

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

**FIRST APPEAL NO. 1403 OF 2017**

- 1] Late Suman Vishwanath Chavan, (Deleted)
- 2] Late Vishwanath Rangnath Chavan, (Deleted)
- 3] Smt. Smita Mahendra Chavan,  
age 34 year, occ. Household,
- 4] Chi. Tanmay Mahendra Chavan,  
age 13 years, occ. Education,
- 5] Kum. Shruti Mahendra Chavan,  
age 8 years, occ. Education,

All R/o Chalisgaon, Tq.Chalisgaon,  
District Jalgaon

[Appellant no. 3 is the mother  
and natural guardian of applicant  
Nos. 4 and 5 being her children  
and minors]

..Appellants  
[Orig. Claimants]

VERSUS

The Divisional Controller,  
Maharashtra State Road Transport  
Corporation, Jalgaon Division,  
Jalgaon

...Respondent  
[Orig. Respondent]

...

Shri M.M.Bhokarikar, advocate for Appellants  
Shri S.P.Salgare h/f Mr. B.S.Deokar, advocate for  
Respondent

...

**CORAM : SUNIL K.KOTWAL, J.**

**DATE OF RESERVING  
THE JUDGMENT : 23.10.2018  
DATE OF PRONOUNCEMENT  
OF JUDGMENT : 29.10.2018**

**J U D G M E N T :**

This appeal is directed by original claimants against the judgment and award, passed by the Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No. 459 of 2009, where the Tribunal awarded compensation of Rs.3,93,500/- with interest thereon at the rate of 7.5 per cent per annum from the date of filing of claim petition.

2. Respondent is the Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon.

3. Facts, leading to institution of this appeal are that on 29.10.2008, deceased Mahendra Vishwanath Chavan was proceeding from Dhamangaon to Chalisgaon by Chalisgaon-Dhule road while driving

maroti van No. MH-19/AE-3891. At about 8.00 p.m. the van driven by deceased dashed against the S.T. Bus No. MH-20/D-5441 from its rear side, when it was in stationary condition. The S.T. Bus was parked on road without keeping on signal or parking blinkers. In that accident, deceased sustained injuries and subsequently succumbed to those injuries. Therefore, the claimants filed petition for compensation under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as, "the MV Act").

4. By filing written statement (Exh.12), the respondent contended that the accident did not occur due to rash or negligent act on the part of S.T. Bus driver.

5. After considering the evidence placed on record, the Tribunal awarded above said compensation. Therefore, this appeal arises for enhancement of compensation.

6. Heard Mr. M.M.Bhokarikar, learned counsel for the appellants and Shri S.P.Salgare, learned counsel for the respondent.

7. Learned counsel for the appellants submits that on the date of death, the deceased was 29 years old, and therefore, multiplier of 18 is applicable in accordance with the Second Schedule of MV Act.

His next submission is that the Tribunal did not consider loss of future prospects and proper compensation under conventional head as per the guidelines issued by the Apex Court in **"National Insurance Company Ltd. Vs Pranay Sethi and others"** [2018 (3) Mh.L.J. 70].

Contention of learned counsel for the appellant is that interest shall be awarded at the rate of nine per cent per annum from the date of filing of the petition. He also submits that the notional income at the rate of Rs.3,000/- per month is erroneously considered by the Tribunal.

8. Learned counsel for respondent submits that the accident occurred due to negligence on the part of the deceased. He contends that in the case at hand, multiplier of 17 will be applicable and the Tribunal considered proper notional income of the deceased.

His contention is that this petition being under Section 163A of the MV Act, the ratio of **"National Insurance Company Ltd. Vs Pranay Sethi and others"** (supra) is not applicable in the case at hand.

9. At the out set, I must make it clear that this petition being filed under Section 163A of the MV Act, rash and negligent driving by deceased or by driver of S.T. Bus, does not play any role.

10. 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 Verma and Ors. vs Delhi Transport Corporation and**

**Anr."** [2009 (5) Mh.L.J. 775], "**National Insurance Company Ltd. Vs Pranay Sethi and others**" (supra), or "**Reshma Kumari vs Madan Mohan**" [2018 (3) Mh.L.J. 70] is applicable".

11. Therefore, I have carefully gone through these three cases and I am 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 paragraph 18 of the judgment in the case of "**Smt. Sarla Verma vs Delhi Transport Corporation and Anr.**" (supra) 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 II<sup>nd</sup> 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<sup>nd</sup> Schedule can be taken to be guide for determination of amount of compensation."

12.        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.

13.        Even in "**National Insurance Company Ltd. Vs Pranay Sethi and others**" (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.

