IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2678 OF 2016

1. Alka w/o Sunil Kadlag
Age : 38 years, occu.: household

2. Vaibhav Sunil Kadlag
Age : 22 years, occu.: education

3. Suraj Sunil Kadlag
Age : 20 years, occu.: education

4. Saurabh Sunil Kadlag
Age : 17 years, occu.: education

5. Parighabai w/o Dattatray Kadlag
Age : 63 years, occu.: housewife

Appellant No.1 is the legal
guardian of appellant No.4.

All R/o Nimgaon Bhojapur,
Tal. Sangamner, Dist. Ahmednagar. **Appellants**.

Versus

1. Prabhakar Sadashiv Pendse
Age : major, occu.: owner
R/o S. NO. 502, Varad Bunglow
No.40, Shriram Nagar, Adgaon,
Tal. & Dist. Nashik.

2. The General Manager
Reliance Insurance Company Ltd.
106/107/108, 1st Floor, Spec
Cosmos, Ashok Stubh, Taluka
and District Nashik. **Respondents**.

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Mr. K.S. Shermale, Advocate for the appellants.
Mr. S.K. Shinde, Advocate for respondent No.1.
Mr. S.S. Patil, Advocate for respondent No.2.

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WITH

FIRST APPEAL NO.2981 OF 2016

Reliance General Insurance Company
Through its Manager, Adalat Road,
Aurangabad. **Appellant**.

Versus

1. Alka w/o Sunil Kadlag
Age : 38 years, occu.: household

2. Vaibhav Sunil Kadlag
Age : 22 years, occu.: education

3. Suraj Sunil Kadlag
Age : 20 years, occu.: education

4. Saurabh Sunil Kadlag
Age : 17 years, occu.: education

5. Parighabai w/o Dattatray Kadlag
Age : 63 years, occu.: housewife

Respondent No.4 minor represented
through his guardian mother i.e.
respondent No.1.

All R/o Nimgaon Bhojapur,
Taluka. Sangamner,
District Ahmednagar.

6. Prabhakar Sadashiv Pendse
Age : major, occu.: owner
R/o S. NO. 502, Varad Bunglow
No.40, Shriram Nagar, Adgaon,
Tal. & Dist. Nashik. **Respondents**.

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Mr. S.S. Patil, Advocate for the appellant.

Mr. K.N. Shermale, Advocate for respondent Nos.1 to 5.

Mr. S.K. Shinde, Advocate for respondent No.6.

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CORAM : SUNIL K.KOTWAL, J.

Judgment reserved on : 16 April 2019.

Judgment pronounced on : 24 April 2019.

JUDGMENT.

. First Appeal No. 2678 of 2016 is filed by original claimants and First Appeal No.2981 of 2016 is filed by original respondent No.2 Reliance General Insurance Company Ltd. against the judgment and award passed by Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal"), Sangamner in Motor Accident Claim Petition (M.A.C.P.) No. 53/2013.

2. Hereinafter the parties are referred in accordance with their status in the original claim proceeding as "claimants", "owner of offending vehicle" and "insurer of the offending vehicle".

3. As these both appeals are filed against quantum of compensation awarded by the Tribunal, the facts leading to institution of appeals regarding the nature and manner of the accident are not much relevant.

4. In brief, it can be stated that on 02.03.2013 when the deceased Sunil Kadlag was proceeding from Sangamner Sugar Factory to his residence at Nimgaon Bhojpur by his motorcycle bearing registration No. MH-17-H-4044, as a pillion rider, the offending Xylo Mahindra Jeep bearing registration No. MH-15-DC-3542 came from opposite direction in high speed and gave dash to the motorcycle. In that accident deceased Sunil sustained serious injuries resulting into his death in the hospital on 09.03.2013. Therefore, the dependents of the deceased filed claim petition for compensation before the Tribunal.

5. By filing written statements, respondents owner and insurer of the offending vehicle opposed the claim petition blaming rider of the motorcycle for occurrence of the accident. In the alternate, contention of the owner of offending vehicle is that as the jeep was insured with respondent No.2/Insurance Company, the insurance company is liable for payment of compensation. On the other hand, insurer of the offending vehicle

has raised defence that the driver of offending vehicle did not hold valid and effective driving licence, and therefore, due to breach of condition of policy of insurance by respondent No.1/owner of offending vehicle, the insurer is not liable to pay compensation to the claimants.

