRST APPEAL NO. 368 OF 2017

1. Shri. Bhagwat Namdev Dunde,
Age : 45 years, Occu. Labourer,
2. Sau. Sushilabai Bhagwat Dunde,
Age : 40 years, Occu. Household,
3. Chi. Rahul Bhagwat Dunde,
Age : 17 years, Occu. Education,
4. Ku. Tejaswini Bhagwat Dunde,
Age : 15 years, Occu. Education

(Appellant No. 1 is legal guardian of appellant nos. 3 and 4 being father)

All R/o. Gondkhed, Tal. Jamner,
Dist. Jalgaon.

... The Appellants
(Orig. Claimants)

VERSUS

1. Shri. Dinesh Kantilal Bedmutha,
Age : Major, Occu. Business,
R/o Jamner, Tal. Jamner, Dist. Jalgaon.
2. The National Insurance Company Ltd.,
Through Divisional Manager,
Division Office, Saibaba Market,
2nd Floor, Jalgaon, Tal. & Dist. Jalgaon.

...The Respondents

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Mr Madhav M. Bhokarikar, Advocate for the appellants
Mr Kalyan V. Patil, Advocate for respondent No. 1 (Absent)
Mr Atul B. Gatne, Advocate for respondent No. 2

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CORAM : A. M. DHAVAL, J.
DATE : 27TH JULY, 2018.

ORAL JUDGMENT :-

1. The appellants are parents and minor brother and sister of the deceased Gajanan, aged 21 years, who died in accident on 28.10.2013. The Motor Accident Claims Tribunal (MACT), Jalgaon by judgment dt. 11.01.2016 in MACP No. 343/2013, awarded compensation of Rs. 7,52,000/- with interest at the rate of 7.5% p.a. Still, the claimants expect higher compensation and they have preferred this appeal.

2. Shri. M. M. Bhokarikar, learned counsel for the appellants argued that, the deceased was aged 21 years and was getting gross salary of Rs. 6045/-. The Tribunal erred in taking his salary at Rs. 5,000/- by wrongly considering the deductions. The Tribunal awarded future prospects at the rate of 30%. Those should have been awarded at the rate of 50%, as per the law prevailing then, but, now in view of the judgment in **National Insurance Company Vs. Pranay Sethi** reported in **AIR 2017 SC 5157** (Bench of 5 Judges), the future prospects should be quantified at 40% with multiplier of 18 and there should be proportionate enhancement. He fairly conceded that, as per Pranay Sethi's case (supra), the compensation under conventional heads should be Rs. 30,000/- only. He submitted that, claimant Nos.3 and 4 were aged 17 and 15 years and were dependants on the deceased. They should be taken into

consideration while deducting the amount towards personal expenses. It should be $1/4^{\text{th}}$ and not $1/3^{\text{rd}}$.

3. Per contra, learned advocate Shri. Gatne for respondent No. 2 submitted that, the deceased was working as a daily labourer. The employer examined by the claimants have given admission to that effect. He was getting Rs. 242/- per day. Therefore, he cannot be treated as an employee with fixed salary so as to grant him enhancement under the head of future prospects. He also relied on various judgments to submit that the conveyance allowance and other benefits, which do not go to the family, should not be taken as part of the salary. He argued that, in case of person having parents, normally his brother and sister who are dependant on his father cannot be said to be dependants on the deceased and they cannot be counted for determining the share for deduction of personal expenses. The rulings cited by both the parties shall be considered in due course.

4. The points for my consideration with my findings thereon are as follows:-

Sr. No.	Point	Finding
1	Whether the deceased was a person on fixed salary entitled for future compensation?	...In the affirmative.

2	What is the salary of the deceased to be considered for grant of compensation?	Rs. 5430/- + future prospects 40% = Rs. 7602/- per month.
3	Whether the learned Tribunal has not granted just and reasonable compensation to the claimants?	Yes. Compensation enhanced to Rs. 8,51,016/- with interest @7.5% p.a. and proportionate costs.
4	What Order?	The appeal is partly allowed.

REASONS

5. The evidence on record shows that, deceased Gajanan was aged 21 years. His father and mother were aged 45 and 40 years, and brother and sister were aged 17 and 15 years, respectively. The occupation of father, brother and sister is shown as labourer. The deceased was appointed in a company as an employee through contractor. The claimants pleaded that, the deceased was getting Rs. 220/- per day whereas; CW2 Vitthal has stated that he was paying Rs. 242/- per day as per Minimum Wages Act, but he was getting work everyday. The certificate about wages was at the rate of Rs. 242/- per day only, but later on CW2 has produced its official record showing salary of the deceased.

6. There is evidence and finding of the Tribunal that, on 28.10.2013 at about 5:30 pm, the deceased Gajanan was proceeding

on his bike and one Luxury bus owned by respondent No. 1 insured with respondent No. 2 gave him a dash which resulted into death of Gajanan instantaneously. The driver of the Luxury bus has been charge-sheeted by the police. The liability of respondents No. 1 and 2 to pay the compensation stands accepted as the respondents have not preferred any appeal.

7. Normally, the employee appointed on daily wages is not entitled to claim benefit of future prospects. In Pranay Sethi's case (supra), the Apex Court considered the earlier rulings in this regard and observed as follows:

57. [Section 168](#) of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. *It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the*

Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

. At the end, it was observed that,

59(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.

