IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1357 OF 2017

M/s. Shriram General Insurance Company Limited, E-8, EPIP, RIICO Industrial Area, Sitapur, Jaipur (Rajasthan State) through its Branch Manager / Authorised Signatory, Aurangabad.	... **APPELLANT** (Orig. Rspdnt No.2)

VERSUS

1. Pushpa Somnath Landge, Age - 36 years, Occu: Household, 2. Sandeep Somnath Landge, Age – 15 years, Occu. Education, 3. Sachin Somnath Landge, Age: 13 Occu : Education, No. 2 and 3 are minors, U/G of their natural mother i.e. Pushpa Landge 4. Mahesh Kantilal Shedale, Age : Major, Occu : Business, R/o Jam-Kaudgaon, Taluka Nagar, District Ahmednagar.	**Respondents** (Rspdt. Nos.1 to 3 Org. Claimants Rspdt.No.4– Org. Rspdt. No.1

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Mr. S.G. Chapalgaonkar, for the Appellant.

Mr. S.R. Andhale, for respondent Nos.1 to 3.

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CORAM : SUNIL K. KOTWAL, J.

Date : 10th June, 2019

JUDGMENT:

1. This appeal is directed by Shriram General Insurance Company Limited, which was original opponent No.2, against the judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar in MACP No.243/2013.

2. Respondent Nos. 1 to 3 are original claimants and respondent No. 4 is original opponent No.1 who is the owner of the offending vehicle.

3. Facts leading to institution of this appeal are that on 19.01.2013, when deceased Somnath was proceeding by Ahmednagar to Pathardi Road, that time, the offending tempo bearing registration No.MH-12-DT-2652 gave dash to the deceased, resulting into his death. The accident occurred due to rash and negligent driving by the driver of the offending vehicle. Therefore, claimants filed claim petition under Section 166 of the Motor Vehicle Act for compensation. By filing written statement Ex. 23 opponent No.1 resisted the claim by denying rash and negligent driving by driver of the tempo. Even opponent No.2 resisted the claim petition by raising statutory defence regarding breach of condition of the policy of the insurance by opponent No.1, for want of valid and effective driving

license with the driver of the offending vehicle.

4. After considering the evidence placed on record by both the parties, learned Tribunal awarded total compensation of Rs.16,99,000/- in favour of the claimants with interest @ 7% per annum from the date of filing of the petition. This award is challenged by insurance company only on the ground that the compensation awarded by the Tribunal is exorbitant.

5. Heard learned counsel Mr. Chapalgaonkar for appellant - insurer and Mr. S. R. Andhale learned counsel for respondent Nos. 1 to 3. None appeared for respondent No. 4 though served.

6. Learned counsel for the appellant submits that the learned Tribunal committed error while assessing notional income of the deceased @ Rs.7000/- per month and erroneously added 50% amount towards loss of future prospect. He submits that the notional income of the deceased being agriculturist cannot be more than Rs.3000/- per month. He has pointed out that no reliable evidence has been placed on record by claimants to prove the income of the deceased out of dairy business or as mason. He has also pointed out that though deceased was 35 years old, in view of law settled by larger bench of Apex Court in **National**

Insurance Co. Ltd. Vs. Pranay Sethi and Ors., reported in **[2018 (3) Mh.L.J. (SC) 70]** as deceased was self employed, below the age of 40 years, there can be addition of 40% in the monthly income of the deceased. He has also pointed out that under conventional head exorbitant compensation is awarded by the Tribunal.

7. Learned counsel for claimants supported the judgment passed by the Tribunal on the ground that the deceased was only the bread earning member of the family. He submits that by examining PW2, the claimants have placed on record evidence regarding income of the deceased as a mason, as agriculturist as well as his income from dairy business. He submits that the notional income of the deceased was rightly considered by Tribunal as Rs.7000/- per month.

8. For assessing the fair and reasonable compensation payable to the claimants, age of the deceased at the time of death and in occupation are the relevant factors. In the case at hand, undisputedly, the deceased was 35 years old at the time of his death. Therefore, in view of law settled by Apex Court in **Sarla Varma and Ors. Vs. Delhi Transport Corp. and Anr.,** reported in **[AIR 2009 SC 3104]** multiplier of 16

is applicable while determining the loss of dependency of the claimants.