6. After considering the evidence placed on record of both the parties, the Tribunal held that the accident dated 02.03.2013 occurred due to sole rash and negligent driving of the offending jeep by its driver resulting into death of deceased Sunil. The Tribunal also held that respondent No.2 i.e. the insurer of the offending vehicle failed to prove its contention of breach of condition of policy by owner of the offending vehicle. In the result, the Tribunal awarded compensation of Rs.20,71,000/- and joint and several liability was fastened against owner and insurer of the offending vehicle to pay the compensation.

7. Heard Mr. K.N. Shermale, learned Counsel for the claimants, Mr. S.K. Shinde, learned Counsel for owner of offending vehicle and Mr. S.S. Patil, learned Counsel for the insurer of the offending vehicle.

8. Learned Counsel for the claimants submits that while assessing the quantum of compensation, the Tribunal

considered only salary of the deceased who used to work in Sugar the Factory as a permanent employee. His grievance is that the Tribunal did not consider the income of deceased from agricultural land and dairy business. He submits that the Tribunal did not consider the loss of future prospects though the deceased was 42 years old at the time of accident. He prays for enhancement of compensation.

9. Learned Counsel for the claimants placed reliance on the cases of **"National Insurance Co. Ltd. Vs. Pranay Sethi and others" [2018 (3) Mh.L.J. (SC) 70]**, **"Vimla Devi & others Vs. National Insurance Company Ltd."** delivered on 16 November 2018 in Civil Appeal No. 11042 of 2018 and **"Magma General Insurance Co. Ltd. Vs. Nanu Ram" (2018 SCC Online SC 1546)** for claiming high rate of compensation under conventional heads.

10. On the other hand, learned Counsel for the insurer submits that the salary certificate (Exh.59) relied on by the claimants was not prepared by employer of the deceased. He submits that even loss of future prospects is considered and compensation is enhanced, then there shall be deduction of

income tax from the said compensation. He placed reliance on the case of **"Shyamwati Sharma & ors. Vs. Karam Singh and Ors" (2010 AIR SCW 4391)** to substantiate his contention that when the income of deceased was within taxable range, 30% amount be deducted towards income tax.

11. As in both the appeals only quantum of compensation is disputed, I need not to consider whether the accident occurred due to rash and negligent driving of the offending jeep by its driver.

12. So far as the compensation is concerned, the age of deceased, his occupation as well as income from all sources play an important role. By filing School Leaving Certificate of the deceased, the claimants have proved that date of birth of deceased was 20.04.1970. The deceased died on 09.03.2013. Thus, the deceased was 42 years old at the time of his death. Thus, in view of the guidelines issued by Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp. Anr.", (AIR 2009 SC 3104)**, multiplier of "14" is applicable in the case at hand.

13. To prove monthly income of the deceased, the claimants have examined Sandeep Kolhe (PW-3), who used to

work in Sangamner Sugar Factory, specially in Labour Department. According to this witness, deceased Sunil Kadlag used to work in the said Sugar Factory as a Welder. He has proved pay bills (Exhs.56, 57 & 58) of the deceased. This witness has made it clear that the deceased was permanent employee of the Sugar Factory and his last gross salary was Rs. 14,832/- per month. This witness has proved salary certificate (Exh.59) signed by Executive Director of the Sugar Factory.

14. The evidence of Sandeep Kolhe (PW-3) is assailed by learned Counsel for the insurer on the ground that from the cross-examination of Sandeep Kolhe (PW-3) it emerges that this witness belongs to Labour Department which is separate from Account Section. This witness has also admitted that he has no knowledge regarding Account Section. Sandeep Kolhe (PW-3) has also admitted that he has not annexed certificate which is required to prove the computerized data. However, these objections hold no substance for the simple reason that in motor accident claim proceedings, the rules of pleadings as well as Evidence Act are not strictly applicable. The claimants have to prove their contention on the touch-stone of preponderance of probability. In the circumstances, only because the required

certificate to prove the computerized data is not annexed with the pay bills of the deceased, the evidence of Sandeep Kolhe (PW-3) cannot be doubted. So also, it cannot be ignored that though this witness was employee in the Sugar Factory in Labour Department, he was duly authorised by the Sugar Factory and accordingly he has produced relevant documents including pay bills and last pay certificate (Exh.59). The computerized date of the pay bills (Exhs.56 to 58) being the entries in the account register maintained by the Co-operative Society in regular course of business, the production of its certified copies is sufficient proof regarding those pay bills.

