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

FIRST APPEAL NO.189 OF 2004

1. Kantabai Ganesh Rajure
Age : 21 years, Occu ; Household,
R/o. Padampura, Mama Chowk,
In front of Mahanagarpalika School,
Aurangabad, Tal. & District Aurangabad

2. Pooja d/o Ganesh Rajure
Age : 5 years, r/o As above,
Under Guardianship of mother
Kantabai w/o Ganesh Rajure

3. Manoj s/o Ganesh Rajure
Age : 3 years, r/o As above,
Under Guardianship of mother
Kantabai w/o Ganesh Rajure .. **APPELLANTS**
(Orig. Claimants No.1 to 3)

Versus

1. Shaikh Osman Shaikh Musa
Age : 26 years, Occu : Driver,
R/o. Dattanagar, Galli No.5,
Kailashnagar, Near New Square
Tailor, Aurangabad, Taluka &
District Aurangabad

2. Abdul Latif Abdul Rashid Siddiqui
Deceased, through his legal representatives:

2-A. Haroon Rashid Siddiqui,
Age : 60 years, Occu : Driver,

2-B. Shakil Rashid Siddiqui
Age : 58 years, Occu : Retired,

2-C. Khaled Rashid Siddiqui
Age : 56 years, Occu : Business,

2-D. Shahid Rashid Siddiqui
Age : 54 years, Occu : Service

2-E. Jabed Rashid Siddiqui
Age : 49 years, Occu : Service
All R/o. Priyadarshini Colony,
Padegaon, Tq. & Dist. Aurangabad

3. The Divisional Manager,
United India Insurance Co. Ltd
Through its Branch Manager
R/o. Osmanpura, Aurangabad
Tal & Dist. Aurangabad

4. Babulal s/o Kanijaram Rajure
Age : 65 years, Occu : Nil
R/o. Mukundwadi, Aurangabad
Taluka & District Aurangabad

.. Appeal dismissed against Respdt No.4 vide Registrar order dt.19.12.2006

.. **Respondents**
(No.1 to 3 Orig. Resdpt No.1 to 3 and No.4 Orig Claimant No.4)

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Advocate for Appellants : Shri A.S. Shelke
Advocate for Respondent No.3 : Shri A.B. Gatne
Shri M.N. Shaikh, Advocate, h/f. Shri S.S. Kazi
Advocate for Respondents No.2 (A) to 2 (E)

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CORAM : P.R. BORA, J.
Dated: JANUARY 11, 2019

ORAL JUDGMENT :

1. The original claimants in Motor Accident Claim Petition No.471 of 2000 decided by the Motor Accident Claims Tribunal at Aurangabad (hereinafter referred to as the 'Tribunal') on 05.08.2003 have preferred the present appeal

seeking enhancement in the amount of compensation awarded by the said Tribunal.

2. The appellants, who are hereinafter referred to as the claimants, had preferred the aforesaid claim petition seeking compensation on account of death of Ganesh Rajure in a vehicular accident happened on 14.09.2000 having involvement of a Tata truck of 1210 model bearing Registration No.MH-20-F-5345. At the time of the alleged accident, deceased Ganesh was aged about 22 years and was working as a plumber. As per the contention of the claimants, deceased Ganesh was employed with one pluming contractor namely G.K. Ranjane and used to earn the monthly salary to the tune of Rs.4600/- per month. It was also the contention of the claimants that, the alleged accident happened because of the sole negligence on part of the driver of the offending tata truck. The claimants had, therefore, claimed the compensation of Rs.6,50,000/- from the driver, owner and the insurer of the said truck. The petition so filed by the claimants was opposed by the respondents. In order to substantiate the claim raised by them, claimant no.1 Kantabai,

the widow of deceased Ganesh, herself testified before the Court and the employer of deceased Ganesh namely G.K. Ranjane was also examined as a witness. The salary certificate was also placed on record.

3. The learned Tribunal, after having assessed the evidence on record, held the income of deceased Ganesh to the tune of Rs.1500/- per month by applying the criteria of notional income and accordingly determined the amount of compensation to the tune of Rs.2,29,000/- inclusive of NFL. Aggrieved by, the claimants have preferred the present appeal.