14.        In the case at hand, the claim petition is filed under Section 163A of the MV Act. Therefore, while determining the compensation only in structural formula under Section 163A Second

Schedule of the MV Act can be considered.

15. The postmortem report (Exh.28) of the deceased shows that the deceased was 29 years old on the date of his death. Therefore, as per the structural formula under Section 163A Second Schedule of MV Act, proper multiplier applicable in the case at hand is 18 and not 17, as contended by the learned counsel for the respondent.

16. As per the pleading of the claimants, the monthly income of the deceased was Rs.3,300/- per month. Therefore, at the stage of appeal, learned counsel cannot claim notional income of the deceased to the extent of Rs.5,000/- per month or more. Otherwise also, this petition being filed under Section 163A of the MV Act, the same cannot be entertained if annual income of the deceased is more than Rs.40,000/-. As per the contention of claimant Smita Chavan (PW 1), deceased used to earn Rs.3,300/- per month by running grocery shop. However, she has not filed any documentary evidence, such as shop license or any accounts

maintained in the grocery shop to show that the occupation of the deceased was grocery shop keeper. Therefore, occupation of the deceased can be treated as ordinary labour. I hold that even if testimony of claimant Smita Chavan (PW 1) is accepted, the notional income of the deceased can be assessed to the extent of only Rs.3,300/- per month. Thus, annual income of the deceased is assessed as  $\text{Rs.}3300 \times 12 = 39600/-$ .

As per Second Schedule of the MV Act, from this amount  $1/3^{\text{rd}}$  income is to be deducted towards self-expenditure of the deceased. Thus annual contribution of the deceased to his family is assessed as  $\text{Rs.}39600 - 13200 = 26400/-$ , which can be treated as proper multiplicand.

After applying multiplier of 18 to this multiplicand, the total loss of dependency is assessed as  $\text{Rs.}26400 \times 18 = 475200/-$ .

17. Under Second Schedule of the MV Act, only following general damages can be awarded to the claimants in addition to above compensation.

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|                    |              |
|--------------------|--------------|
| Funeral Expenses   | : Rs. 2000/- |
| Loss of Consortium | : Rs. 5000/- |
| Loss of Estate     | : Rs. 2500/- |

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

|                    |               |
|--------------------|---------------|
| Loss of depedency  | : Rs.475200/- |
| Loss of consortium | : Rs. 5000/-  |
| Loss of Estate     | : Rs. 2500/-  |
| Funeral expenses   | : Rs. 2000/-  |
|                    | -----         |
| Total              | : Rs.484700/- |
|                    | -----         |

[Four Lakh Eighty Four Thousand  
Seven Hundred Only]

19. As observed above, the ratio of "**National Insurance Company Ltd. Vs Pranay Sethi and others**" (supra) is not applicable in the claim petition filed under Section 163A of the MV Act. Therefore, no compensation can be added towards loss of future prospects. So also, under conventional head, compensation of Rs.70000/- cannot be awarded, as contended by the learned counsel for the appellant.

20. In the result, I hold that the appellants are entitled to only compensation of Rs.4,84,700/- with interest thereon at the rate of nine per cent per annum from the date of filing of the claim petition till realization of the compensation amount.

21. It follows that this appeal deserves to be partly allowed in above terms. Accordingly, First Appeal No. 1403 of 2017 is partly allowed.

“ (i) Claim Petition is allowed.

(ii) Opponent shall pay compensation amount of Rs.484700/- [Four Lakh Eighty Four Thousand Seven Hundred Only] to the claimants, with interest thereon at the rate of nine per cent per annum from the date of filing of the claim petition till realization of the compensation amount.

(iii) Compensation amount shall be equally apportioned in between claimant no. 3-Smita Mahendra Chavan, claimant no.4-Tanmay Mahendra Chavan, and

claimant no. 5-Shruti Mahendra Chavan.

(iv) Claimant nos. 4 and 5 being minors, compensation amount of their share shall be invested in fixed deposit through claimant no.3 in any Nationalized Bank till they attain majority.

(v) Quarterly accrued interest of fixed deposit amount be paid to claimant nos. 4 and 5 through their mother claimant no.3-Smita Mahendra Chavan.

(vi) Premature withdrawal of the fixed deposit amount is not permissible. The concerned Bank be informed accordingly.

(vii) Compensation amount of the share of claimant no.3 Smita Mahendra Chavan be paid to her by separate account payee cheque.

(viii) The award, passed by the Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claim Petition No. 459 of 2009 be modified in above said terms. "

22. Parties shall bear respective costs of the appeal.

23. Appeal is disposed of in above said terms.

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

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