IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 167 OF 2011

1. Sakharam S/o Bhagwan Dhale,
Age 42 years, Occ. Labour,
R/o. Rahul Nagar, Parbhani,
Taluka & District: Parbhani.

2. Vaijnata W/o Sakharam Dhale,
Age 40 years, Occ. Household, … **APPELLANTS**
R/o. As above. (Original Claimants)

Versus

1. Ramarao Basaheb Shinde,
Age 45 years, Occ. Business,
(Owner of Jeep MH 22, 3508)
R/o. Khanapur Nagar, Prabhawati,
Parbhani, Tq. & Dist. Parbhani.

2. The New India Assurance Company Ltd.,
Through its branch Manager,
Yashodeep Building, Shivaji Nagar, … **RESPONDENTS**
Parbhani, Tq. & Dist. Parbhani. (Original Respondents)

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Advocate for Appellants : Mr. P. S. Agrawal
Advocate for Respondent no. 2 : Mr. Dhananjay Deshpande

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CORAM : MANGESH S. PATIL, J.
RESERVED ON: 14.11.2019
PRONOUNCED ON: 19.11.2019

JUDGMENT :-

This is an Appeal by the original Claimants who are aggrieved by the quantum of compensation determined by the Motor Accident Claims

Tribunal in a petition filed by them under Section 166 of the Motor Vehicles Act, on account of death of their son who was stated to be aged 22 years on the date of the accident. The Respondents are the owner/insured and the insurer of the vehicle.

2. According to the Appellants the deceased was aged 22 years. He had studied up to 12th Standard and was doing Tailoring work and earning Rs.150 to Rs.200 per day. Unfortunately on 02.02.2009 when he was travelling in a Jeep owned by the Respondent no.1 and insured with the Respondent no.2 the driver of the Jeep could not control its speed. As a result it turned turtle and their son sustained head injury. He was shifted to Civil Hospital but succumbed to the injury. The driver of the Jeep was prosecuted for causing accident by rash and negligent driving and thus they claimed a total compensation of Rs.6,36,000/- but restricted it to Rs.6,00,000/-.

3. The Respondent no.1 in his written statement (Exhibit-13) *inter alia* denied that the accident had occurred due to rash and negligent driving of the Jeep driver and further denied the age, occupation and income of the deceased.

4. The Respondent no.2 Insurance Company in its written statement (Exhibit-12) also disputed the manner of occurrence of the accident. It

further raised defences that excess passengers were being carried in the Jeep. The driver of the Jeep was not holding valid and effective licence and thus there was a breach of the terms and conditions of the insurance policy and claimed to be exonerated.

5. The Tribunal held that the accident was proved. The deceased was travelling in the Jeep and had sustained head injury as a result of the rash and negligent driving of the Jeep driver and consequently the Respondent no.1 being the owner and the Respondent no.2 being the insurer were liable to pay the compensation.

6. The Tribunal held that there was no evidence to show that the deceased was doing any work. Taking into account the notional income of Rs.18,000/- per annum and deducting 1/3rd towards personal expenses if assessed the loss of dependency at Rs.12,000/- per annum and applying the multiplier of 15 by taking into account the age of the Appellants of 42 and 40 years assessed the loss of income at Rs.1,80,000/-. Conspicuously the Tribunal has not awarded anything for loss of love and affection, funeral expenses etc. Hence this Appeal.

7. The learned advocate for the Appellants vehemently submitted that the Tribunal has grossly erred in applying the law and the well settled

principles by the Supreme Court in catena of decisions while assessing the compensation. It has not applied mind and has only held the Appellants to be entitled to loss of income and no compensation has been awarded under well accepted heads as laid down in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation and Ors.; AIR 2009 SC 3104**, and **National Insurance Company Limited Vs. Pranay Sethi and Ors.; AIR 2017 SC 5157**. The learned advocate would further submit by referring to the decision in the case of **Govind Yadav Vs. The New India Insurance Company Limited; 2011 (10) SCC 683** and submitted that assuming that the Appellants have been unable to prove the occupation of the deceased of being a Tailor should have taken into account the notional income at Rs.36,000/- per annum.

8. The learned advocate also submitted that even the Tribunal has grossly erred in applying the multiplier. Since deceased was aged 22 years, the correct multiplier '18' should have been applied according to decision in the case of **Sarla Verma** (supra) by taking into account the age of the deceased and not the age of the Appellants as has been held in the case of **Pranay Sethi** (supra). Lastly, the learned advocate for the Appellants would submit that the Tribunal even ought to have taken into account the future prospects as has been laid down in the case of **Pranay Sethi** (supra).

9. The Respondent no.1 has been duly served but has not appeared.

10. The learned advocate Mr. Deshpande for the Respondent no.2 vehemently submitted that there is no error committed by the Tribunal in assessing the compensation. The Appellants had failed to prove the occupation of the deceased and even his income. The Tribunal has correctly taken into account the notional income at Rs.18,000/-. Since the deceased was a bachelor, in fact the Tribunal ought to have deducted one half of his income towards his personal expenses but has reduced it only by 1/3rd. The multiplier of '15' has been correctly applied by taking into account the age of the Appellants.