8. As per judgment in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121, the benefit of future prospects was earlier granted to the persons having permanent job depending upon the age of the victim. In Pranay Sethi's case (supra), the same benefit has been extended to self-employed persons with fixed salary but at lower rates. The crucial question is, whether the deceased in the present case can be held to be on fixed salary or a daily wage earner who is getting the dues in

lump-sum at the end of the month. The evidence on record shows that he was employed by contractor and was getting wages at the rate of Rs.242/- per day. He worked for 26 days. At this rate, his salary should have been 6292/-. In the present case, the deceased was getting salary which is divided into various heads as follows:

Basic.	Rs. 2672/-
Conveyance	Rs. 936/-
H.R.A.	Rs. 935/-
Medical	Rs. 935/-
Others allowances	Rs. 1063/-

	Rs. 6541/-

9. It was also subject to provident fund scheme and provident fund of Rs. 321/- was deducted from his salary. Besides, professional tax of Rs. 175/- was also deducted from his salary. The Apex Court in Pranay Sethi's case has observed that, "we are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative". Thus, the Apex Court has given benefit of future prospects at lower rates for the persons who were self-employed or persons on fixed salary.

10. In the present case, the deceased was working in a company not directly as an employee of the company but, appointed through the contractor and was getting salary as per minimum wages. He was getting job throughout the month and was getting salary at the end of the month. Perhaps, he may not be entitled for annual increments and there may not be job certainty but those cases are covered in respect of employees entitled for fixed salary. Considering the beneficial legislation and the reasoning given by the Apex Court in Pranay Sethi's case, I hold that, the workers working in a company appointed by a Contractor who are getting work regularly and salary at the end of month and subject to PF scheme, should be treated as workers having fixed salary. Therefore, they will be governed by para 59.4 of the judgment in Pranay Sethi's case (supra).

11. The next question is, how much salary should be considered for the purpose of determining the compensation. The learned advocate Shri. Gatne relied on National Insurance Company Vs. Indira Srivastava reported in 2008(2) SCC 763 wherein it is observed that, the salary includes the benefits which are meant only for the personal benefit of the employee.

12. Relying on this judgment, the Division Bench of this Court at Principal Seat in National Insurance Company vs. Vaishali Deore

reported in 2013(1) Mh.L.J. 411, in para 18, declined to include uniform washing allowances, transport allowance and conveyance allowance as part of the salary. Learned advocate Shri. Bhokarikar relied on the judgment in Sunil Sharma & Ors. vs. Bachitar Singh and others reported in 2011 AIR SCW 2811, wherein house rent allowance and CCA were included in the salary and PPF and CIF deductions were not considered as deductions for computing the monthly salary. In Manasvi Jain vs. Delhi Transport Corporation reported in 2014 AIR SCW 2604, deductions towards GPF, HRA and Insurance were not considered for deduction in the monthly salary. It was held that, except deductions towards income tax, no other deductions should be made.

13. After taking into consideration the binding precedents of the Apex Court, I hold that, conveyance allowance of Rs. 936/- will have to be deducted from total salary of Rs. 6541/-. Besides, professional tax of Rs. 175/- will also have to be deducted. Thus, the monthly income of the deceased will have to be taken at Rs. 6541/- minus Rs. 936/- minus Rs. 175/-, total Rs. 5430/- per month. The deceased was aged 21 years and, therefore, as per judgment in Pranay Sethi's case, his income will have to be enhanced by 40% and will have to be assumed at Rs. 7602/- per month.

14. The deceased was bachelor. His father was then aged 45 years and was earning. He had two minor siblings who claim to be dependants. Mr Bhokarika submitted that, as there were four dependents, the expenses for personal deductions should be taken at $1/4^{\text{th}}$ whereas; Id. advocate Shri. Gatne submitted that, the personal deductions should be taken at $1/2$. In Pranay Sethi's case (supra), the following view of Sarla Verma's case has been quoted with approval.

"Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father."

15. In the present case, the father was aged 45 years and was earning. There is no evidence to show that the minor siblings of the deceased were not dependant on their father. Considering the facts, I proceed with the normal rule of 50% deductions. Thus, the loss of salary would be Rs. 3801/- per month i.e. 45,612/- per annum. The multiplier applicable would be that of the deceased and not of the parents. It would be 18 and the loss on income would be Rs.

8,21,016/-. In addition, the claimants are entitled for Rs. 15,000/- towards loss of estate and loss of Rs. 15,000/- towards funeral expenses. Thus, the claimants are entitled for Rs. 8,51,016/-.

16. The ld. trial Judge erred in taking the salary at Rs. 5,000/- and granting future prospects of 30%. He has granted funeral expenses and loss of love & affection of Rs. 50,000/-. In view of judgment in Pranay Sethi's case (supra), those will have to be reduced to Rs. 30,000/-. Thus, the claimants are entitled for Rs.8,51,016/-. The appeal deserves to be partly allowed. Hence, the following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) The judgment and decree of the Tribunal is hereby modified. Respondents No. 1 and 2 do jointly and severally pay to the claimants Rs. 8,51,016/- (inclusive of NFL) along with interest at the rate of 7.5% p.a. and proportionate costs.
- (iii) Since the claimants No. 3 and 4 have become major, there is no question about investment.
- (iv) The amount already paid shall be deducted from the liability and considered while calculating interest.

- (v) Advocate Shri. Gatne submits that, Insurance Company would pay the balance amount along with interest within eight (8) weeks from today. The Insurance Company shall issue cheque in the name of claimant No. 2 (mother) on production of authority on behalf of the claimants, in the trial Court.
- (vi) The appellants shall pay deficit court fees, if any.
- (vii) On payment of deficit court fee, award amounting to decree be drawn up accordingly.

[A. M. DHAVAL]
JUDGE

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