

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

FIRST APPEAL NO. 1455 OF 2017

1. Sushiladevi Sudish Shaha
Age : 28 yrs, occu.: household.
2. Kundankumar Sudish Shaha
Age : 8 yrs, oucc.: education
3. Vivek Sudishkumar Shaha
Age : 6 yrs, occu.: education.
4. Vikas Sudishkumar Shaha
Age : 4 yrs, occu.: education.

(Appellant Nos.2 to 4 being minor
under guardianship of claimant
N.1, mother).

All above r/o Shri Kaila Patil
Metal Industries, Pachora to
Jamner Road, Pachora,
District Jalgaon.

5. Vajinath Rameshwar Shaha
Age : 65 yrs, occu.: household.
6. Dularidevi Vajinath Shaha
Age : 60 yrs, occu.: household

Appellant Nos.5 & 6 are
R/o Ningha, Taluka Barauni,
District Begusarai (Bihar State).

Appellants.

Versus

1. Dinesh Eknath Tawade
Age : 40 yrs, occu.: business
R/o Plot No.15, SBI Colony,
Pachora, District Jalgaon.

2. New India Assurance Co. Ltd.
Mandore Market, Dadhiwala
Bungalow, Mehrun Road, Jilha
Peth, Jalgaon, Dist. Jalgaon.

Respondents.

Mr. M.M. Bhokrikar, Advocate for the appellants.
Mr. Shaikh Ashfaq, Advocate holding for
Mr. A.P. Avhad, Advocate for respondent No.1.
Mr. Dhananjay Deshpande, Advocate for respondent No.2.

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 23rd October 2018.

Judgment pronounced on : 30th October 2018.

JUDGMENT.

1. This appeal is directed by the original claimants and original respondent Nos.3 and 4 against judgment and award passed by Motor Accident Claims Tribunal, Jalgaon (hereinafter referred to as "Tribunal") in Motor Accident Claim Petition No.496/2008, for enhancement of compensation.

2. Respondent No.1 is the owner of tanker bearing registration No. MH-19-Z-2283 (hereinafter referred to as the "offending tanker") and respondent No.2 is the insurer of the said offending tanker.

3. Hereinafter the parties are referred to by their status in the original claim petition.

4. The facts, in nutshell, are that the deceased Sudish Vajinath Shaha, who was the husband of claimant No.1, father of claimant Nos.2, 3 and 4 and son of respondent Nos.3 and 4, used to work as a Cleaner on the offending tanker. On 23.06.2008, when he was travelling by offending tanker as a Cleaner by Bombay to Agra road, near Vatpade Vasti in Pachora Shivar, the tanker gave dash to one tree standing by the side of the road, due to rash and negligent driving by its driver. In that accident deceased Sudish sustained serious injuries and succumbed to those injuries.

5. Respondent No.1 – owner of the offending tanker was proceeded exparte. Only respondent No.2 Insurance company resisted the claim by filing written statement (Exh.13) and took all possible defences. However, the learned Tribunal held that the accident occurred due to rash and negligent driving by driver of the offending tanker. None of the defences raised by respondent No.2 – Insurance Company was accepted by the Tribunal. It was held that the offending tanker was duly insured

with respondent No.2 – Insurance Company on the date of accident. In the result, compensation of Rs. 4,90,000/- was awarded and joint and several liability was saddled on respondent Nos.1 and 2.

6. Heard Mr. M.M. Bhokrikar, learned Counsel for the appellant, Mr. Ashpaq Shaikh, learned Counsel for respondent No.1 and Mr. Dhananjay Deshpande, learned Counsel for respondent No.2 – Insurance Company.

7. Learned Counsel for the appellant submits that considering the age of deceased as 33 years on the date of death, the proper multiplier of “16” was applied. However, the Tribunal did not consider the loss of future prospects of the deceased. He submits that even notional income of the deceased is considered as only Rs. 3,000/- per month when it should not be less than Rs.5,000/- per month, as the deceased was Cleaner on the tanker. He has also pointed out that under the conventional heads, meager compensation is awarded, which is improper in view of the verdict of the Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others” [(2017) 16 SCC 680]**.

8. Learned Counsel for respondent No.2-Insurance Company submits that the cleaner is not a skilled labourer, and therefore, notional income of the deceased considered as Rs.3,000/- per month is proper. His next submission is that, as the deceased was an ordinary labourer, no compensation can be awarded for loss of future prospects. He submits that the Tribunal erroneously deducted one-fifth income from the annual income of the deceased when in the family of deceased the dependents are '6' in number. However, he fairly submits that under conventional heads, the compensation can be enhanced to the extent of Rs. 70,000/- for loss of consortium, loss of estate and funeral expenses.

9. Learned Counsel for respondent No.1 submits that the deceased was in employment of the owner as temporary cleaner.

10. I have carefully gone through the record and proceeding. As no cross objection is filed by the Insurance Company, I will restrict my discussion with only the quantum of compensation.

