IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 266 OF 2017

New India Assurance Company Ltd.,
Through Branch Manager,
Abbott Building, 1st Floor,
New Ashoka Hotel, Kind Road,
Ahmednagar.

Through its Divisional Manager/
Authorized Signatory,
Adalat Road, Mahesh Auto Compound,
Aurangabad.

APPELLANT
(Original Respondent No.2)

VERSUS

1) Kantabai Dattatraya Salve,
Age; 37 years, Occupation; Household,

2) Sangeeta Dattatraya Salve,
Age; 19 years, Occupation; Education,

3) Sunita Dattatraya Salve,
Age; 16 years, Occupation; Education,
Since Minor Under Guidance of
mother Kantabai.

4) Nilesh Dattatraya Salve,
Age; 19 years, Occupation; Education,

All resident of Jamhked,
Taluka; Jamkhed,
District; Ahmednagar.

5) Mahadeo Bhagwan Yamgar,
Age; Major, Occupation; Busines,
Resident; Plot No. 57,
Hucheswar Nagar,
Kumaihr Naka, Solapur.

RESPONDENTS
(Respondent Nos. 1 to 4 Original
Claimants and Respondent
No. 5 – Original Respondent No. 1)

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Shri. S.G. Chapalgaonkar, Advocate for Appellant
Shri. A.S. More, Advocate for Respondent No. 1
Shri F.K. Patel, Advocate for Respondent No. 5
Respondent Nos. 2 to 4 Served.

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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 19.9.2018

Date of Pronouncing Judgment : 24.9.2018

J U D G M E N T :

The appeal is admitted. Respondents waive service of notice of final hearing. Appeal is heard with the consent of both the parties.

2. This appeal is directed by respondent no. 2 Insurance Company of offending Lorry / Truck No. MH-13-R-1969, which was involved in the motor vehicular accident dated 4.1.2007, resulting into death of Dattatraya Salve, who was driving Tata Sumo No. MH-16-R-1728. The respondent Nos. 1 to 2 are the original claimants and respondent no. 5 is original respondent no. 1, who is the registered owner of offending vehicle.

3. The application for compensation was filed under Section 163 -A of Motor Vehicles Act, 1988 (hereinafter referred to

as “M.V .Act”). The learned Tribunal awarded compensation of Rs. 6,010,000/- with interest thereon @ 9 % p.a. from the filing of this petition till the date of deposit of this amount.

4. Heard Shri S.G. Chapalgaonkar, learned Cousnel for appellant, Shri A.S. More, learned counsel for respondent no. 1 and Shri F.K. Patel, learned counsel for respondent No. 5.

5. The learned Counsel for appellants submits that though, claimants filed application under Section 163-A of the M.V. Act, the learned Tribunal awarded the compensation as if, it was the petition filed under Section 166 of M.V. Act. He submits that when claim petition is filed under Section 163-A of M.V.Act, the compensation is to be awarded only in accordance with structural formula given under Second Schedule of the M.V. Act. His main objection is regarding grant of non pecuniary compensation of Rs. 50,000/- to claimant No. 1 (wife) and Rs. 1,50,000/- to claimant nos. 2 to 4, Rs. 25,000/- for transportation and funeral expenses and Rs. 25,000/- for loss of estate. He submits that even multiplier of “15” is wrongly applied by trial Court applying the ratio of “**Smt. Sarla Varma vs Delhi Transport Corporation [2009 (5) Mh.L.J. (SC) 775]**. The learned Counsel for appellants submits that in the case of **“Smt. Sarla Varma”** the Apex Court was considering applicability of suitable multiplier in the Claim petitions under section 166 of M.V.Act and not

under Section 163-A of the M.V.Act. He prays for re-assessment of compensation.