4. Shri A.S. Shelke, learned Counsel appearing for the claimants assailed the impugned Judgment mainly on the count of the finding recorded by the Tribunal as about the income of deceased Ganesh. Learned Counsel submitted that, merely because the employer of deceased Ganesh could not produce on record his pluming licence and that he was not maintaining muster role, his entire evidence could not have been discarded by the Tribunal. Placing reliance on the Judgment of this Court

in the case of **Smt Uma w/o. Navneet Vyas & Ors Vs. Himmatsingh Jeetsingh Ghotre & Anr, 2017 (5) ALL MR 396,** the learned Counsel submitted that, when some cogent evidence was produced, the Tribunal should not have lightly discarded the said evidence without assigning cogent reasons therefor. The learned Counsel pointed out that, the learned Single Judge of this Court while delivering the Judgment in the case of **Smt. Uma Navneet Vyas** (cited supra) had relied upon the Judgment of the Hon'ble Apex Court in the case of **Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service, (2013) 16 SCC 719.** The learned Counsel invited my attention to the discussion made by the learned Single Judge in para 13 to 15 of the said Judgment. The learned Counsel submitted that, the Tribunal has manifestly erred in discarding the evidence adduced by the claimants as about the income of deceased Ganesh and holding the income of deceased Ganesh on the basis of the notional income. The learned Counsel further submitted that, having regard to the age of deceased Ganesh, the appropriate multiplier was 18, whereas the Tribunal has applied the multiplier of 17. The learned

Counsel further submitted that, considering the number of dependents on income of deceased, the Tribunal could not have deducted more than 1/4th of his total income towards his personal expenses, whereas the Tribunal has deducted 1/3rd of his total income on that count. The learned Counsel further submitted that, the Tribunal has also erred in not considering the future prospects of deceased Ganesh while assessing the amount of compensation. The learned Counsel further contended that, the Tribunal has not awarded the appropriate amount towards the non-pecuniary damages. On all above grounds, the learned Counsel prayed for adequate enhancement in the amount of compensation.

5. Opposing the submissions advanced on behalf of the appellants – claimants, Shri A.B. Gatne learned Counsel appearing for the respondent – Insurance Company supported the impugned Judgment and Award. The learned Counsel submitted that, the Tribunal in its Judgment has elaborately discussed as to why it has not relied upon the evidence of the employer i.e. AW-2 G.K. Ranjane. The learned Counsel further

submitted that, it was quite possible for the employer of deceased Ganesh to place on record the copy of his plumbing licence. However, the same has not been produced for the reasons known to the claimants. The learned Counsel further submitted that, the Tribunal has rightly observed that, merely with an intention to support or to help the claimants to earn some more compensation, AW-2 GK Ranjane has entered into the witness box with a case that, deceased Ganesh was working with him and he used to pay him salary to the tune of Rs.4600/- per month. The learned Counsel further submitted that, there is no question of considering future prospects of deceased Ganesh in absence of any pleading or evidence therefor. The learned Counsel submitted that, even considering the Judgments of the Hon'ble Apex Court in the cases of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors., (2017) 16 SCC 680** and **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121,** it is difficult to apply the said criteria in the facts of the present case, when there is absolutely no evidence showing the prospects of deceased Ganesh. It was further argued by the learned Counsel that, when the income of the deceased is determined on the basis of notional income, the criteria of future prospects may not be applicable. The learned Counsel submitted that, in such circumstances, no fault can be found in the observations made and the finding recorded by the Tribunal. The learned Counsel submitted that, insofar as the income is concerned, no interference is required in the Judgment and order so passed. The learned Counsel was, however, fair in submitting that the appropriate multiplier in the present case would be of 18 and the amount of Rs.70,000/- would be liable to be paid towards non-pecuniary damages.

6. Learned Counsel Shri M.N. Shaikh supported the argument advanced by Shri Gatne and supported the impugned Judgment and Award.

7. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. The main controversy raised in the present matter is as about income of deceased Ganesh. According to the appellants – claimants, deceased was employed with one GK. Ranjane and

was working as a plumber. The material on record shows that, the certificate issued by said Shri Ranjane was placed on record by the claimants along with the claim petition and in order to prove the said certificate, the claimants had also examined said G.K. Ranjane as AW-2. I have carefully gone through the evidence of Shri Ranjane and the facts which have come on record in his cross-examination. It was the contention of Shri Shelke, learned Counsel appearing for the claimants that, merely because AW-2 Ranjane did not place on record the plumbing licence and that he was not maintaining muster role, his evidence could not have been discarded by the Tribunal. I am, however, not fully agreeing with the submissions so made by Shri Shelke. When it was the specific answer given by the said Shri Ranjane that, he was holding a plumbing licence, there was no reason for not producing the said licence on record even at some subsequent stage before delivery of the Judgment by the Tribunal. Admittedly, such certificate was not placed on record. In the circumstances, it is really difficult to implicitly rely upon the testimony of Shri Ranjane. On the other hand, the fact that deceased Ganesh was working as plumber though has been disputed by the respondents, there is no contrary evidence showing that, he was doing some other work. As such, I see no reason to outrightly disbelieve the statement made by the claimants since filing of the claim petition. In the circumstances, it appears to me that, even though the evidence of AW-2 Ranjane is kept aside or kept out of consideration, considering the fact that deceased Ganesh was at the relevant time working as a plumber in other words was a skilled employee, his salary income in any case could not have been held less than Rs.3000/- per month. I, therefore, deem it appropriate to hold the income of deceased Ganesh to the tune of Rs.3000/- per month.

8. Though it was sought to be contended by Shri Gatne that, when the income of a person is assessed on the basis of notional income, the future prospects criteria may not be applied. I am not convinced with such an argument. The future prospects are available for every person and they need to be considered. The Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** (cited supra) has held that future prospects are not only for government employees or for semi-government employees, but are available even for the persons, who are working in the private sector or who are self-employed. In the present case,

even if deceased Ganesh was in the private employment or it is assumed that, he was self employed as plumber, his future prospects as per the guidelines laid down in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** (cited supra) are to be considered. Considering the said guidelines, 40% of the total income of deceased Ganesh would be liable to be included in his existing income so as to assess the amount of compensation payable to his dependents / legal heirs. I have held the salary of deceased Ganesh to the tune of Rs.3000/- per month, which comes to Rs.36,000- per annum. 40% of it i.e. the amount of Rs.14,400/- would be liable to be included in the said amount for determining the amount of compensation payable to the claimants. Added the said amount, the prospective income comes to Rs.50,400/-. 1/3rd of it would be liable to be deducted towards the personal expenses of the deceased whereupon amount remains of Rs.33,600/- available to be spent on the dependents of deceased Ganesh.

9. It was sought to be contended by the learned Counsel for the claimants, that since the number of dependents are four, the Tribunal could not have deducted more than 1/4th of the annual income of the deceased towards the personal expenses of the deceased. However, there is no evidence on record showing that, the father of deceased Ganesh was depending upon the income of deceased Ganesh. In the circumstances, it cannot be accepted that, dependents on the income of deceased Ganesh were more than three. As per the

evidence on record, the widow and two children only can be said to be depending upon income of deceased Ganesh and as such, 1/3rd of his total income was liable to be deducted towards his personal expenses. Having regard to the age of deceased Ganesh, the appropriate multiplier will be of 18. By applying the said multiplier, the amount of dependency compensation comes to Rs.6,04,800/-. In addition to the aforesaid amount, the claimants are also entitled to the amount of Rs.70,000/-towards non-pecuniary damages. Adding the said amount, the amount of total compensation payable to the claimants comes to Rs.6,74,800/-. In the facts and circumstances of the case, it appears to me that, this would be the just and fair amount of compensation payable to the claimants. I, therefore, hold the claimants entitled to the said compensation jointly and severally from the owner and insurer of the offending vehicle. In the result, the following order is passed.

ORDER

(i) The claimants are held entitled for the enhanced compensation of Rs.3,75,800/-.

(ii) The respondents do jointly and severally pay the aforesaid amount of enhanced compensation to the claimants with the interest thereon at the rate of 9% from the date of filing of the appeal till its realization.

(iii) Since the claimants who were minor at the time of filing of the petition have now become major, I do not see any propriety in passing any further order as about depositing certain amounts in the name of the said claimants.

(iv) The modified award be prepared accordingly.

(v) It would be appreciated, if the Insurance Company pays the enhanced amount of compensation along with the interest accrued thereon directly into the accounts of the respective claimants within four months from the date of this order.

(vi) The claimants shall provide the information as about their bank accounts to Insurance Company.

(vii) The appeal stands allowed in the aforesaid terms.

(viii) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

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