**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1174 OF 2014

The New India Assurance Company Ltd.
A subsidiary of the General Insurance Co.Ltd.
Having one of its Divisional Office at
Adalat Road, Aurangabad
Through its authorized signatory
and constituent attorney = **Appellant**
(Orig.Resp.No.2)

VERSUS

1. Vandana wd/o Ganesh Rathod,
Age 26 yrs, Occ: Household,
R/o Ambikanagar, Parbhani,
Tq & Dist. Parbhani

2. Subhangi d/o Ganesh Rathod,
Age 08 yrs, U/g R. No. 1,

3. Amit Palsing Alog
age 55 yrs, Occ. Business,
R/o Sahebmitrawila -105,
Kadbi Chowk, Opp. Sukhajivan
Society, Nagpur.

4. Ramji Sartu Rathod,
Age 70 yrs Occ. Agri.
R/o Sonsawangi, Tk. Sengaon
Dist. Hingoli

5. Smt. Walubai Ramji Rathod
Age 65 yrs. Occ. Household
R/o as above = **RESPONDENTS**
(R.Nos. 1-2 : Org.
Clmts. R.Nos.3,4,5:
Org.R. Nos.1,3&4)

Shri Mohit Deshmukh, Adv. h/for Shri Kadethankar Ajit B., Adv. for Appellant;

Shri P.S.Paranjape, Adv. for Resp.Nos.1 & 2;

Shri. A.B.Salve, Adv. for Resp.Nos.4 & 5;

CORAM : P.R.BORA, J.
DATE : 8th February, 2019

ORAL JUDGMENT

1. Appellant-insurance company has preferred this appeal against the Judgment and Award passed by the Motor Accident Claims Tribunal, at Parbhani (hereinafter referred to as the Tribunal) in MACP No.186/2010 decided on 27th February, 2014.

2. Present Respondent Nos.1 & 2 had filed the aforesaid claim petition, claiming compensation on account of death of Ganesh Rathod, alleging the same to have been caused in a vehicular accident happened on 10th March, 2010 having involvement of a truck bearing registration No.MH-31-CB-5125 owned by present Respondent No.3 and insured with appellant- insurance company.

3. It was the contention of Respondent Nos. 1 & 2, who are hereinafter referred to as the claimants, that, on 10th March, 2010, while deceased Ganesh was proceeding on his motorcycle, was dashed by the offending truck and in the accident so happened, Ganesh suffered the death.

It was alleged by the claimants that the accident, in question, happened because of the sole negligence on part of driver of the truck. It was their contention that at the relevant time, the offending truck was being driven in high speed and negligent manner and it gave dash to motorcycle of the deceased from its behind. As stated in the claim petition, the deceased was a police constable in Maharashtra State Police. Age of the deceased was stated to be 30 years. His net salary income was stated to be Rs.13,474/- per month. The claimants had, therefore, claimed the total compensation of Rs.27,88,696/-. Parents of the deceased were added as Respondent Nos.3 and 4 in the claim petition by amending the petition.

4. The claim was contested by the respondent insurance company on various grounds. Plea of contributory negligence was raised by the insurance company and the amount of quantum was also disputed. The insurance company has also raised objection as about the involvement of the truck insured with it.

5. Learned Tribunal, after having considered the evidence brought before it, held the claimants as well as Respondent Nos.3 and 4, i.e. parents of the deceased, entitled for the total compensation of Rs.33,53,000/-(excluding the amount of NFL) jointly and severally from the owner and insurer of the offending truck. Aggrieved by, the insurance company has preferred the present appeal.

6. Shri Mohit Deshmukh, learned counsel appearing for the appellant insurance company, assailed the impugned Judgment and Award on several grounds. The learned counsel submitted that the Tribunal has failed in appreciating that, in occurrence of the alleged accident, some negligence was liable to be attributed on part of the deceased. The learned counsel submitted that considering the situation on the spot, reasonable inference can be drawn that the deceased was also negligent in plying his motorcycle.

7. The learned counsel further submitted that even if it is accepted that greater negligence was liable to be attributed on part of driver of

the offending truck, at least, some negligence was definitely liable to be attributed on part of the motorcyclist.

8. The learned counsel further submitted that while computing the amount of compensation, the Tribunal has wrongly added 100% of the income of the deceased towards his future prospects. Relying upon the Constitution Bench Judgment of the Hon'ble Apex court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. - (2017) 16 SCC 680*, the learned counsel submitted that only 50% of the income of the deceased was liable to be added towards his future prospects.

9. The learned counsel further submitted that the Tribunal has further erred in awarding exorbitant amount towards non-pecuniary damages. Relying on the judgment of the Hon'ble Apex court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors. - (2017) 16 SCC 680*, the learned counsel submitted that towards the future prospects, the maximum amount, which was liable to be added in the existing income of the deceased,

was to the extent of 50% of his existing income and not 100%, as has been added by the Tribunal and towards the non-pecuniary damages, the maximum amount, which could have been granted by the Tribunal, was to the extent of Rs.70,000/- and not more than that. The learned counsel further submitted that while determining the income of the deceased, the statutory deductions are also not made from the said amount towards the income-tax and profession tax. The learned counsel, in the circumstances, prayed for necessary modifications in the impugned Award.

