IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 FIRST APPEAL NO.384 OF 2017

1. Smt. Savitribai Ramdas Sonawane,
Age 70 years, Occupation Household,
R/o Dhamangaon Plot, Kanalada
Tq. Dist. Jalgaon.

2. Smt. Jyoti Chhotu @ Santosh Sonawane,
Age 25 years, occupation Household.

3. Chi. Yash Chhotu @ Santosh Sonawane,
Age 6 years, Occupation Education,
Applicant No.2 and 3 R/o C/o. Shri.
Bhikan Tanku Koli, Indira Nagar,
Jai Valmik Floor Mill, Adavad Tq.Chopada
Dist. Jalgaon.

(Appellant No.2 is the mother and natural
guardian of Appellant No.3, son) ..Appellants

VERSUS

1. Shri. Ramesh Baburao Bhoi,
Age 38 years Occupation Business,
R/o C/o Shri Dnyaneshwar B. Sonawane
At and Post Kanalada Tq. and Dist.
Jalgaon.

2. The New India Assurance Company
Ltd. Through Manager, Mandore Market,
Dadhiwala Bunglow, Jilha Peth, Mehrun
Road, Jalgaon. ..Respondents

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Advocate for Appellants : Mr. Bhokarikar Madhav M.
Advocate for Respondents No.1 : Mr. C. P. Patil.
Advocate for Respondent No.2 : Mr. Usmanpurkar Aniruddha S.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-07-2019.

ORAL JUDGMENT :

1. Present appeal has been filed by the original claimants for enhancement of the compensation. They are challenging the Judgment and award passed in Motor Accident Claim Petition (MACP) No.100 of 2008 by Member Motor Accident Claims Tribunal, Jalgaon dated 09-01-2015.

2. The claimants had come with a case that, they are the legal representatives of one Chhotu @ Santosh Ramdas Sonawane, aged 26 years, who was labour doing centering work and earning Rs.5000/- per month. He was travelling in auto rickshaw bearing No.MH-19 / V-1938, around 11.00 p.m. on 22-01-2008. When the auto rickshaw came within the limits of village Fufnagari, the driver lost control and the auto rickshaw turned turtle. As a result of which the deceased died on the spot. The said auto rickshaw was owned by original respondent No.1 and it was insured on the date of the accident with respondent No.2.

3. Both the respondents filed separate written statements and denied all the averments in the claim petition. They have denied the age, occupation and income of the deceased. They have also denied

that the said accident had taken place due to the negligence on the part of the driver of the rickshaw. It was contended that, respondent No.1 that his vehicle was insured with respondent No.2 and prayed for fixing the liability on the insurer also. The respondent No.2 denied its liability by saying that the risk of the gratuitous passenger was not covered under the policy and thus the statutory defence was taken.

4. Only the claimants have led evidence and taking into consideration the evidence, the learned Tribunal has held that the accident had taken place due to the negligence on the part of the driver of the auto rickshaw. Since the deceased had expired in the said accident, the claimants being his legal representatives are entitled to get compensation. Further it has been held that, since the insurance company has failed to prove the statutory defences, both the respondents are liable to pay the compensation to the claimants jointly and severally. They have been directed to pay amount of compensation Rs.6,77,000/- inclusive of the amount of no fault liability, along with interest @ 7.5% per annum from the date of the petition till actual realization of the entire amount. This award challenged in this appeal. and the original claimants have prayed for enhancement.

5. Heard Advocate for Appellants Mr. Bhokarikar Madhav M., Advocate for Respondents No.1 Mr. C. P. Patil, and Advocate for

Respondent No.2 Mr. Usmanpurkar Aniruddha S.

6. It will not be out of place to mention here itself that, since the findings of issue No.1 and 2 and also the entitlement of the claimants to get compensation from respondents jointly and severally is not challenged by the present respondents. We need not discuss it in this appeal. In other words since the appeal is restricted to the quantum, the limited point is taken up for consideration as follows ;

> "Whether the learned tribunal has arrived at just compensation or whether it requires interference ?"