11. I have carefully gone through the papers. At the outset it is necessary to note that the owner and the insurer of the vehicle i.e. Respondents have not preferred any appeal. The finding and the conclusion of the Tribunal that the accident had occurred due to rash and negligent driving of the driver of the Jeep has become final. Therefore the only question as regards the quantum of the compensation needs to be addressed.

12. According to the Appellants the deceased was aged 22 years. He had studied up to 12th standard and was doing Tailoring work and was earning Rs.150 to Rs.200 per day or around Rs.4,000/- per month. However,

except the highly interested version of the Appellants and the statements in the deposition of Appellant Sakharam who was examined as their witness no.1 there is absolutely no cogent and reliable evidence as regards the occupation and income of the deceased. One can easily comprehend that if really he was doing some Tailoring work, the Appellants could have easily brought some evidence on the record in that respect either in the form of some certificate under the Shops Act or a certificate from the Village Panchayat or the Local Body or could have examined at least one of his customers. In the absence of any such evidence, the Tribunal was left with no other alternative but to proceed on the premise that the deceased was not having any such occupation or income. Therefore no fault can be found with the observation and the conclusion of the Tribunal to proceed on the premise that there was no alternative but to resort to determine the compensation by taking into account income of the deceased notionally.

13. Assuming that the deceased was not doing anything, still by applying the well settled principles, the notional income as has been held in the case of **Govind Yadav** (supra) could have been taken into account by taking note of the rate of daily wages on the date of the accident being earned by a labourer. In the case of **Govind Yadav** (supra) the incident had taken place in the year 2004 and the notional income of the Petitioner-injured was

taken as Rs.36,000/- per annum. Whereas in the mater in hand the accident had occurred in the year 2009 and still the notional income has been taken at Rs.18,000/- per annum. The Tribunal has therefore erred in this regard and one can proceed by assuming the notional income of the deceased to be Rs.36,000/-.

14. However, the Tribunal has wrongly deducted 1/3rd of the income towards personal expenses although the deceased was a bachelor and applying the principles in the case of **Sarla Verma** (supra) 50 % of his income must be deducted towards his personal expenses. The learned advocate for the Appellants vehemently submitted that though the deceased is regarded as a labourer, still applying the guidelines laid down in the case of **Pranay Sethi** (supra), he should have been regarded as a person falling in category no.4 for ascertaining future prospects which is applicable to the cases where the deceased is self-employed or on a fixed salary. And since the deceased was aged less then 25 years 40 % of the established income should have been added. When as a matter of fact it has been held that the deceased was not doing any Tailoring work, he cannot be regarded as a self-employed so as to fall in this category no.4 of the guidelines. In my considered view, this category is not applicable to persons who are not employed and have no permanent income and the Tribunal has to consider the income only

notionally. In other words such future prospects cannot be considered in the same proportion as has been laid down in the guideline no.4 in **Pranay Sethi's** case. Therefore one needs to proceed only on the premise that the income of the deceased was Rs.36,000/- per annum, without taking into account any future prospects, particularly when he was merely 12th pass person aged around 22 years and there has been no evidence about his inclination in academics or in any other field.

15. As far as multiplier is considered without indulging into any lengthy discussion one can safely proceed by following the decision in the case of **Pranay Sethi** (supra) wherein it has been specifically laid down that the multiplier should be applied according to the age of the deceased. Thus applying the schedule from **Sarla Verma** (supra), since the deceased was aged between 15 to 25 years, the multiplier applicable would be '18'. The Tribunal has erred in applying the multiplier of '15', by taking into account the age of the Appellants instead of applying the multiplier of '18' according to the age of the deceased.

16. The Tribunal has also grossly erred and committed an illegality in not awarding anything to the Appellants in respect of the other heads of compensation like loss of love and affection and funeral expenses. Thus

taking into account all the above aspects. in my considered view the following would be the just compensation to which the Appellants are entitled to:

1]	Loss of income of Rs.36,000/- per annum – 50 % = Rs. 18,000/- per annum multiplied by 18 = 3,24,000/-.
2]	Loss of love and affection Rs.1,00,000/- each.
3]	Funeral Expenses of Rs.15,000/-

17. Thus, the Appellants are entitled to just compensation of Rs.5,39,000/-. The Tribunal has clearly erred in not following the principles while assessing the compensation which has resulted in gross miscarriage of justice which needs to be corrected.

18. The Appeal is allowed. The impugned judgment and award is modified. The Appellants are entitled to recover Rs.5,39,000/- together with interest at the rate of 6% per annum from the date of the petition till realization of the entire amount of the award which shall be inclusive of the amount of no fault liability of Rs. 50,000/-. The compensation shall be disbursed to the Appellants in equal proportion.

[MANGESH S. PATIL, J.]