IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.451/2007

1] Chandrakalabai w/o Kailas Nikumbh,
age 48 yrs., occu.household,

2] Rupesh s/o Kailas Nikumbh,
age 28 yrs., occu.education,

3] Paresh s/o Kailas Nikumbh,
age 26 yrs., occu.education,

4] Nilesh s/o Kailas Nikumbh,
age 23 yrs., occu.education,

All r/o Saneguruji Nagar,
Opposite to Nahata College, Bhusawal.
Dist.Jalgaon.

...Appellants..
(Org.petitioners)

VERSUS

1] Kashinath s/o Keshav Salunke,
age 55 yrs., occu.service,
r/o Bhoiwada, Varangaon.
Tq.Bhusawal Dist.Jalgaon.
(Owner of Tempo Trax No.MH-19/G-0462)

2] The Divisional Manager,
The New India Assurance Co.Ltd.,
Dhadiwala Bunglow, Jalgaon.

3] The Chairman,
Lok-Kalyan Gramin Non-Agriculture
Cooperative Society Ltd.,
Varangaon, Office at Gandhichauk,
Varangaon Tq.Bhusawal.

...Respondents..
(Org.respondents)

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Shri C.K. Shinde, Advocate for appellants.
Respondent nos.1 & 3 served, but absent.
Shri M.M. Ambhore, Advocate for respondent no.2.

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CORAM: V.L. ACHLIYA, J.

DATE: 12.04.2019

JUDGMENT :

1] Being aggrieved by the judgment and order dated 21.1.2002 passed by the Member, Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No.229/1997, the appellants – original claimants have preferred this appeal to the limited extent of challenging the quantum of compensation awarded by the Tribunal.

2] Heard learned counsel for the appellants – respondents. Perused the record and proceedings.

3] In view of the challenge in the appeal confined to quantum of compensation awarded by the tribunal, it is not necessary to deal with the facts in detail.

4] Before adverting to deal with the submissions advanced, it is useful to refer to few facts leading to filing of the claim petition.

5] The appellants preferred the claim petition seeking compensation of Rs.13,64,000/- as against the respondents on account of accidental death of the deceased Kailas – the husband of appellant no.1 and father of appellant nos.2 to 4. The deceased met with an accident on 10.3.1997 while proceeding on a motor-cycle. The deceased was hit by Tempo Trax No.MH-19/G-0462 and succumbed to injuries, which vehicle was owned by respondent no.1 and insured with respondent no.2. At the time of incident, the deceased was 50 years old and was serving as a Branch Manager in United Western Bank, Branch at Bhusawal. He was drawing monthly salary of Rs.13433=64 and after compulsory deductions, the deceased was receiving Rs.13,100/- per month as salary. The deceased was due for retirement at the age of 58 years. On the basis of pecuniary and non-pecuniary loss, the appellants have claimed compensation of Rs.13,64,000/-.

6] The Tribunal has assessed the compensation to be payable at Rs.6,30,156/- as against the claim of Rs.13,64,000/- inclusive of amount of Rs.50,000/- paid as No Fault Liability with future interest at the rate of 9% p.a. from the date of petition till realization of the entire amount. Being aggrieved by the quantum of compensation awarded, the appellants have preferred this appeal.

7] Learned counsel for the appellants assailed the reasons and findings recorded by the Tribunal to assess the compensation at Rs.6,30,156/- as against the claim of Rs.13,64,000/- made by the appellants. It is submitted that the Tribunal has erred in applying the multiplier of 11 while assessing the compensation. It is submitted that though the deceased completed the age of 50 years, but not completed the age of 51 years at the time of his death, the multiplier of 13 as applicable for the age group of 45 to 50 years ought to have been applied by the Tribunal. It is further submitted that though the deceased was permanent employee of the bank, the Tribunal has erred in not taking into consideration the future prospects while assessing the compensation. It is submitted that in the facts and circumstances of the case, the Tribunal ought to have added atleast 30% as income in the yearly income of the deceased to be computed for the purpose of assessment of compensation. The learned counsel further submitted that the compensation assessed is not in accordance with the law laid down by the Apex Court in the case of *Sarla Verma (Smt.) & others v. Delhi Transport Corporation and another* reported at **(2009) 6 SCC 121** and *National Insurance Company Limited v. Pranay Sethi & others* reported at **(2017) 16 SCC 680.**

