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

FIRST APPEAL NO. 2136 OF 2018

New India Assurance Company Limited,
Through its Branch Manager,
Divisional Office, Lahoti Complex,
Vazirabad, Nanded.

New India Assurance Company Limited,
Through its Authorized Signatory/
Senior Divisional Manager/ Incharge Legal Hub,
Mahesh Compound, Adalat Road,
Aurangabad. ..Appellant

Versus

1. Bhagirathabai W/o Prakash Chavan,
Age: 40 Years, Occu: Household,

2. Amol S/o Prakash Chavans,
Age: 21 years, Occu: Education,

3. Sonutai D/o. Prakash Chavan,
Age: 20 years, Occu: Education,

4. Sunil S/o. Prakash Chavan,
Age: 19 years, Occu: Nil,

5. Renukabai W/o. Shankar Chavan,
Age: 67 years, Occu: Household,

6. Shankar S/o. Thavara Chavan,
Age: 72 years, Occu: Nil,

All R/o Amrabad Tanda, Tq. Ardhapur,
Dist. Nanded.

7. Premchand S/o. Ashok Chavan,
Age: Major, Occu: Business,
R/o A/p. Alegaon, Tq. Nanded,
Dist. Nanded. ..Respondents

...

Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. B.S. Kudale h/f Mr. Kiran M. Nagarkar, Advocate for

Respondent Nos.1 & 2.

...

CORAM : P.R. BORA, J.
DATE : 08th FEBRUARY, 2019.

JUDGMENT:-

1. The judgment and award passed in Motor Accident Claim Petition No.262 of 2016 by the Motor Accident Claims Tribunal at Nanded on 28.03.2018 is challenged in the present appeal by the insurance company, which was respondent no.2 in the aforesaid petition.

2. Present respondent nos. 1 to 6 had filed the aforesaid claim petition claiming compensation on account of the death of one Prakash Shankar Chavan alleging the same to have been caused in a vehicular accident happened on 02.06.2016 having involvement of a Bolero Max Jeep bearing Registration No.MH-26-AD-9359 owned by present respondent no.7 and insured with the appellant-insurance company. Respondent Nos. 1 to 6 are hereinafter referred to as the 'claimants'.

3. In the claim petition, it was the contention of the claimants that on 02.06.2016 when deceased Prakash was proceeding on his motorcycle from Bhokar towards his native place Amrabad Tanda, he was dashed by the offending jeep in the Amrabad Shivar. It was the further

contention of the claimants that the alleged accident happened because of the rash and negligent driving of the person who was driving the offending jeep at the relevant time. As was stated in the petition, the age of deceased Prakash was 38 years and he was earning salary around Rs.20,000/- per month from his employment with Bhaurao Chavan Co-operative Sugar Factory. It was also the contention of the claimants that deceased Prakash was having agricultural lands and he was earning income of Rs.6,000/- per month from the agriculture. It was also the contention of the claimants that deceased Prakash used to earn the income of Rs.15,000/- per month by doing business of letting jeep belonging to him on rent. It was also the contention of the claimants that the salary income of deceased Prakash was already increased before his death because of one settlement arrived at between the union and the employees of sugar factory. In the circumstances, the claimants had claimed the compensation of Rs.85,00,000/- jointly and severally from the owner and insurer of the offending jeep.

4. The claim petition was resisted by the appellant-insurance company on various grounds. The insurance company had raised the defense of non-joinder of necessary

party. The insurance company had also raised a plea of breach of policy condition by the insured by allowing a person not holding a valid driving licence to drive the offending jeep at the relevant time. The age and income of the deceased were also disputed by it. The owner of the offending vehicle (original respondent no.1) had also filed his written statement and has resisted the petition on the similar grounds. In order to substantiate the claim so raised, one of the claimants deposed before the Tribunal and the reliance was also placed by the claimants on the police papers filed on record pertaining to the alleged accident. One more witness was examined by the claimants in order to prove the salary income of deceased Prakash. The respondents did not adduce any oral evidence. The learned Tribunal after having assessed the oral and documentary evidence brought on record before it, held the claimants entitled for the total compensation of Rs.36,80,000/- jointly and severally from the owner and insurer of the offending jeep. Aggrieved by, the insurance company has preferred the present appeal.

5. In the memo of appeal, though the insurance company has raised various grounds in exception to the impugned judgment and award, during the course of his

arguments, Shri Mohit Deshmukh, the learned counsel appearing for the appellant-insurance company assailed the impugned judgment mainly on the ground of quantum of compensation. The learned counsel submitted that the Tribunal has erred in holding the income of deceased to the tune of Rs.21,976/- per month for the period of 7 months and Rs.7,250/- per month for remaining 5 months though there was no concrete evidence in that regard. The learned counsel submitted that the Tribunal has also erred in assessing the future prospects of the deceased by adding 50% of his existing income in the annual income of the deceased for the purposes of determining the amount of dependency compensation. The learned counsel further submitted that the Tribunal has also erred in deducting 1/6th of the total income of deceased Prakash towards the personal and living expenses though having regard to the number of dependents, 1/4th of his total income was liable to be deducted from the annual salary income of the deceased. The learned counsel further submitted that the Tribunal has also not deducted the amount of income tax and the profession tax while assessing the amount of compensation. The learned counsel further submitted that the Tribunal has also erred in awarding the exorbitant amount of

Rs.1,55,000/- towards non-pecuniary damages. The learned counsel in the circumstances, prayed for adequate deductions in the amount of compensation and to modify the award accordingly.

