IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2626 OF 2018
WITH
CIVIL APPLICATION NO.6915 OF 2018
IN
FIRST APPEAL NO.2626 OF 2018

1. Laxman s/o Hekmati Jhodage,
Age : 72 years, Occu. Nil

2. Rukhminbai w/o Laxman Jhodage,
Age : 64 years, Occu. Nil

Both r/o Kanadi Ghat,
Taluka Beed, District Beed

APPELLANTS/
APPLICANTS
(Orig. Claimant Nos.4 and 5)

VERSUS

1. SDH. LOGISTICS PROP -
Manjeet Singh,
Age : Major, Occu. Business,
R/o Saraya Ka Rasta,
Behind Prince Vatika,
Opp. Sector-5, Near Petrol Pump,
Mata Mandir Road,
Gurgaon (Haryana)

2. I.C.I.C.I. Lombard Motor
Insurance Company Ltd.,
through Branch Manager,
Branch Office, Sathe Chowk,
Beed

3. Ilyas Khan Jumma Khan,
Age : Major, Occu. Driver,
R/o Vill F.P. Jhirka,
District Mewat Nuh (Haryana)

4. Uma w/o Rameshwar Jhodage,
Age : 28 years, Occu. Household,
R/o Kanadi Ghat, Tq. Beed,
District Beed

5. Tejaswi d/o Rameshwar Jhodage,
Age : 10 years, Occu. Education,
Minor U/g of Claimant No.1

6. Pushparaj s/o Rameshwar Jhodage,
Age : 8 years, Occu. Education,
Minor U/g of Claimant No.1

RESPONDENTS
(Resp.Nos.1 to 3 orig. respondents and resp.Nos.4 to 6 are orig. claimant Nos.1 to 3)

WITH

CROSS OBJECTION (ST.) NO.4760 OF 2019

1. Uma w/o Rameshwar Jhodage,
Age : 29 years, Occu. Household,
R/o Kanadi Ghat, Tq. Beed,
District Beed

2. Tejaswi d/o Rameshwar Jhodage,
Age : 11 years, Occu. Education,
Minor through natural guardian
i.e. Appellant No.1

3. Pushparaj s/o Rameshwar Jhodage,
Age : 9 years, Occu. Education,

APPELLANTS
(Orig. Claimant Nos.1 to 3 and Respt. Nos.4 to 6 in First Appeal

VERSUS

1. SDH. LOGISTICS PROP -
Manjeet Singh,
Age : Major, Occu. Business,
R/o Saraya Ka Rasta,
Behind Prince Vatika,
Opp. Sector-5, Near Petrol Pump,
Mata Mandir Road,
Gurgaon (Haryana) **Orig.Opponent No.1**

2. I.C.I.C.I. Lombard Motor
Insurance Company Ltd.,
through Branch Manager,

Branch Office, Sathe Chowk,
Beed **Orig.Opponent No.2**

3. Ilyas Khan Jumma Khan,
Age : Major, Occu. Driver,
R/o Vill F.P. Jhirka,
District Mewat Nuh (Haryana) **Orig.Opponent No.3**

4. Laxman s/o Hekmati Jhodage,
Age : 73 years, Occu. Nil
R/o Kanadi Ghat,
Tq. and District Beed **Orig. Claimant No.4**

5. Rukhminbai w/o Laxman Jhodage,
Age : 64 years, Occu. Nil
R/o As above **Orig.Claimant No.5**

….. **RESPONDENTS**

Mr. S.K. Naikwade, Advocate for the Appellants/ Applicants
Mr. Abhijit G. Choudhari, Advocate for respondent No.2
Mr. A.N. Nagargoje, Advocate for respondent Nos.4 to 6 in First Appeal and for the appellants in Cross-Objection

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CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 19th MARCH, 2019
JUDGMENT PRONOUNCED ON : 5th APRIL, 2019

JUDGMENT :

First Appeal No.2626 of 2018 is filed by original claimant Nos.4 and 5, who are the parents of the deceased Rameshwar Jhodge, against the judgment and award passed by Motor Accident Claims Tribunal ("Tribunal", for short) in Motor Accident Claims

Petition ("MACP", for short) No.58 of 2013. Respondent No.1 in this appeal is owner of the offending vehicle. Respondent No.2 is insurer of the offending vehicle and respondent No.3 is the driver. Respondent Nos.4, 5 and 6 are original claimant Nos.1 to 3. Even claimant Nos.1 to 3 have filed Cross-Objection in the same appeal, claiming enhancement of the compensation. No Cross-Objection or Cross-Appeal is filed by the owner, driver or insurer of the offending vehicle.