8] On the other hand, the learned counsel representing the respondent no.2 – the insurance company supported the judgment and order passed by the Tribunal. The learned counsel submits that the compensation as awarded by the Tribunal is just and proper and assessed as per settled principles laid down in determination of compensation and calls for no interference in the exercise of appellate jurisdiction.

9] I have carefully considered the submissions advanced in the light of rival pleadings, oral and documentary evidence adduced and the judgment and order passed by the Tribunal. In my view, the assessment of compensation made by the Tribunal requires re-assessment in exercise of appellate jurisdiction.

11] If we consider overall facts of the case, then the fact is not in dispute that the deceased was working as Branch Manager with United Western Bank and at the time of incident, the deceased was above the age of 50 years and below the age of 55 years. The date of birth of deceased proved to be 13.10.1946. In view of the evidence on record, there is no dispute as to the fact that at the time of incident, the deceased was drawing monthly salary of Rs.13435=64. The deceased died on 10.3.1997. In order to prove the age, income and occupation of the deceased, the appellant no.1 has stepped into the witness box and deposed as per the case of the appellants. She has categorically deposed that her husband was serving as Branch Manager in the United Western Bank at Bhusawal and receiving monthly salary of Rs.13,500/- per month and contributing Rs.11,000/- per month for the maintenance of the family. In support of the age of the deceased, the claimants have produced the school leaving certificate of the deceased, which is at

Exhibit 42. While entering the school, the date of birth of the deceased shown to be recorded as 13.10.1946. The appellants – claimants have examined Dattatray Landage (PW3), Clerk working with United Western Bank, Branch at Bhusawal, where the deceased was working. The witness has categorically deposed that in the month of February, 1997, the deceased was receiving monthly salary of Rs.13,435=64 and produced the salary certificate to that effect at Exhibit 53. He further deposed that the deceased had a span of 10 years to serve in the bank. The copy of pay bill of the deceased produced at Exhibit 56 shows that in the month of February, 1997, the deceased was receiving net monthly salary of Rs.13,435=64. The basic pay of the deceased was Rs.8280/- and dearness allowance of Rs.3710=74 paid to him in said month. Besides this, the deceased was receiving HRA of Rs.1179=90 and personal pay allowance (PPA) of Rs.265/-. The amount of Rs.7,845/- is shown to be deducted from the net salary towards provident fund, professional tax, income tax, insurance premium, bank loan, society loan, welfare fund, PF loan recovery etc. Thus, if we consider the statutory deductions, then the

amount of professional tax and income tax alone to be deducted while assessing the monthly / yearly income of the deceased.

12] Thus, considering net monthly salary of the deceased as Rs.11,990=74 (i.e. basic Rs.8280/- plus DA Rs.3710=74), multiplied by 12, the gross yearly income for the purpose of assessment works out to Rs.1,43,888=88. After making statutory deductions on account of professional tax and income tax as per break up given in pay slip (Exhibit 56), the amount of Rs.15,637/- (i.e. IT Rs.14,757/- plus PT Rs.880/-) needs to be deducted as yearly statutory deductions from the net yearly salaried income of the deceased. Thus, after making the statutory deductions, the net yearly income of the deceased on account of salary works out to Rs.1,28,251=88. Therefore, the monthly salary for the purpose of assessing the computation of compensation to be worked out at Rs.10,687/-. In that view, the Tribunal has erred in assessing the monthly salary for the purpose of assessment of compensation as Rs.9335/- per month and further after making 1/3rd deduction towards personal expenses assessing monthly contribution of deceased as per Rs.6236/- per month for all purposes for assessing the compensation. It appears that deduction of Rs.4,000/- in lump-sum towards income tax and Rs.80/- towards professional tax was made from the monthly salary of Rs.13,435=64 of the deceased drawn in the month of February, 1997.