6. The learned counsel for respondent No. 1 placed reliance on **“Reshma Kumari vs Madan Mohan” [2013 (3) ALL M.R. 460]**, and **“National Insurance Company Ltd. Vs Pranay Sethi” [2018 (3) Mh.L.J. 70]**. Relying on these authorities, learned counsel for respondent no. 1 submits that the law laid down by Apex Court in above cited two authorities is applicable in the cases filed under Section 163-A of M.V.Act and the ratio of these authorities is not restricted with claim petitions file under section 166 of the M.V. Act. He submits that while awarding compensation, the tribunal did not award additional compensation under the head of “Loss of Future Prospectus”, and even the Tribunal erroneously deducted one third income from the annual income of deceased, though in accordance with law laid down by Apex Court in **“Smt. Sarla Varma (supra)**” as there are four Claimants in the family of deceased, only one forth income can be deducted from the annual income of deceased while determining the loss of dependency. He submits that at the most in accordance with law laid down by the Larger Bench of the Apex Court in **“Pranay Sethi” (supra)**, the compensation awarded under conventional head can be reduced as Rs. 40,000/- for loss of consortium, Rs. 15,000/- each for funeral expenses and loss of estate. He submits that the claimants are entitled to compensation of

Rs. 6,37,000/- instead of Rs. 6,10,000/- as awarded by the Tribunal. He prays for enhancement of compensation. For that purpose, he placed reliance on **“New India Assurance Co. Ltd. Vs Smt. Seema Auti” decided by this Court on 9.6.2017 in First Appeal No. 1991 of 2011**, awarding enhanced compensation, even in absence of Cross Appeal or Cross Objection in the Appeal preferred by the Insurance Company.

7. The most important point which first arises for my consideration is, “whether in the petitions filed under Section 163-A of the M.V.Act, the ratio or law laid down by the Apex Court in **Smt. Sarla Varma (supra), Pranay Sethi (supra) or Reshma Kumari (supra)** is applicable”.

8. Therefore, I have carefully gone through these three cases and fully satisfied that in those matters, the Apex Court was considering applicability of proper multiplier, proper deductions; compensation for the loss of future prospectus and proper compensation under conventional heads, only in the petitions filed under Sections 166 of the M.V.Act. In **Smt. Sarla Varma in paragraph No. 18 of the judgment the Apex Court** observed that,

> “The principle relating to determination of liability and quantum of compensation are different for claims made under section 163-

A of M.V.Act and claims under section 166 of the M.V. Act.” In paragraph No. 20 of the judgment the Apex Court observed that "we are concerned with cases falling under section 166 of the M.V. Act and not under section 163-A of the M.V. Act.” Even in **“Reshma Kumari” (supra)** in paragraph No. 10 and 11 of the judgment, the Apex Court observed that “in 1988 Act gives choice to the claimants to seek compensation on structural formula basis as provided in Section 163-A of M.V. Act or make an application for compensation arising out of an accident of the nature specified in Sub Section (1) of Section 165, under Section 166 of M.V. Act. The claimants have to elect one of the two remedies provided in Section 163-A and Section 166 of the M.V. Act. The remedy provided in Section 163-A is not a remedy in addition to the remedy provided in Section 166 but, it provides for an alternative course to Section 166 of the M.V. Act. Under section 163-A of M.V. Act, the claimants are

> not required to plead or establish that the death of permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of owner or owners of the vehicle concerned. When application for compensation is made under Section 163-A; the compensation is paid as indicated in the IInd Schedule. On the other hand by making an application for compensation arising out of accident under section 166 of M.V. Act it is necessary for claimants to prove negligence on the part of driver or the owner of the vehicle. We are confronted with the question whether while considering an application for compensation made, under section 166, the multiplier specified in II nd Schedule can be taken to be guide for determination of amount of compensation."

10. Thereafter, the Three Judges Bench of the Apex Court considered the applicability of proper multiplier in the claim Petitions filed under section 166 of the M.V.Act.

