IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 265 OF 2017

1 Rafik S/o. Nasir Shaikh,
Age 32 years, Occu. Labour,
R/o. Andhaner, Taluka Kannad,
District Aurangabad.

2 Nasrin W/o. Rafik Shaikh,
Age 28 years, Occu. Household,
R/o. As above. .. Appellants
(Original Claimants)

Versus

1 Osheem S/o. Sabir Miyan,
Age Major, Occu. Driver,
R/o. Village Bhairnalli, Tq. Bidar,
Dist. Bidar (Karnataka State).

2 Mohd. Sadiq Ali S/o. Mohd. Saber Ali,
Age Major,Occu. Business,
R/o. House No. 79, Bhairnalli, Tq.
Bidar, District Bidar (Karnataka State).

3 Shriram General Insurance Co. Ltd.
Through its Branch Manager,
Branch Office at
Aurangabad. .. Respondents
(Original Respondents)

...

Mr. R. V. Gore h/f. Mr. Shivaji K. Shirse, Advocate for appellants.
Mr. S. G. Chapalgaonkar, Advocate for Respondent No.3.

...

CORAM : A. M. DHAVALE, J.

DATED : 3rd AUGUST, 2018.

JUDGMENT :-

Being aggrieved by Judgment and Award dated 12-07-2016 passed by the learned Member, Motor Accident Claims (MAC) Tribunal, Court No.6, Aurangabad, in MAC Petition No. 517 of 2015 thereby awarding the compensation of Rs.1,10,000/- including no fault liability with interest @ 9 % per annum for the death of child aged two and half years, the appellants-original claimants prefer this appeal for enhancement.

2. It is not in dispute that Saniya @ Aliya Rafik Shaikh was the daughter of appellants-claimants and on 05-04-2015 at 5.45 hours, she met with an accidental death involving truck bearing No. MH-04-EL-1230 owned by respondent No.2, driven by respondent No.1 and insured with respondent No.3. Though, in the petition it was claimed she was aged about four years, in fact the learned Tribunal found that she was just two and half years old. The learned Tribunal awarded compensation of Rs.85,000/- as loss of income and Rs.25,000/- as non-pecuniary damages, and thus, awarded total compensation Rs.1,10,000/-.

3. Mr. Gore holding for Mr.Shirse, learned Advocate for the appellants-claimants relying on the Judgment of Apex Court in the case of ***Kishan Gopal Versus Lala [2014 AIR SC (Supp) 173]*** submits that in a case of death of young boy who was aged 10 years, the Apex Court assumed his notional income Rs.30,000/-, multiplier of 15 was applied and awarded compensation of Rs.5,00,000/- to him. He, therefore, submits that the compensation awarded by learned Tribunal is too meager and it should be enhanced in the light of ratio laid down in the aforesaid Judgment.

4. Mr. Chapalgaonkar, learned Advocate for respondent No.3 submits that same case is distinguishable on facts; that deceased boy was helping his parents in their agricultural occupation. He relied on the Judgment in a case of ***Lata Wadhwa Versus State of Bihar [(2001) 8 SCC 197]***, wherein the Apex Court has awarded Rs.2,00,000/- for the age group 5 to 10 years. He submitted that as per the Second Schedule, the income of the deceased child should be

taken as Rs.15,000/- and there should be one third deduction, the loss comes to Rs.10,000/-. The multiplier '15' would be applicable. Thus, the appellants-claimants are entitled to Rs.1,50,000/-. In addition, as per ratio laid down in the case of ***National Insurance Company Limited Versus Pranay Sethi, [(2017) 16 SCC 680]***, the claimants are entitled to Rs.30,000/-. Relying on ***R.K.Malik Vs. Kiran Pal [SC 2009 5173]***, submits that in that case on 18-11-1997 when the school boys were proceeding to the school in a bus and after overrunning the road and breaking the railing got drowned in Yamuna river at Wazirabad Yamuna Bridge, the learned Tribunal awarded compensation of Rs.1,55,000/- to the dependents of children between age group of 10 to 15 years, Rs.1,65,000/- between 15 to 18 years and Rs.1,31,000/- for the students below 10 years. The multiplier 15 for children below 15 years and multiplier of 16 for children between 16 and 18 years was applied. In the High Court, compensation was enhanced by Rs.75,000/-. The aggrieved claimants went to the Supreme Court and the Supreme Court granted further enhancement by Rs.75,000/- to the dependents towards future prospects looking to the educational career and performance of deceased students in the school. He submitted that in the present case the compensation on account of death of deceased should not exceed Rs.2,00,000/- to 2,50,000/-.

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

Nos.	Points		Findings
1	Whether the learned Tribunal has awarded just and proper compensation to the claimants ? If no, at what rate ?	..	In the negative. Compensation Enhanced to Rs.2,55,000/- inclusive of all heads.

2	What order ?	..	As per final order.

6. Grant of compensation is always based on guess work. In order to bring equality, the Apex Court introduced multiplier factor method and issued guidelines regarding fixation of compensation for loss under transaction. Still in case of the child aged below 5 years like in the present case, it is very difficult to determine the compensation. The legislation does not help in such cases. As per settled provision even in claim petition under Section 166 of the Motor Vehicles Act (in short 'Act'), the provision of the Second Schedule, Section 163-A of the Act can be considered. Schedule 163-A of the Act prescribes notional income of Rs.15,000/- per annum for child below 15 years of age, non earning person in fatal and disability in non-fatal accident cases. The chart also lays down that there should be one third deduction towards personal expenses. This chart is not free from ambiguity. If the notional income of child is assumed Rs.15,000/- per annum out of which one third deduction towards personal expenses, the loss of income comes to Rs.10,000/- per annum, The multiplier '15' would be applicable. It would come to Rs.1,50,000/- plus compensation under conventional heads. The general damages shall be payable in addition to compensation outlined i.e. Rs.2,00,000/- + other nominal compensation like funeral expenses Rs.2,000/-, loss of estate Rs.2,500/- etc. Whereas, the chart shows the compensation of Rs.2,40,000/- for income of Rs.12,000/- p.a. and Rs.3,60,000/- for income of Rs.18,000/- p.a. Thus, for income of Rs.15,000/-, it has to be assumed at Rs.30000/-.

7. In R.K.Malik's case in paragraph No.32, it is laid down that there should be compensation awarded towards future prospects. But, in the present case when the child is of two and half years age, there could be no future prospects on the line of discussion in the Judgment i.e. performance in the school. This schedule was legislated long back in year 1994 and in spite of major changes in price index and lowering down of the price of Rupee, no changes are effected in the Schedule. In some Apex Court's Judgment, no deductions towards personal expenses are shown in case of children below 5 years.

8. Considering all the aspects, I feel that lump-sum amount of Rs.2,25,000/- towards loss of income and Rs.30,000/-, towards loss of estate and funeral expenses would meet the ends of justice. The compensation of Rs.1,10,000/- awarded by learned Member, Tribunal is too meager. Hence, I answer the point No.1 accordingly and proceed to pass the following order :-

O R D E R

(1) The appeal is partly allowed with proportionate costs.

(2) The impugned Judgment and Award dated 12th July, 2016 passed by the Member, Motor Accident Claims Tribunal, Aurangabad, in MACP No. 517 of 2015 is set aside and modified as follows:-

(i) The respondents do jointly and severally pay to the claimants Rs.2,55,000/- inclusive other heads on account of death of deceased Saniya @ Aliya Rafik Shaikh with interest @ 9 % per annum from the date of petition.

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

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

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

[A. M. DHAVALE]
JUDGE

rrd.