2. Therefore, in this appeal/cross-objection, the point for consideration before this Court is "whether the compensation awarded by the Tribunal can be enhanced. If yes, what would be the just and reasonable compensation ?"

3. The second point for consideration is "whether the apportionment made by the Tribunal in respect of awarded compensation is correct and proper ?"

4. Heard Shri S.K. Naikwade, learned counsel for the appellants/parents, Shri A.N. Nagargoje for cross-objector/claimant Nos.1 to 3 and Shri S.G. Choudhari, learned counsel representing the insurer of the offending vehicle.

5. Learned counsel for the parents of the deceased submits that while making apportionment of the compensation, the Tribunal awarded only Rs.1,50,000/- each to the father and mother of the deceased and major share of the compensation was awarded to the widow and minor children of the deceased. He submits that under Hindu Succession Act, even the mother and father are entitled to equal share in the property of their son and therefore, the parents are entitled to equal share in the awarded compensation amount. He placed reliance on the judgment of this Court delivered in First Appeal No.2879/2015, wherein this Court has awarded major share of the compensation amount to the widow of the deceased and out of total amount of Rs.6,70,800/-, the share of Rs.2,00,000/- was awarded to the mother.

6. In reply, learned counsel for claimant Nos.1 to 3 submits that claimant No.1 being young widow of the deceased and claimant Nos.2 and 3 being minor daughter and son of the deceased respectively are entitled to major share in the compensation amount. He submits that both the parents of the deceased are old aged persons and considering their remaining life span, the Tribunal

awarded just and reasonable share of the compensation amount in their favour.

7. Regarding the enhancement of the compensation, learned counsel for claimant Nos.1 to 3 submits that the monthly salary of the deceased was Rs.28,001/- after deduction of income tax. He submits that as there are five dependents in the family of the deceased, only 1/4th amount towards personal expenses of the deceased can be deducted from annual income of the deceased. His next contention is that in view of the judgment of the larger Bench of the Apex Court in ***"National Insurance Company Limited Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. SC 70],*** as the deceased was 30 years old person in permanent service as Assistant Teacher, there should be addition of 50% in the actual monthly salary of the deceased towards future prospect. He submits that after applying multiplier of 17, the claimants are entitled to total compensation of Rs.62,83,220/-.

8. Learned counsel for the Insurance Company submits that the compensation awarded by the Tribunal is just and proper and it cannot be interfered with.

9. In the case at hand, undisputedly, at the time

of death, the deceased was 30 years old and he used to work as Assistant Teacher in Education Department, Panchayat Samiti, Surgaon, District Nasik. By examining witness from the office of the deceased, even his pay slip (Exh-52) is proved, which shows that the gross salary of the deceased was Rs.28,001/- per month. In paragraph No.23 of the judgment of the Tribunal, the entire exercise of deduction of income tax from the annual income of the deceased is rightly made by the Tribunal and the Tribunal has assessed the annual income of the deceased as Rs.3,24,875/-. This much annual income of the deceased minus taxes is not disputed by any party.

10. As there are five dependents in the family of the deceased, in view of law settled by the Apex Court in ***"Sarla Varma and others Vs. Delhi Transport Corporation and another" (AIR 2009 SC 3104)***, there shall be deduction of 1/4th amount from the annual income of the deceased towards his personal expenses of the deceased. Thus, after deduction of 1/4th amount towards personal expenses of the deceased, the annual income of the deceased comes to Rs.2,43,656/-.

11. In view of the law laid down by the Apex Court in the case of ***"National Insurance Company Limited Vs. Pranay Sethi and others"*** (supra), as the deceased was below age of 40 years in permanent service, there should be 50% addition of the actual salary in the income of the deceased towards future prospect. Thus, if in the annual income of the deceased, 50% amount is added, his total annual income comes to Rs.3,65,484/-.

12. As the deceased was 30 years old at the time of his death, in view of guidelines issued by the Apex Court in ***"Sarla Varma and others Vs. Delhi Transport Corporation and another"*** (supra), multiplier of 17 is applicable in the case at hand. Thus, if annual income of the deceased is multiplied by 17, the loss of dependency comes to Rs.62,13,228/-.

13. In addition to this, the claimants are entitled to following compensation under conventional heads.

(i)	Loss of Consortium	Rs. 40,000/-
(ii)	Loss of Estate	Rs. 15,000/-
(iii)	Funeral Expenses	Rs. 15,000/-
	Total :	Rs. 70,000/-

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

(i)	Loss of Dependency	Rs.62,13,228/-
(ii)	Loss of Consortium	Rs. 40,000/-
(iii)	Loss of Estate	Rs. 15,000/-
(iv)	Funeral Expenses	Rs. 15,000/-
	Total :	Rs.62,83,228/-

14. The claimants are entitled to total compensation of Rs.62,83,228/- and interest accrued on this amount at the rate of 9% per annum from the date of filing of claim petition till realisation of the amount.

