IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1794 OF 2012

1. Sheela w/o Shyamsundar Jadhav
Age : 28 years, occu.: household
R/o Pulkute Nivas, Barshi Road,
Behind Garad Garden, Vikram
Nagar, Latur.

2. Rohan Shyamsundar Jadhav
Age : 8 years, occu.: education
R/o as above.
(Being minor under guardianship
of claimant No.1 – mother).

3. Jairam Laxman Jadhav
Age : 63 years, occu.: nil
R/o as above.

4. Kondabai w/o Jairam Jadhav
Age : 58 years, occu.: household
R/o as above. **Appellants**.

Versus

1. M/s Bensara Pharmaceuticals
Pvt. Ltd., W-264, M.I.D.C.
TTC Industrial area, Rabale,
Navi Mumbai.

2. Cholomandalam M S General
Insurance Company Limited
"Dare House 2nd Floor, N.S.C.
Bose Road, Chennai (Tamilnadu). **Respondents**.

***

Mr. R.P. Aadgaonkar, Advocate for the appellants.
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2.

***

CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 16 April 2019.

Judgment pronounced on : 24 April 2019.

JUDGMENT.

. This appeal is directed by original claimants for enhancement of compensation against judgment and award passed by Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal"), Latur in Motor Accident Claim Petition (M.A.C.P.) No.385/2008.

2. Respondent No.1 is the owner of offending vehicle and respondent No.2 is the insurer of the said vehicle.

3. As no cross objection or cross appeal is filed by the owner or insurer of the offending vehicle, the facts regarding occurrence of the accident and finding regarding rash and negligent driving by the driver of offending vehicle need not be reproduced in the present appeal.

4. Heard Mr. Adgaonkar, learned Counsel for the appellants and Mr. S.G. Chapalgaonkar, Advocate for respondent No.2/Insurer.

5. Learned Counsel for the appellants submits that date of the accident is 15.02.2008 and on that date the deceased was 31 years old. He submits that the deceased was in service and he was permanent employee of Aviance Healthcare Pvt. Ltd. Nagpur.

6. Next contention of learned Counsel for the appellants is that though annual income of the deceased was more than Rs.1,20,000/-, while determining the compensation the Tribunal considered inadequate annual income of the deceased on the basis of 15 days salary of deceased in the last month. He submits that even the Tribunal wrongly deducted one-third income from the annual income of the deceased towards his personal expenses, though the number of dependents in the family of deceased were “4”. He has pointed out that under conventional heads less compensation is awarded by the Tribunal and even rate of interest on compensation amount is not correct. He prays that rate of interest will be 9 % per annum from the date of filing of claim petition.

7. The last contention of the learned Counsel for the appellants is that while determining annual income of deceased

the Tribunal did not consider loss of future prospects due to premature death of the deceased. He placed reliance on the cases of"**Sarla Varma & Ors Vs. Delhi Transport Corp. & Anr.", (AIR 2009 SC 3104)** and **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. (SC) 70]**.

8. In reply, learned Counsel for the respondent No.2 / Insurer submits that to prove monthly income of the deceased the claimants have not placed on record the bank account of the deceased to show as to how much salary was deposited in his account by the employer. He has drawn my attention towards cross-examination of Vaibhav Kasture (PW-2) wherein this witness has admitted that the allowances payable to the deceased are not part of the salary. He has also drawn my attention towards admission of this witness that monthly salary of the deceased was calculated on the basis of number of working days. Contention of the learned Counsel for respondent No.2 is that the personal allowances payable to the deceased should be deducted alongwith taxes from his payable income.

9. Undisputedly, the deceased died in a motor vehicular accident on 15.02.2008. On the basis of Transfer Certificate

(Exh.35) of deceased it can be gathered that the date of birth of deceased was 16.06.1976. Thus, the contention of appellants is correct that at the time of death the deceased was 31 years old young person.

10. By examining Vaibhav Kasture (PW-2), who is the Office Assistant in Aviance Healthcare Pvt. Ltd., the claimants have duly proved that since November 2005 deceased used to work in the said Pharmaceutical Company and he was permanent employee of the said Company. From the evidence of this witness it emerges that in the month of March 2006 the deceased was promoted as as Business Development Manager (Exh.44). Other letters (Exhs. 46, 47) proved by this witness show the escalation in the monthly salary of the deceased. This witness has also duly proved monthly salary slip (Exh.48/1 to Exh.48/12) of the deceased of the year 2008. Deceased died in the month of February 2008. Therefore, his salary slip of the month of January 2008 is relevant which can show the last monthly salary of deceased together with the relevant allowances and deductions. The salary slip of the deceased for the monthly January 2008 shows that total monthly salary of the deceased

was Rs. 10,100/- and out of this salary profession tax of Rs. 200/- and Provident Fund deduction of Rs. 660/- was deducted. Apart from this, the salary slip shows that monthly salary of the deceased includes the following pay and allowances :-