6. Shri K.M. Nagarkar, the learned counsel appearing for the claimants opposed the submissions advanced on behalf of the appellant-insurance company. The learned counsel submitted that infact the Tribunal has awarded less amount than was expected by the claimants. The learned counsel submitted that the Tribunal has erred in not considering the fact that because of the settlement between the employees union and the sugar factory, the salary of deceased Prakash had been increased retrospectively. The learned counsel further submitted that the Tribunal has wrongly refused to take into account the income of the deceased from the agricultural lands as well as from the jeep. The learned counsel in the circumstances, prayed for enhancement in the amount of compensation, though the claimants have not preferred any separate appeal seeking enhancement in the amount of compensation.

7. I have given due consideration to the submissions

made on behalf of the learned counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. As noted herein-above, though certain other grounds are also raised by the appellant-insurance company in the memo of appeal in exception to the impugned judgment and award, as has been submitted by the learned counsel for the appellant, the challenge is now restricted to the quantum of compensation.

8. It is not in dispute that deceased Prakash was an employee of Bhaurao Chavan Co-operative Sugar Factory. As has come on record, last drawn salary of deceased Prakash was Rs.19,176/- per month. As has further come on record, deceased Prakash used to draw full salary for the period of 7 months whereas, for the remaining period of 5 months he use to earn 33% of the said salary.

9. Though, it was sought to be argued by Shri Nagarkar, the learned counsel appearing for the claimants that because of the settlement arrived at between the employees union and the sugar factory the salary of deceased Prakash was liable to be increased retrospectively to the tune of Rs.22,050/-, the evidence which has come on record falls short to accept the contention so raised by the learned counsel. Moreover, at this stage itself it has to be

clarified that even otherwise the appropriate care can be taken in regard to the possibility of the increase in the salary income of the deceased by adding 50% of his existing salary income towards his future prospects in view of the law laid down by the Hon'ble Apex Court in the case of ***"National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680."*** In the circumstances, the salary of deceased as has been held by the Tribunal to the tune of Rs.21,976/- per month by considering the submission as regard to increase in the salary by way of settlement between the union and the sugar factory to the extent of 50% is difficult to be accepted.

10. The salary certificate of deceased Prakash is available on record. According to the said certificate, last drawn monthly salary of deceased Prakash was Rs.19,176/- in the said month. It is not in dispute that the employees like deceased Prakash used to get the salary at the said rate for 7 months and in the off season for remaining 5 months the salary used to be paid at the rate of 33% of the aforesaid salary. As such, the salary income of deceased Prakash has to be considered at the aforesaid rate. If calculated so, the annual income of deceased Prakash comes to Rs.1,65,872/- (Rs.19,176 x 7 = Rs. 1,34,232;

Rs.6,328 x 5 = Rs.31,640 totaling to Rs.1,65,872). Though it was sought to be contended by the Shri Deshmukh that deceased Prakash being a seasonal employee of sugar factory, the future prospects are liable to be considered at the rate of 40% of his salary, I am not convinced with the submissions so made. From the evidence on record it is quite evident that deceased Prakash was in the permanent employment of the sugar factory and as such, his future prospects are to be considered by adding in his annual income 50% of his existing income. If such an income is added, his total income comes to Rs.2,48,808/- for the purpose of assessing the amount of dependency compensation.

11. The learned Tribunal has deducted $1/6^{th}$ of the total income of deceased Prakash towards his personal expenses. Having regard to the number of dependents, the Tribunal must have deducted $1/4^{th}$ of his total income towards his personal and living expenses. Such $1/4^{th}$ amount comes to Rs.62,202/-. Deducting the said amount from the notional prospective income of deceased Prakash to the tune of Rs.2,48,808/-, the amount comes to Rs.1,86,606/-, which can be said to be the amount available with the deceased to be spent on his family members. From

the aforesaid amount, the amount of profession tax to the extent of Rs.2,500/- would be liable to be deducted. Deducting the said amount, the net amount comes to Rs.1,84,106/-. Having regard to the age of deceased Prakash, the appropriate multiplier in the case will be of 15. Applying the said multiplier, the amount of dependency compensation comes to Rs.27,61,590/-.

12. The claimants are also to be held entitled to receive the non-pecuniary damages to the tune of Rs.70,000/- in view of the judgment of the Hon'ble Apex Court in the case of 'Pranay Sethi' (cited supra). Adding the said amount, the amount of compensation finally comes to Rs.28,31,590/-.

13. In the facts and circumstances of the case, it appears to me that this would be the just and fair amount of compensation payable to the claimants. The impugned award, therefore needs to be modified to the aforesaid extent. It be modified accordingly. Save and except the amount of compensation, the remaining part of the award is maintained as it is. As informed by the parties, though the insurance company has deposited the entire amount of compensation as per the award passed by the Tribunal in this Court along with interest thereon, till this date no

amount has been withdrawn by the respondents i.e. original claimants. As such it is directed that the amount of Rs.28,31,590/- as determined by this Court be remitted in favour of the claimants with interest thereon at the rate of 9% p.a. from the date of filing of the petition i.e. 18.07.2016 till the date of deposit of the said amount by the insurance company in this Court. After remittance of the said amount to the claimants, the remaining amount with interest accrued thereon be refunded to the appellant-insurance company. The appeal is partly allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//