15. So also, the pay bill of the deceased itself shows that the deceased did not fall in the category of income tax payee. In other words, income of deceased did not fall in the taxable range of the salary. Therefore, no amount can be deducted from the monthly salary of the deceased towards income tax.

16. Before parting with this point, I must make it clear that no evidence has been placed on record by the claimants to prove the income of deceased from dairy business. Even it cannot be ignored that after the death of deceased, his agricultural land is cultivated by his widow and mother. Therefore, there cannot

be any loss of income from agricultural land. Thus, except the source of salary, no other source of income can be considered while assessing the income of the deceased.

17. As the deceased died in the month of March 2013, the pay bill of the month of February 2013 is relevant to ascertain last monthly pay drawn by the deceased. The pay bill of February 2013 (Exh.57) shows that gross salary of the deceased for the said month was Rs. 14,832/-, including personal allowances of Rs.400/-. Out of this amount, an amount of Rs.780/- was deducted towards provident fund and Rs. 200/- were deducted towards profession tax. The pay bill also shows that no income tax was deducted from the salary of the deceased. The other deductions are in respect of installment of Society and other irrelevant deductions. Out of these deductions, only profession tax and personal allowances are to be deducted from the gross salary of the deceased as the Apex Court in the case of **"National Insurance Co. Vs. Pranay Sethi"** (supra) has made it clear that the income of deceased should be considered as minus taxes. Therefore, the other deductions cannot be made from the gross salary of the deceased. In the circumstances,

after deducting Rs. 200/- towards profession tax and Rs. 400/- towards personal allowances (total Rs. 600/-) the monthly income of Rs.14,232/-. It follows that annual income of the deceased comes to Rs.1,70,784/- (14,232 x 12).

18. In view of the law settled by the Apex Court in the case of **"National Insurance Co. Vs. Pranay Sethi"** (supra), as the deceased was in between 40 to 50 years of age and in permanent service, 30% amount of the monthly salary of deceased is to be added in the actual salary of deceased. Thus, after adding 30% amount, the annual income of the deceased comes to Rs.2,22,019/-.

19. Though the learned Counsel for the Insurer invited my attention towards the case of **"Shyamwati Sharma Vs. Karam Singh"** (supra) in support of his contention for deducting 30% amount towards income tax, the ratio of that case is distinguishable for the simple reason that in that case salary of the deceased was within taxable range, and therefore, 30% amount was deducted towards income tax. So also, it cannot be ignored that hike in the annual income towards loss of future prospects cannot be considered for deducting additional income

tax from the annual income of deceased for the simple reason that in the entire cross-examination of Sandeep Kolhe (PW-3) nothing has been brought on record by the Insurance Company to prove that the income of deceased falls in the taxable range of income. Nothing is brought on record regarding income tax payable by deceased. So also, no substance is on record to show what would be the future slab for exemption of income tax and what would be the rate of future income tax. Therefore, only on guess work this Court is not expected to deduct income tax from the amount of loss of future prospects. In the circumstances, I hold that no amount can be deducted from the annual income o the deceased towards income tax.

20. Though learned Counsel for the Insurer submits that the deceased was seasonal employee of the Sugar Factory, which runs only for the period of six months, the suggestion given by the Counsel for the Insurer to Sandeep Kolhe (PW-3) that Sugar Factory runs only for six months, is specifically denied by this witness. Even Sandeep (PW-3) has denied the suggestion given by the Insurer that the deceased was not permanent servant. Thus, I do not find any substance in the above-said objection raised by the learned Counsel for Insurer.