11. Even in **“Pranay Sethi” (supra)**, the Larger Bench of the Apex Court considered the applicability of proper multiplier, compulsory deductions for personal expenses of the deceased, additional compensation for the loss of future prospectus and proper compensation under conventional heads that is loss of consortium, loss of estate and funeral expenses, only in the claim Petitions filed under sections 166 of M.V. Act. The law laid down by the Apex Court in above referred cases of the Supreme Court is not applicable in the claim petitions filed under section 163-A of the M.V. Act.

12. In the case at hand, after going through the petition, it become crystal clear that it was filed only under Section 163-A of the M.V. Act and not under section 166 of the M.V.Act. However, the learned Tribunal erroneously passed judgment, as if, it was the petition filed under Section 166 of the M.V. Act. Even in the opening paragraph the Tribunal made erroneous observation that, “this petition is under section 166 of M.V. Act.” Therefore, while awarding compensation, Tribunal erroneously considered and made applicable the law laid down by the Apex Court in **“Smt. Sarla Varma” (supra)** while considering the applicability of proper multiplier. The trial Court without considering the IInd Schedule of the M.V. Act, which is only applicable in claim Petition under section 163-A of the M.V. Act awarded exorbitant compensation under different heads as under :

a)	Loss of future income	Rs. 3,60,000/-
b)	Loss of consortium	Rs. 50,000/-
c)	Loss of love and affection	Rs. 1,50,000/-
d)	Transportation and funeral expenses	Rs. 25,000/-
e)	Loss of estate	Rs. 25,000/-

	Total =	Rs. 6,10,000/-
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13. Therefore, now while assessing the proper compensation to the claimants after applying the structural formula provided under section 163-A IInd Schedule of M.V. Act, the following compensation is payable to the claimants.

14. The postmortem report of the deceased shows that at the time of death, the deceased was 35 years old. Therefore, as per structural formula given under section 163-A of M.V. Act (II nd Schedule) proper multiplier is "17". The notional monthly income of the deceased is considered by Tribunal as Rs. 3,000/-. Even in the petition, the claimants have claimed that the deceased used to draw monthly salary of Rs. 3200/-. Even accepting this contention as it is, the annual income of the deceased is calculated as (Rs. 3200 x 12 = 38,400/-) . As per IInd Schedule, from this amount one third income is to be deducted towards self-expenditure of the deceased. Thus,

available contribution of the deceased to the family is (Rs. 38,400 – 12,800) = 25,600/-. After applying multiplier of "17", the total loss of dependency is assessed as Rs. 25,600 x 17 = 4,35,200/-.

15. Under IInd Schedule of M.V. Act, only following general damages can be awarded to the Claimants in addition to above compensation.

a)	Funeral expenses	Rs.	2,000/-
b)	Loss of consortium	Rs.	5,000/-
c)	Loss of estate	Rs.	2500/-

Therefore, the claimants are entitled to following compensation under different heads.

1)	Loss of dependency	Rs.	4,35,000/-
2)	Loss of consortium	Rs.	5,000/-
3)	Funeral expenses	Rs.	2,000/-
4)	Loss of estate	Rs.	2500/-

	Total =		4,44,500/-
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16. As observed above the law laid down by the Apex Court in **"Pranay Sethi" (supra)** is not applicable in the claim petition filed under section 163-A of M.V.Act. Therefore, additional compensation

under the head of loss of future prospectus and conventional compensation as specified in **"Pranay Sethi" (Supra)** case, cannot be awarded. Thus, in any case, the claimants are entitled to total compensation of Rs. 4,44,500/-, with interest thereon at the rate of 9% per annum from the date of filing of petition till realization. The Claimants are also entitled to proportionate cost of the petition. Original respondent Nos. 1 and 2 are jointly and severally liable to pay this compensation to the Claimants.

17. It follows that this appeal deserves to be partly allowed in above said terms. No order as to costs of appeal. The award passed by M.A.C.T. Ahmednagar in MACP No. 247 of 2009 be modified in above said terms. The claimant are at liberty to withdraw the compensation amount already deposited in this Court and the balance amount be refunded to appellant Insurance Company.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/