10. Shri PS Paranjape, learned counsel appearing for Respondent Nos.1 & 2, i.e. original claimants, supported the impugned Judgment and Award. The learned counsel submitted that, in fact, the Tribunal has wrongly considered the monthly salary income of the deceased to the tune of Rs.11,942/-; when the documents on record, undoubtedly show monthly salary of the deceased to the tune of Rs.13,474/-. The learned counsel submitted that, in the circumstances, in fact, the amount of compensation needs to be enhanced. The

learned counsel further submitted that the Tribunal has also erred in deducting 1/3rd of the total income of the deceased towards his personal expenses. The learned counsel submitted that, having regard to number of dependents on income of the deceased, the Tribunal could not have deducted more than 1/4th of the total income of the deceased towards his personal expenses.

11. Relying upon the judgment of the Hon'ble Apex court in the case of *Vimal Kanwar and Ors. Vs. Kishore Dan and Ors. - AIR 2013 SC 3830*, the learned counsel submitted that the Tribunal has rightly added 100% of his total income towards the future prospects of the deceased and no interference is required in the addition so made. The learned counsel further submitted that the non-pecuniary damages, as have been awarded by the Tribunal, are also correctly awarded and the same also cannot be interfered with.

12. The learned counsel further submitted that having regard to the total annual income of the deceased, it is evident that no income tax was

liable to be paid by him and as such, no deductions can be made on that count. The learned counsel submitted that though the claimants had not preferred any separate appeal, in view of the facts and legal infirmities brought to the notice of this Court in the impugned Judgment and Award, the compensation awarded by the Tribunal needs to be enhanced. The learned counsel prayed for such enhancement and shown readiness on behalf of the claimants to pay deficit court fees on such enhanced amount.

13. It was further argued by the learned counsel that the Tribunal in the impugned order has made unreasonable apportionment of the amount of compensation amongst the legal heirs of the deceased. The learned counsel further submitted that more amount needs to be granted to the widow and daughter of the deceased than the amount awarded by the Tribunal.

14. Shri Salve, learned counsel appearing for Respondent Nos.4 and 5, opposed the submissions made by the learned counsel for Respondent Nos.1 &

2. The learned counsel submitted that the Tribunal has consciously apportioned the amount of compensation amongst the legal heirs of the deceased and no interference is required in the apportionment so made. The learned counsel submitted that the another surviving son of respondent Nos.4 & 5 is mentally weak and his entire responsibility is on Respondent Nos.4 & 5 and they are required to spend huge amounts on his treatment. The learned counsel further submitted that in his life time, the deceased was bearing the said expenses. The learned counsel, in the circumstances, submitted that no interference be caused in the amount of compensation allotted to the share of Respondent Nos.4 & 5.

15. I have given due considerations to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned Judgment and Award as well as the evidence on record.

16. The first objection as has been raised by the insurance company is in respect of the finding

recorded by the Tribunal, attributing the entire negligence on part of the driver of the offending truck insured with the appellant insurance company. As noted herein above, it is the contention of the appellant that some negligence was liable to be attributed on part of the deceased. In view of the submissions so made, when I scrutinized the oral and documentary evidence on record and more particularly went through the contents of the spot panchanama, there has remained no doubt in my mind that no negligence was liable to be attributed on part of the deceased motorcyclist. It has not been disputed that the deceased motorcyclist was dashed by the offending truck from his behind. Moreover, when the insurance company had raised the plea of contributory negligence, the onus was on it to substantiate the said defence. The record shows that the insurance company had adduced the evidence of one Amrutpalsingh Jeetsing Alag and Sundarlal Bhaulu Varwade. However, the evidence of the said witnesses was in respect of the defence raised by the insurance company of non-involvement of the offending truck in the alleged accident. The Tribunal has rejected the defence so raised by the insurance company and I do not see any infirmity in the finding so recorded. Thus, the fact remains that the insurance company did not adduce any evidence to prove the plea raised by it as about the contributory negligence of the deceased in occurrence of the alleged accident. I reiterate that even from the evidence on record the plea so raised by the insurance company appears apparently unacceptable. In the circumstances, the objection raised in this regard has to be rejected.

17. The second objection raised by the insurance company is as about the salary income of the deceased. According to the appellant, the Tribunal has wrongly considered the monthly salary of the deceased to the extent of Rs. 11,940/-. As against it, it was argued on behalf of the claimants that the salary was, in fact, Rs. 13,474/- per month. In this context, the document at Exh.57 was brought to my notice by the learned counsel appearing for the appellant as well as the learned counsel appearing for the original claimants. The learned counsel jointly submitted that they both rely upon the said document.

Exhibit-57 is salary slip of deceased Ganesh for the month of December-2009. As per the said salary slip, his monthly income appears to be Rs. 13,474/-. The learned counsel for the insurance company submitted that from the said income, however, the amount of income tax and profession tax would be liable to be deducted. In so far as the amount of profession tax is concerned, there was no objection on behalf of the claimants. However, so far as the deductions towards the income tax is concerned, learned counsel Shri Paranjape submitted that having regard to the total annual salary income of the deceased, he was not liable to pay income tax. In absence of any concrete evidence, It may not be proper to deduct any amount towards the income tax.

