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

FIRST APPEAL NO. 215 OF 2017

1. Smt. Sifiyabee Shaikh Nabi Pinjari (Mansuri)
   Age : 64 years, Occu. Household.

2. Shaikh Nabi Shaikh Nathu Pinjari (Mansuri)
   Age : 68 years, Occu. Nil.

3. Salmabee Shaikh Yunus Pinjari (Mansuri)
   Age : 25 years, Occu. Household.

4. Nargis Shaikh Yunus Pinjari (Mansuri)
   Age : 7 years, Occu. Education.

5. Mumtajbee Shaikh Yunus Pinjari (Mansuri)
   Age : 6 years, Occu. Education.

(Applicant No. 3 is mother and natural guardian of applicant Nos. 4 and 5)

All R/o. Indira Nagar, Masawad,
Tal. & Dist. Jalgaon. Appellants...

Versus

1. Shri. Basid Khan Nabisher Khan Pathan,
   Age : 45 years, Occu. Business
   R/o. Ajmerinagar, Harpailwas Road,
   At and Post. Kim, Tal. Olpad, Dist. Surat (Gujarat)

2. The Branch Manager,
   The National Insurance Company Ltd.,
   299, Baliram Peth, Jalgaon, Dist. Jalgaon. Respondents...

....
Mr M. M. Bhokarikar, Advocate for the appellants
Mr S. N. Pagare, Advocate for respondent No. 2
....

CORAM : A. M. DHAVALE, JJ.

DATE OF RESERVING THE JUDGMENT : 24.07.2018.
DATE OF PRONOUNCING THE JUDGMENT : 31.07.2018.

<u>JUDGMENT</u> :-

1. Heard. **<u>Admit.</u>** With the consent of the parties, the appeal is taken up for final disposal at the stage of admission.

2. Aggrieved by the judgment and decree passed by the Member, Motor Accident Claims Tribunal, Jalgaon, on 06.09.2016 in Motor Accident Claim Petition No. 344 of 2010 of granting compensation at the rate of Rs. 8,74,000/- with interest at the rate of 8% p.a. The legal heirs of deceased have preferred this appeal for enhancement of compensation.

3. Heard Shri. M. M. Bhokarikar, learned counsel for the appellant and Shri. S. N. Pagare for respondent No. 2.

4. The claimants' case is as under:

Deceased-Shaikh Yunus Nabi Pinjari, aged 22 years, was earning Rs. 6,000/- per month. He was son of appellants No. 1 and 2, husband of appellant No. 3 and father of two minor children i.e. appellant Nos. 4 and 5. He was working as a Labourer at Brick Furnace at village Lolav. On 16.04.2008, he, as a labourer, loaded bricks in a truck and went from Jalgaon to Surat. When the truck came on Surat-Olpad road, it was driven in rash and negligent manner and it gave a dash to dumper halted by the side of the road. As a result, Shaikh Yunus sustained injuries and died instantaneously on the spot. The crime was registered against the driver of the truck at C.R. No. 57/2010 at Olpad Police Station, Dist. Surat. All the claimants were dependent upon him. The truck was owned by respondent No. 1 and validly insured with respondent No. 2. With these pleadings, the accident claim was filed. Respondent No. 1 remained absent and matter proceeded ex-parte against him. Respondent No.2 contested the petition and denied the rashness & negligence of driver of the truck and age, income and other personal details of the deceased. It claimed that, the policy was act policy only and deceased was illegally traveling in the said truck by paying fair. He was not covered under third party risk. It has disputed the claim.

5. The claimants examined Shaikh Nathu, father of the deceased, while respondent no. 2 examined its officer to show breach of terms and conditions of the policy. The learned Member, MACT, held the driver of the truck rash and negligent and responsible for the accident. The defence of breach of policy was rejected and assuming the monthly income of the deceased at Rs. 3,000/-, he awarded loss of income at Rs. 7,29,000/- and additional amount of Rs. 1,45,000/-

under conventional heads of consortium, funeral expenses and love & affection, total Rs. 8,74,000/- with interest at the rate of 8% p.a.

6. Learned advocate Shri. M. M. Bhokarikar for the appellants argued following points.

(i) The deceased was working at a Brick Kiln and his monthly income was Rs. 6,000/- and the same was not considered by the Tribunal. The income was assumed at Rs. 3,000/- per month, which should be fixed at least at Rs. 4500/- per month.

(ii) The Tribunal has awarded 50% future prospects, which should be retained.

(iii) There are five dependants only. $1/5^{th}$ amount should be deducted towards personal expenses of the deceased. Even if $1/5^{th}$ amount is deducted, still the loss of income would be Rs. 7,29,000/- + loss of future prospects would be Rs.2,91,600/- with interest at the rate of 14% p.a. Besides, there should be additional compensation at Rs. 70,000/- under conventional heads and at the rate of Rs. 15,000/- for love & affection of each claimant. He argued that, the interest should have been at the rate of 9% p.a.

(iv) He relied on ***Laxmidhar Nayak Vs. Jugal Kishor*** reported in *AIR 2018 SC 204*, to show that, even the income of agriculture labourer and housewife was taken at Rs. 4500/- per month.