13] The pay slip at Exhibit 56 reveals that the yearly income tax payable by the deceased in the financial year works out to Rs.14,757/- and the amount on account of professional tax to be deducted for the said assessment year works out to Rs.880/-. Thus, the yearly deductions on account of statutory deductions works out to Rs.15,637/-. The determination of monthly salary on the basis of income tax paid in the month of February, 1997 was improper. While assessing the compensation, the Tribunal was expected to have computed the yearly income after making the statutory deductions of the entire year from the net salary of the deceased payable for the assessment year. In that view, the Tribunal has committed error in assessing the monthly income of the deceased. On account of wrong assessment of the monthly salary, further calculations made on account of personal income are also not in accordance with law. So also the Tribunal has failed to take into consideration that the deceased was permanent employee and serving as Branch Manager. In that view, the Tribunal ought to have considered the future prospects of the deceased and added monthly income to the extent of 15% in total income of the deceased for the purpose of assessment of compensation. So also the compensation awarded on account of non-pecuniary loss also is not in accordance with law.

12] In the case of *National Insurance Company Limited v. Pranay Sethi & others* (supra), the Apex Court has laid down following broad guidelines in the matter of determination of compensation:-

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
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> (i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
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> (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 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.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with

paragraph 42 of that judgment.
(vii) The age of the deceased should be the basis for applying the multiplier.
(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

13] Thus, considering the overall facts of the case and on the date of accident i.e. 10.3.1997, the deceased was 50 years 04 months and 21 days old, the multiplier of 11 needs to be applied in the case of deceased Kailas as per the law laid down in the case of *Sarla Verma* (supra). Since the deceased was above the age of 50 years and below the age of 60 years, while assessing the compensation, 15% of actual salary is to be added in the total income of the deceased for the purpose of assessing the compensation. So far as non-pecuniary loss is concerned, the appellants deserve to be awarded Rs.70,000/- towards loss of estate, loss of consortium, funeral expenses etc. Thus, the compensation deserves to be re-assessed as under:-

Gross Monthly Salary	Rs.11,990/- per month
Gross Annual Income	11990 x 12 = Rs.1,43,888/-
Statutory deductions towards professional tax and income tax	Rs.15,567/- per year
Net yearly salary receivable by deceased	143888 – 15567 = Rs.1,28,251/-
Net monthly salary payable per month after statutory deductions	Rs.10,687/-
Net yearly salary to be considered for the purpose of computation	10687 x 12 = Rs.1,28,244/-
After making 1/3rd deduction towards personal expenses (3 dependents)	128244 – 42743 = Rs.85,501/-
15% addition in the income towards future prospects	85501 + 12825 = Rs.98,326/-
On applying multiplier of `11', the total computation on account of pecuniary loss works out	Rs.10,81,586/-
Addition under non-pecuniary heads	Rs.70,000/-
TOTAL COMPENSATION TO BE PAYABLE	**Rs.11,51,586/-**

14] In the result, the appeal deserves to be partly allowed. Accordingly, following order is passed:-

O R D E R

A] The appeal is partly allowed.

B] The award passed by the Tribunal is modified as under:-

i] The respondent nos.1 and 2 shall jointly and severally pay amount of compensation of Rs.11,51,586/- inclusive of amount of Rs.50,000/- awarded towards No Fault Liability with interest at the rate of 6% p.a. from the date of registration of the petition till realization of the amount.

ii] The amount deposited by the insurance company in terms of the award and withdrawn by the appellants, including the amount, if any, lying deposited in the Court, be adjusted towards the amount to be payable in terms of the modified award.

iii] Out of the amount payable as per the modified award, 50% of the amount shall be paid to the appellant no.1 and the balance amount be paid in equal proportion to the appellant nos.2 to 4.

iv] The respondent nos.1 and 2 shall bear their own costs and pay proportionate costs of the petition as well as the appeal to the appellants-claimants.

(V.L. ACHLIYA, J.)