IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.280 OF 2014

1. Smt. Usha w/o Daulat Nathani,
   Age : 37 years, Occu. Household

2. Vinisha d/o Daulat Nathani,
   Age : 16 years, Occu. Education
   Under guardianship of appellant No.1

   Both r/o 34, Ganesh Nagar,
   In front of Sant Hardasram
   Mangal karyalaaya, Jalgaon

APPELLANTS
(Orig. Claimants Nos.1 and 2)

VERSUS

1. Shri Dalbirsing,
   Age : Major, Occu. Transportation,
   R/o Road No.9, Bagan Oriy,
   Jamshedpur

2. The Oriental Insurance Co. Ltd.,
   through Divisional Manager,
   Central Phule Market, 2nd Floor,
   Jalgaon, District Jalgaon

RESPONDENTS
(Ori. Respondent Nos.1 and 2)

3. Smt. Savitribai Kanhaiyalal Tiwari
   (Since deceased, through her L.Rs.)

3-A. Purushottam Kanhaiyalal Nathani,
   Age : 37 yeas, Occu. Business

3-B. Chandrakant Kanhaiyalal Nathani,
   Age : 34 years, Occu. Business

   Both r/o 34, Ganesh Nagar,
   In front of Sant Hardasram
   Mangal Karyalaya, Jalgaon

RESPONDENTS
(L.Rs. of orig. Claimant No.3)

Mr. Mehul V. Navandar, Advocate for the appellants
Mr. Dhananjay Deshpande, Advocate for respondent No.2

CORAM : SUNIL K. KOTWAL, J.

DATE : 13th JUNE, 2019

ORAL JUDGMENT :

This appeal is directed by original claimant Nos.1 and 2 in Motor Accident Claims Petition ("MACP", for short) No.391 of 2003 against the judgment and award dated 30th March, 2012, passed by the Motor Accident Claims Tribunal ("Tribunal", for short), Jalgaon, whereby total compensation of Rs.10,00,350/- was awarded by the Tribunal with interest thereon at the rate of 7.5% per annum from the date of filing of petition. Respondent No.1 is the owner of the offending vehicle and respondent No.2 is the insurer.

2. As this appeal is only regarding quantum of compensation amount, the facts of the case need not be reproduced. It is suffice to say that according to claimants, the deceased was in the business and his annual income was Rs.1,10,000/-.

3. Heard Mr. M.V. Navandar, learned counsel for

the appellants and Mr. Dhananjay Deshpande, learned counsel for respondent No.2 - insurer of the offending vehicle.

4. The objection raised by learned counsel for the appellants is that while assessing annual income of the deceased, the Tribunal did not consider average income of the last three years of the deceased, but has considered only annual income of the last year before the death of the deceased. His next objection is that the Tribunal did not consider the loss of future prospect as well as the Tribunal awarded inadequate compensation under conventional heads.

5. In reply, learned counsel for the insurer supported the judgment and award passed by the Tribunal.

6. It is admitted at this appellate stage that the deceased died on 24th January, 1999 and on the date of accident, the offending vehicle was insured with respondent No.2 - insurer. The post-mortem notes of the deceased (Exh-49) show that at the time of his death, the deceased was 25 years old. In the claim petition itself, the claimants have mentioned that at the time of death, the deceased was 30 years old. No other

documentary evidence is available on record to ascertain the correct age of the deceased. Therefore, accepting the contention of claimants, the age of the deceased at the time of his death is determined as 30 years. Therefore, in view of law settled by the Apex Court in "***Sarla Verma Vs. Delhi Transport Corporation***", ***(AIR 2003 SC 3104***, the multiplier of 17 is applicable in the case at hand.

7. For determining annual income of the deceased, the claimants have filed income tax returns of the last three years of the deceased. As the annual income of the deceased of the last year is relevant, I will consider only the income tax return of the Assessment Year 1998-1999 (Exh-57). This income tax return shows that gross income of the deceased was Rs.95,623/- and income tax of Rs.4153/- was payable for that assessment year, after considering the rebate under Section 88 of the Income Tax Act. Thus, after deducting this amount of income tax from the gross income of the deceased, his annual income comes to Rs.91,470/-.

8. As the deceased was below the age of 40 years and self-employed person, in view of law settled by the Apex Court in ***"National Insurance Company Ltd. Vs.***

Pranay Sethi and others" [2018(3) Mh.L.J.70], there will be addition of 40% amount towards loss of future prospect. Thus, the annual income of the deceased comes to Rs.1,28,058/-. As there are three dependents in the family of the deceased, there would be deduction of 1/3rd amount towards personal expenses of the deceased. Thus after deduction of 1/3rd amount from Rs.1,28,058/-, the available annual income to the family of the deceased comes to Rs.85,372/-.

9. As observed above, multiplier of 17 is applicable in the case at hand. Thus, after multiplying the available annual income by multiplier of 17, the loss of dependency comes to Rs.14,51,324/-. In addition to this, in view of law settled by the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Pranay Sethi and others"*** (supra), the claimants are also entitled to following compensation under conventional heads as the Tribunal awarded inadequate compensation.

(i)	Loss of consortium	Rs. 40,000/-
(ii)	Loss of estate	Rs. 15,000/-
(iii)	Funeral Expenses	Rs. 15,000/-
	Total :	Rs. 70,000/-

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

(i)	Loss of dependency	Rs. 14,51,324/-
(ii)	Loss of consortium	Rs. 40,000/-
(iii)	Loss of estate	Rs. 15,000/-
(iv)	Funeral Expenses	Rs. 15,000/-
	Total :	Rs. 15,21,324/-

11. Taking into consideration the challenge raised by the insurer of the offending vehicle regarding genuineness of policy of the insurance, I hold that the claimants are also entitled to interest at the rate of 9% per annum from the date of filing of claim petition on the compensation amount.

12. Regarding apportionment of the compensation and investment, the Tribunal has rightly passed the order and I do not want to make any interference in those directions.

13. Accordingly, my conclusion is that this appeal deserves to be partly allowed.

14. In the result, First Appeal No.280 of 2014 is partly allowed. The award passed by the Motor Accident Claims Tribunal, Jalgaon is modified to enhance the compensation to the tune of Rs.15,21,324/-, inclusive of No Fault Liability amount, with interest thereon at the rate of 9% per annum from the date of filing of the petition till realization.

15. The rest part of the award passed by the Tribunal is confirmed as it is.

16. The award be modified in abovesaid terms.

17. The parties to bear their respective costs of the appeal.

18. First Appeal is accordingly disposed of.

[SUNIL K. KOTWAL]
JUDGE

npj/fa280-2014