(v) He relied on ***National Insurance Company Vs. Pranay Sethi*** reported in *AIR 2017 SC 5157* (Bench of 5 Judges), for additional 40% for future prospects contending that the deceased was a self-employed. He relied on ***Munnu Swamy Vs. Managing Director, TNRDC*** reported in *AIR 2018 SC 816,* to argue that, the claimant was entitled for future prospects of 40% and also for love & affection.

7. Per contra, Shri. S. N. Pagare, learned advocate for the respondent argued that, the deceased was a labourer having no proof of income and as such, he was not entitled for addition under the head of future prospects. He also submitted that, the vehicle was insured for third party liability and the deceased was traveling in a goods vehicle. There was no insurance cover for him. He alternatively submitted that, the amount of compensation granted is proper and needs no interference.

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

Sr.No.	Points	Finding
1	Whether the quantum of compensation fixed by the Member, MACT, is on lower side?	...In the negative.
2	What order?	...The appeal is dismissed.

REASONS

9. Since the learned Member, MACT, has fixed the liability on the Insurance Company as well, and since the Insurance Company has not preferred any appeal, it is not permissible to consider the arguments of learned advocate for respondent No.2 that the Insurance Company was not liable to pay on the ground that the deceased was fair paying passenger.

10. As far as the quantum is concerned, Shaikh Nathu has examined himself at Exh. 19. He has produced following documents.

(a)	Exh. 22	-	FIR
(b)	Exh. 24	-	Spot Panchanamam
(c)	Exh.25	-	InquestPanchanama.
(d)	Exh. 26	-	PM notes.
(e)	Exh. 27	-	Letter of PSO.
(f)	Exh. 28	-	R. C. Book.
(g)	Exh. 29	-	Insurance Policy.
(h)	Exh. 30	-	Form Comp AA.
(i)	Exh. 32	-	School Leaving Certificate.

11. The claimants have examined CW2 - Vaishali Patil, who has translated Gujarati documents into Marathi and those are at Exh. 22A to 27A. There is cryptic cross-examination of the witnesses. The claimant No. 1 has denied that, his son was not working on the said truck as a Labourer. He admitted that, he had no documents to show that his son was earning Rs. 6,000/- per month. Respondent No.2 has examined its officer claiming that the deceased was fare paying

passenger. He admitted that, the driver, cleaner and labourer in the vehicle are covered under third party, but, submitted that they are covered only at the time of loading and unloading the goods. He admitted that, no additional premium was required to be paid to cover the labourers working on the truck.

12. The evidence on record shows that, the deceased was aged 22 years and his wife, parents and two children, in all five persons were dependent upon him. There is no document whatsoever to show his income as Rs. 6,000/- per month. The deceased has died on 17.04.2009 and considering the prevailing labour charges, it can be assumed that he must be getting around Rs. 4500/- per month by way of labour work.

13. Though, there is a claim for addition of 40% towards future prospects, as held in Pranay Sethi's case (supra), after a detailed discussion justifying extension of benefit of future prospects to persons working on fixed salary, it was concluded in para 61, as under:

> (ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was 48 between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(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.

14. Mr. Bhokarikar, learned counsel has placed reliance on Munnu Swamy's case (supra). In this case also, reference is made to the judgment in Pranay Sethi's case. Sub-clause 4 of para 61 of the said case provides for addition of 40% income towards future prospects only in case of self-employed or persons on fixed salary. As there is no such evidence to show that the deceased was having fixed salary or was self-employed, this provision is not applicable. Learned advocate Shri. Bhokarikar has drawn my attention to the grant of compensation of Rs. 60,000/- towards loss & affection both by High Court as well as Supreme Court in the case of ***Munusamy and others v. Managing Director, Tamil Nadu State Transport***

Corporation (Villupuram) Ltd. reported in *AIR 2018 SC 816*. It is apparent that, the High Court has granted this compensation under this head when there was no judgment in Pranay Sethi's case. Since the appeal was preferred by the claimants and not by the Insurance Company, this amount could not have been reduced by the Apex Court and hence the amount was awarded by the Supreme Court as well. It does not mean that the Apex Court has taken a view contrary to its own judgment delivered in Pranay Sethi's case by a Bench of five judges. In the circumstances, it must be assumed that, the deceased was a daily labourer and, therefore, his income should be assumed at Rs. 4500/- i.e. Rs. 54,000/- per annum with no addition for future prospects.

15. Since there were five dependents, there will be deduction of $1/4^{th}$ amount towards personal expenses. The loss of income would be Rs. 40,500/- p.a. The multiplier would be 18 and the total loss of income would be Rs. 7,29,000/-.

16. In addition thereto, the deceased was entitled to compensation under conventional heads. The learned trial Judge has awarded Rs. 1,00,000/- for loss of consortium, Rs. 20,000/- for funeral expenses and Rs. 20,000/- for love & affection. In view of the

latest judgment in Pranay Sethis's case (supra), there is drastic change in these figures. There is no compensation permitted under the head of love & affection whereas; the compensation under head of loss of consortium, loss of estate and loss of funeral expenses has been reduced to Rs. 40,000/-, 15000/- & 15,000/-, total Rs. 70,000/-. However, since the Insurance Company has not preferred any appeal, the amount awarded by the ld. trial Court cannot be reduced.

17. For the reasons aforesaid, I find, that no interference is called for and the appeal deserves to be dismissed and same is dismissed. Parties to bear their own costs.

[A. M. DHAVALE]
JUDGE

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