18. The annual salary income of deceased Ganesh has to be, therefore, held to the tune of Rs.1,59,188/- (i.e. Rs. 13474 X 12 = Rs.1,61,688 – Rs.2,500 towards profession tax = Rs.1,59,188/-). The Tribunal has added 100% of the existing income of deceased Ganesh towards his future prospects. According to Shri Paranjape, learned counsel

appearing for the claimants, the Tribunal while adding 100% income towards future prospects, has relied upon the judgment of the Hon'ble Apex court in the case of *Vimal Kanwar* (cited supra), and as such, no interference is required in the amount so added. As against it, Shri Deshmukh, learned counsel appearing for the insurance company has relied upon the judgment of the Hon'ble Apex court in the case of *Pranay Sethi* (cited supra).

19. The Hon'ble Apex court in the case of *Vimal Kanwar and Ors* (cited supra), has determined the compensation by granting 100% increase in the income of the deceased towards his future prospects. However, subsequently, the Constitution Bench of the Hon'ble Apex court in the case of *Pranay Sethi (cited supra),* has laid down the guidelines for assessing the amount of compensation. Relevant guideline No.59.3 reads thus, -

> “59.3. 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."

In view of the above, only 50% of the actual salary of the deceased can be added to the income of the deceased towards the future prospects. As noted herein above, the actual salary income of the deceased was Rs.1,59,188/-. 50% of the same, i.e. Rs.79,594/- will have to be added in the said income, whereupon, the total income reaches to Rs. 2,38,782/-. The Tribunal has deducted 1/3rd income of deceased Ganesh towards his personal expenses. Having regard to the number of dependents upon the income of deceased Ganesh, in fact, the Tribunal could not have deducted more than 1/4th of the total income of the deceased. The learned counsel for the insurance company was fair enough in conceding the said position. Accordingly, deducting 1/4th of the total income of deceased Ganesh towards his personal expenses, the amount remains to the tune of Rs.1,79,086=50 ps (Rs.

2,38,782 – Rs.59,695=50 ps =Rs.1,79,086=50 ps) Having regard to age of the deceased, appropriate multiplier would be of 17. By applying the said multiplier, the amount of compensation comes to Rs. 30,44,470=50 ps. In addition to the aforesaid amount, the claimants are also entitled for the compensation of Rs.70,000/- towards non-pecuniary damages. Adding the said amount, the total amount of compensation comes to Rs.31,14,470=50 ps, rounded to Rs.31,14,471/-. in the facts and circumstances of the case, it appears to me that this would be the just and fair compensation payable to the dependents of deceased Ganesh.

20. The next question, which falls for my consideration is, apportionment of the amount of compensation *interse* the claimants. It is the contention of learned Counsel Shri Paranjape that the apportionment of the amount of compensation, as has been made by the Tribunal, is unreasonable. The learned counsel submitted that having regard to the age of parents of the deceased, i.e. original claimant Nos.3 and 4, the amounts allotted to their share by the Tribunal is on unreasonably higher

side. As against it, it was argued by Shri Salve, learned counsel appearing for the said original claimant Nos.3 and 4, that the Tribunal has rightly awarded the amount of compensation. It was his further contention that original claimant Nos. 3 and 4 carry responsibility of maintaining their mentally weak son and are required to incur huge expenses on his treatment. However, no such fact is brought on record by the said claimants. After having considered the submissions, as above made by the learned counsel, I am convinced that the apportionment of the amount of compensation made by the Tribunal amongst the claimants, is improper and deserves to be modified.

21. For the reasons stated above, following order is passed, -

ORDER

i. From the amount of compensation deposited by the appellant insurance company in this court in the present appeal, Respondent Nos.1, 2, 4 and 5, viz. Vandana wd/o Ganesh Rathod; Subhangi d/o Ganesh Rathod; Ramji Sartu Rathod and Smt. Walubai Ramji Rathod, are held entitled to receive the compensation of Rs.31,14,471/- inclusive of the amount of NFL compensation, together with interest thereon @ Rs.7½ % per annum from the date of filing of the claim petition till the amount was deposited by the appellant insurance company in this court in the following manner, -

(A) From the payable amount of compensation, 12.5% each, with interest accrued thereon, be paid to present Respondent Nos.4 and 5, viz. Ramji Sartu Rathod and Smt. Walubai Ramji Rathod; and 40% of the payable amount, with interest accrued thereon, be remitted to Respondent Nos.1, viz. Vandana wd/o Ganesh Rathod;

(B) 35% of the payable amount, with interest accrued thereon, be invested in the name of Respondent No. 2 - Subhangi d/o Ganesh Rathod in FDR in any nationalized Bank for the period till she attains the age of majority;

(C) Balance amount be refunded to the appellant insurance company with interest accrued thereon;

ii. Award be drawn accordingly.

iii. The appeal stands disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

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