15. Now important question arises about reasonable apportionment of this compensation amount in between claimant Nos.1 to 3 and claimant Nos.4 and 5. Before making apportionment, I must make it clear that in motor accident claim cases, the apportionment is not made in accordance with the shares of the parties in joint family property under Hindu Succession Act. The apportionment is to be made after considering the age of claimants, their remaining life span and their respective reasonable need in their future life.

16. Claimant No.1 is widow of the deceased of the age of only 28 years, having no separate source of income. Claimant No.2 is ten years old minor daughter and claimant NO.3 is eight years old minor son of the deceased. On the other hand, claimant No.4 is 72 years old father of the deceased and claimant No. 5 is 64 years old mother of the deceased. They have also no separate source of income.

17. However, it cannot be ignored that claimant No.1 being young woman and claimant Nos.2 and 3 being minor children of the deceased, have very long life span in future. Claimant No.1 has to maintain her minor children as well as she has to look after the expenses of their future education as well as marriages. Thus, naturally, considering the life span of claimant Nos.1 to 3 in future and their reasonable needs, they are definitely entitled to major portion of the compensation. Even same view was taken by this Court in First Appeal No.2879/2015, relied upon by learned counsel for the appellants/parents.

18. On the other hand, remaining life span of both the parents is obviously comparatively very short than life span of claimant Nos.1 to 3. In the circumstances,

if proportionately less share is given by the Tribunal to the old parents of the deceased, the same cannot be faulted. However, after considering the substantial enhancement awarded by this Court in the total compensation amount, there should be reasonable addition in the share of claimant Nos.4 and 5 in the compensation amount. Thus, I hold that out of total compensation of Rs.62,83,228/-, claimant No.4 Laxman s/o Hekmati Jhodage is entitled to Rs.2,50,000/- and claimant No. 5 Rukhminbai w/o Laxman Jhodage is entitled to Rs.2,50,000/-. The remaining compensation amount shall be equally apportioned in between claimant Nos.1,2 and 3. Claimant Nos.2 and 3 being minors till today, the compensation amount of their respective share shall be invested in fixed deposit till they attain majority, with liberty to receive quarterly accrued interest by their mother i.e. claimant No.1. In the circumstances, I hold that First Appeal No.2626/2018 and Cross-Objection (St.) No.4760/2019 deserve to be partly allowed.

19. Accordingly, First Appeal No.2626/2018 and Cross-Objection (St.) No.4760/2018 are partly allowed. The award passed by the Motor Accident Claims Tribunal,

Beed in Motor Accident Claims Petition No.58/2013 is modified as under:-

“(i) The claim petition is allowed with costs.

(ii) Respondent Nos.1 to 3 do jointly and severally pay compensation of Rs.62,83,228/-, inclusive of `No Fault Liability', with interest thereon at the rate of 9% per annum from the date of filing of the claim petition till the date of payment of compensation amount in the Tribunal.

(iii) The amount of compensation shall be apportioned amongst the claimants as under:-

(a) Claimant No.4 Laxman s/o Hekmati Jhodage is entitled to Rs.2,50,000/- with proportionate cost of the petition and proportionate interest.

(b) Claimant No. 5 Rukhminbai w/o Laxman Jhodage is entitled to Rs.2,50,000/- with proportionate cost of the petition and proportionate interest.

(c) Claimant Nos.1 to 3 are entitled to equal share in the remaining compensation amount of Rs.57,83,228/-.

(iv) Compensation of the share of claimant Nos.4 and 5 as well as claimant No.1 shall be paid to them through Tribunal by separate account payee cheques issued in their respective names.

(v) The compensation amount of the share of claimant Nos.2 and 3 shall be invested in fixed deposit in any nationalised bank of the choice of claimant No.1 for the period of three years and the fixed deposit shall be renewed after its maturity till the claimant Nos.2 and 3 attain majority.

(vi) Claimant Nos.2 and 3 are entitled to receive quarterly accrued interest on the fixed deposit amount through their mother i.e. claimant No.1.

(vii) Premature withdrawal of the fixed deposit amount is not permissible. The concerned bank be informed accordingly.

(viii) Award be drawn accordingly.”

20. The parties shall bear their respective costs of this appeal.

21. The First Appeal and Cross-Objection as well as Civil Application are disposed of in abovesaid terms.

[SUNIL K. KOTWAL]
JUDGE

npj/fa2626-2018+