21. However, it cannot be ignored that in view of the guidelines issued by Apex Court in the case of **"Sarla Varma Vs. Delhi Transport Corp."** (supra), as there are five dependents in the family of deceased, one-fourth amount from his annual income is to be deducted towards personal expenses of the deceased. Thus, after deducting one-fourth amount from the annual income of the deceased of Rs.2,22,019/-, the income of the deceased available to his family comes to Rs. 1,66,515/-.

22. After multiplying this amount by multiplier of "14", the total loss of dependency comes to Rs.23,31,210/-.

23. Though learned Counsel for the claimants claims higher compensation under conventional heads relying on the cases of **"Magma General Insurance Vs. Nanu Ram"** (supra) and **"Vimla Devi Vs. National Insurance Co.Ltd."** (supra), it can not be ignored that in those cases the Apex Court awarded more compensation under conventional heads than the rate fixed by larger Bench of the Apex Court in **"National Insurance Co. Vs. Pranay Sethi"** (supra), it cannot be ignored that under Article 142 of the Constitution of India the Apex Court has wider discretionary power to award such higher compensation under

conventional heads. High Court does not possess the jurisdiction under Article 142 of the Constitution of India. Therefore, I am bound by the verdict of the larger Bench of the Apex Court in the case of **"National Insurance Co. Vs. Pranay Sethi"** (supra) which mandates that under conventional heads, only following compensation can be awarded :

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

24. In addition to the compensation under above-said heads, the claimants are also entitled to compensation under the head of medical expenditure. By examining Dr. Omkar Mule (PW-4), the claimants have proved the bills of medicines and hospital charges. The Tribunal has rightly considered those bills in absence of evidence in rebuttal. Thus, the claimants are also entitled to compensation of Rs. 1,47,800/- towards medical expenditure.

25. Thus, the claimants are entitled to total compensation, under different heads, as below.

Loss of dependency	:-	Rs. 23,31,210/-
Medical expenditure	:-	Rs. 1,47,800/-
Loss of consortium	:-	Rs. 40,000/-

Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Total	:-	Rs. 25,49,010/-

(Rupees Twenty Five Lakh Forty Nine Thousand and Ten only)

26. The above-said compensation is inclusive of the amount under "no fault liability". So also, 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.

27. In view of the above discussion, First Appeal No.2678 of 2016 filed by the claimants deserves to be partly allowed to enhance the compensation to the tune of Rs. 25,49,010/- and First Appeal No. 2981 of 2016 filed by the insurer of the offending vehicle deserves to be dismissed.

28. Accordingly, First Appeal No.2678 of 2016 is partly allowed and First Appeal No.2981 of 2016 is dismissed.

29. The award passed by the Motor Accident Claims Tribunal, Sangamner in M.A.C.P. No.53/2013 is modified to enhance the compensation to the tune of Rs.25,49,010/- (Rupees Twenty Five Lakh Forty Nine Thousand and Ten only) with interest thereon at the rate of Rs. 9 % per annum from the

date of filing of petition till realization of entire compensation amount. This amount shall be inclusive of the amount under "no fault liability".

30. On deposit of compensation amount, 10 % amount shall be paid to claimant No.5 Parigabai Dattatray Kadlag and balance compensation amount with accrued interest thereon shall be equally apportioned amongst claimant Nos.1 to 4.

31. The compensation amount of the share of claimant No.2 Vaibhav Sunil Kadlag, claimant No.3 Suraj Sunil Kadlag and claimant No.4 Saurabh Sunil Kadlag shall be invested in fixed deposit in any Nationalized Bank for the period of three years and the compensation amount of the shares of claimant No.1 Alka Sunil Kadlag and claimant No.5 Parighabai Dattatray Kadlag be paid to them by issuing separate account payee cheques in their names, through the Tribunal.

32. Award be drawn up accordingly.

33. Parties to bear their respective costs of the appeal.

34. If any compensation amount is deposited in this Court, the same be remitted to the Motor Accident Claims Tribunal, Sangamner for its disbursement in accordance with the

modified award. The claimants are permitted to withdraw the deposited compensation from the Tribunal.

35. Pending Civil Application is disposed of.

(SUNIL K. KOTWAL)
JUDGE

vdd/