9. So also from the PM notes and evidence of claimants, PW-1 on record, it can be gathered that at the time of death the deceased was 35 years old agriculturist who was also well bodied person. Therefore, though learned Tribunal rightly disbelieved the evidence of PW-2 regarding source of income of the deceased from dairy business and as a mason, it cannot be ignored that considering the minimum wages of agricultural labor prevailing in the year 2013, the notional monthly income of the deceased cannot be less than Rs.5000/-. I hold that the notional income of the deceased at the time of his death was Rs.5000/- per month. As deceased was below the age of 40 years and self employed person, in view of law settled by Apex Court in National Insurance Company Vs. Pranay Sethi (supra) there shall be addition of 40% in the actual monthly income of the deceased. Thus, monthly income of the deceased comes to Rs.7000/- per month. It follows that his annual income is Rs.84,000/-.

10. As there are three dependants in the family of the deceased, in view of law settled by Apex Court in Sarla Verma (supra) there shall be deduction of 1/3rd

amount from the annual income of the deceased towards his personal expenses. Thus, after deducting this 1/3rd amount from the annual income of Rs.84,000/- the annual income of the deceased available to his family comes to Rs.56,000/-. After multiplying this amount by multiplier of 16 the loss of dependency comes to Rs.8,96,000/- .

11. Though the tribunal relied on the case of **Rajesh and Ors. Vs. Rajbir Singh and Ors. [(2013) 9 SCC 54]** and **Munna Lal Jain and Anr. Vs. Vipin Kumar Sharma and Ors. [2015 SAR (Civil) 821 Supreme Court]**, in view of judgment of the larger Bench, in Pranay Sethi (supra), these both cases are no more good law. Therefore, as per verdict of Apex Court in Pranay Sethi (Supra) under conventional head, the petitioners are entitled to following compensation :

Loss of Consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
Loss of Funeral Expenses	Rs.15,000/-

12. Thus, the claimants are entitled to total following compensation under different heads:

Loss of dependency	Rs.8,96,000/-
Loss of Consortium	Rs.40,000/-
Loss of Estate	Rs.15,000/-
loss of funeral expenses	Rs.15,000/-
	....
Total :	**Rs.9,66,000/-**

13. On this compensation amount, the claimants are also entitled to interest @ 9% per annum from the date of filing of this petition till realization. All the claimants are entitled to equal share in the said compensation amount. Therefore, by partly allowing this appeal, the award passed by Tribunal deserves to be modified.

14. Accordingly, First Appeal No.1357/2017 is partly allowed.

15. The judgment and award passed by the Motor Accident Claims Tribunal, Ahmednagar in MACP No.243/2013 is modified as under:

"a) Claim petition is partly allowed with proportionate cost;

b) Opponent Nos. 1 and 2 do jointly and severally pay compensation of Rs.9,66,000/- with interest thereon @ 9% per annum from the date of filing of claim petition till realization. This compensation shall be inclusive of no fault liability compensation;

c) On deposit of this compensation before the Tribunal, the share of minor claimant No.3 Sachin Somnath Landge, be invested in fixed deposit in any Nationalized Bank through claimant No.1; till he attains majority. Liberty is given to claimant No.1 to withdraw the quarterly accrued interest on fixed deposit amount for the benefit of minor.

d) Compensation amount of the share of claimant No.1 Pushpa Somnath Landge and No. 2 Sandip Somnath Landge be paid to them through the Tribunal by separate account cheques issued in their respective names.

e) The award be drawn accordingly."

16. The award passed by Tribunal be modified in above said terms.

17. The compensation amount deposited in this Court be transmitted to Motor Accident Claims Tribunal, Ahmednager, for its disbursement in accordance with modified award. Claimant Nos. 1 and 2 are permitted to withdraw compensation amount of their respective shares

after the period of appeal is over.

18. Excess court fee paid by the claimants before the Tribunal be refunded to them.

19. Excess amount with proportionate interest deposited by the appellant insurance company; be refunded to it by the Tribunal.

20. Appeal is disposed of in the above said terms. Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL, J.)

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