Rate of payment	-	Rs. 5500/-
House Rent Allowance	-	Rs. 1650/-
Medical Allowance	-	Rs. 800/-
Education Allowance	-	Rs. 600/-
Conveyance	-	Rs. 650/-
Kit Allowance	-	Rs. 500/-
City Compensatory allowance	-	Rs. 400/-
Total	-	Rs. 10,100/-

11. Thus, out of the above allowances conveyance allowance of Rs. 650/- and Kit allowance of Rs. 500/- being personal allowances are to be deducted from the total salary of the deceased alongwith profession tax of Rs. 200/-. Thus, after deduction of Rs. 1350/- from the total monthly salary of the deceased i.e. Rs. 10,100/-, the monthly income of the deceased comes to Rs. 8,750/-.

12. As the deceased was below the age of 40 years and in the permanent service of the above-said Pharmaceutical Company, in view of the law laid settled by the Apex Court in the

case of **"National Insurance Co. Ltd. Vs Pranay Sethi"** (supra), there should be addition of 50% of the actual salary towards loss of future prospects. Thus, the actual monthly salary of the deceased comes to Rs. 13,125/-. It follows that annual income of the deceased comes to Rs. 1,57,500/- (13,125 x 12).

13. Number of dependents in the family of deceased are "4". Therefore, as settled by the Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp."** (supra), one-fourth amount i.e. Rs. 39,375/- is to be deducted from the annual income of the deceased towards his personal expenses. Thus, after deducting one-fourth amount from the annual income of the deceased towards his personal expenses, his annual contribution available to his family comes to Rs. 1,18,125/- (1,57,500 – 39,375).

14. As the deceased was above 31 years and below 35 years of age, as per the guidelines issued by the Apex Court in the case of **"Sarla Varma Vs Delhi Transport Corp."** (supra), multiplier of "16" is applicable in the case at hand. Thus, the total loss of dependency of the claimants comes to Rs. 18,90,000/- (1,18,125 x 16).

15. After going through the judgment passed by the Tribunal, it emerges that under conventional heads meager compensation is awarded by the Tribunal. Therefore, in accordance with the law settled by larger Bench of the Apex Court in the case of **"National Insurance Co. Ltd. Vs Pranay Sethi"** (supra), the claimants are entitled to following compensation under conventional heads :-

Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-

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

Loss of dependency	:-	Rs. 18,90,000/-
Loss of consortium	:-	Rs. 40,000/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 19,60,000/-

(Rupees Nineteen Lakh Sixty Thousand)

17. The above-said compensation is inclusive of the amount received by claimants under the head "no fault liability". Moreover the claimants are entitled to interest at the rate of Rs.9% per annum on the said compensation amount from the

date of filing of petition till realization of entire compensation amount.

18. Before parting with the judgment, I must make it clear that as the responsible officer from the office of the employer of deceased is examined by the claimants, non-production of bank account of the deceased does not hold any importance.

19. Accordingly, my conclusion is that this appeal deserves to be partly allowed and compensation awarded by the Tribunal deserves to be enhanced to the tune of Rs. 19,60,000/-. Considering young age of claimant Nos.1 and 2 and their further life span, I hold that they are entitled to major share out of compensation amount.

20. In the result, First Appeal No.1794 of 2012 is partly allowed. The compensation awarded by the Tribunal, Latur in M.A.C.P. No.385/2008 is enhanced to the tune of Rs. 19,60,000/- (Rupees Nineteen Lakh Sixty Thousand) with interest thereon at the rate of Rs. 9% per annum from the date of filing of petition till realization of the entire compensation amount. This compensation amount shall be inclusive of the amount under the

head “no fault liability”.

21. On deposit of compensation amount before the Tribunal, an amount of Rs. 1,00,000/- (Rupees One Lakh) each be paid to claimant No.3Jairam Laxman Jadhav and claimant No.4 Kondabai Laxman Jadhav through the Tribunal by issuing separate account payee cheques in their respective names.

22. The remaining compensation amount shall be equally apportioned between claimant No.1 Sheela Shyamsundar Jadhav and claimant No.2 Rohan Shyamsundar Jadhav.

23. Claimant No.2 Rohan being minor, the compensation amount of his share shall be invested in fixed deposit in any Nationalized Bank of the choice of claimant No.1 Sheela Shyamsundar Jadhav for the period of five years and it shall be renewed at the intervals of every five years till the claimant No.2 Rohan Shaymsundar Jadhav attains majority.

24. The compensation amount of the share of claimant No.1 Sheela Shyamsundar Jadhav be paid to her through the Tribunal by issuing account payee cheque in her name.

25. Deficit Court fees, if any, be recovered from the claimants.

26. The award passed by the Tribunal be modified in above-said terms.

27. Parties to bear their respective costs throughout.

(SUNIL K. KOTWAL)
JUDGE

vdd/