11. The postmortem report (Exh.26) of the deceased shows that at the time of death the deceased Sudish was about 35 years of age. Therefore, in view of the guidelines issued by the Apex Court in the case of **“Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.”**, (AIR 2009 SC 3104), the multiplier of “16” will be applicable in the case at hand, as applied by the learned Tribunal.

12. Learned Counsel for the respondent / owner of the tanker has fairly conceded that on the date of death the deceased was in his employment as Cleaner of the tanker. Though the Cleaner of tanker cannot be considered as an ordinary field labourer, considering the wages of the labours in the year 2008, the notional income of the deceased cannot be less than Rs.5,000/- per month. The notional income at the rate of Rs.3,000/- per month as considered by the learned Tribunal is highly dis-proportionate. So also, as the deceased was in the service of respondent No.1 as a Cleaner, in view of the guidelines issued by Apex Court in the case of **“National Insurance Co. Ltd. Vs. Pranay Sethi and others”** [(2017) 16 SCC 680], the deceased being below the age of 40 years, 40% income is to be

added in the monthly income of the deceased. Thus, monthly income of deceased is assessed as Rs.7000/-. It follows that his annual income is Rs. 84,000/-.

13. Including the parents of deceased, who are respondent Nos.3 and 4 in the claim petition, the number of dependents in the the family of deceased are “6”. Therefore, in view of the guidelines issued in the case of “Sarla Varma” (supra), one-fourth income is to be deducted from the annual income of the deceased towards his personal expenses. Thus, the annual contribution of the deceased to his family is assessed as Rs. 63,000/-. On applying the multiplier of “16”, the loss of dependency is assessed as Rs. 10,08,000/-.

14. In view of the guidelines issued by Apex Court in the case of “Pranay Sethi” (supra), under the conventional heads, the following compensation is to be awarded.

Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

15. Thus, the claimants are entitled to total compensation under different heads as under :-

Loss of dependency	:-	Rs. 10,08,000/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	<u>Rs. 15,000/-</u>
Total	:-	<u>Rs. 10,78,000/-</u>

(Rupees Ten Lakh Seventy Eight Thousand)

16. This amount shall be inclusive of the amount received under the head of “no fault liability”. The claimants are entitled to interest at the rate of 9% per annum on the above-mentioned compensation amount from the date of filing of the petition till realization of entire compensation amount.

17. Considering the advanced age of respondent No.3 Vaijinath Rameshwar Shaha and respondent No.4 Dulari Devi Vaijinath Shaha, it is appropriate to award only compensation of only Rs. 50,000/- each to them with proportionate interest thereon.

18. Accordingly, First Appeal No.1455 of 2017 is allowed. The award passed by the Tribunal, Jalgaon in M.A.C.P. No.496/2008 is modified as under :-

“(I) M.A.C.P. No.496/2008 is allowed with costs.

(II) Respondent Nos.1 and 2 do jointly and severally pay compensation of Rs. 10,78,000/-

(Rupees Ten Lakh Seventy Eight Thousand) to the original claimant Nos.1 to 4 and original respondent Nos.3 and 4 with interest thereon at the rate of 9% per annum from the date of filing of the petition till realization of entire compensation amount. This amount shall be inclusive of the amount received under the head "no fault liability".

- (III) On depositing of the compensation amount in the Tribunal, Rs.50,000/- (Rupees Fifty Thousand) each with proportionate accrued interest thereon, shall be paid to original respondent Nos.3 and 4 respectively, by issuing separate account payees cheque in their names through the Tribunal.
- (IV) The remaining compensation amount shall be equally apportioned amongst the claimant Nos.1 to 4.
- (V) The amounts payable to minor claimant No.2 Kundankumar Sudish Shaha, claimant No.3 Vivekkumar Sudish Shah and claimant No.4 Vikaskumar Sudish Shaha be invested in fixed deposits in their respective names through their mother claimant No.1 Sushila Sudish Shaha, in any Nationalized Bank till they attain majority. Claimant No.1 Sushila is permitted to receive quarterly interest accrued

on the said fixed deposit amounts of minor claimants, on behalf these minor claimants.

(VI) Premature withdrawal is not permissible. Concerned bank be informed accordingly by the Tribunal.

(VII) The amount payable to claimant No.1 Sushiladevi Sudish Shaha shall be paid to her by issuing separate account payee cheque in her name through the Tribunal.

(VIII) Deficit Court fees be recovered from the claimants.

(IX) Award be drawn up accordingly.

19. Claimant No.1 and original respondent Nos.3 and 4 are permitted to withdraw their respective shares from the compensation deposited in this Court. Remaining compensation amount be transmitted to the Tribunal for further compliance of directions.

The appeal is disposed of in above terms. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/