The learned advocate appearing for appellant submitted that, deceased Chhotu was 26 years old and he was earning Rs.5000/- p.m. by doing centering work. Evidence to that effect was used by the claimants in the form of testimony of P.W.1. However, the learned tribunal erred in considering notional income of Rs.4000/- p.m. only. So also the future prospects have not been granted and rate of interest is meager and also the fact that non pecuniary damages are not as per the decision in *National Insurance Company Ltd. Versus Pranay Sethi and others, in Special Leave Petition (Civil) No.25590 of 2014 and other, decided on 31-10-2017.*

7. Per contra, the learned appearing for the respondent No.2 submitted that, the accident had taken place in year 2008, and therefore, the notional income was rightly considered as Rs.4000/- p.m. Further when there was no concrete evidence regarding the employment of the deceased, he cannot be termed as self employed, and therefore, the Tribunal was justified in not granting any amount under head of future prospects. He also submitted that, the compensation has been rightly awarded, so also the interest has been granted taking into consideration the fact that the accident had taken place in year 2008.

8. It will not be out of place to mention here that, the learned advocate appearing for the appellants has relied on the three Judges decision of the Hon'ble Apex Court in, *Munusamy and Ors. Vs. Managing Direcotr, Tamil Nadu State Transport Corporation (Villupuram) Ltd.,* reported in *AIR 2018 Supreme Court 816*, wherein interest was granted @ of 9 % per annum, so also the future prospects were granted. He also placed reliance on the decision in *Pranay Sethi's* Case (*Supra*). The learned advocate for the insurance company has also relied on in cases of *Sarla Verma and others v. Delhi Transport Corporation and another,* reported in (*2009) 6 SCC*

121, as well as Pranay Sethi (Supra).

9. It is to be noted that though it was contended by the claimants that, Chhotu was doing centering work, no other evidence in the form of examination of those persons under whom he was carrying out that centering work were examined. Under such circumstance, it cannot be stated that, they have led evidence to consider that he was still labour. However, taking into consideration the fact that he was earning for the members of the family of three, there is every room to presume that he was a labour. Taking into consideration a fact that he was doing labour work and accident had occurred in the year 2008, the notional income that has been taken by the learned tribunal to the extent of Rs.4000/- per month appears to be reasonable. So also in *Munusamy and Ors. Vs. Managing Director case (Supra)* accident had taken place in the year 2007, the Hon'ble Apex Court has calculated the compensation @ Rs.4000/- per month can be taken as guideline. Further as regards future prospects is concerned, the learned tribunal as well as learned advocate appearing for the respondent No.2 submit that, he cannot be considered as self employed person. It is to be noted that, labour is a class of person who may take up a job with various employers and

it may be on daily wages also. Under such circumstance they will have to categorized in the category of self employee person and it is not necessary that it should be proved that they were doing work as carpenter or as mason or any such job which could be taken on contract. The labour work will have to be considered equivalent to that since each day they would be entering into a contract with a person to do labour work for them. Therefore, definitely taking into consideration the fact that, he was a labour and as per para No.64 (iv) 40 % of the income is required to be counted towards future prospects, and therefore the income of deceased Chhotu for our calculation purpose would be to the extent of Rs.5600/- (4000 p.m. + 1600 i.e. 40 % of the income) yearly it would be Rs.67,200/- (5600 X 12 months).

10. The learned Tribunal has made deduction to the extent of 1/4th towards self expenditure but it appears that, he had not taken into consideration the decision in *Sarla Verma (Supra).* The claimants who are three in numbers were dependent on deceased and taking into consideration the decision in arla Verma (Supra) the de3duction would be 1/3rd. At this stage the learned advocate appearing for the appellants – claimants relies on the decision in *United India*

Insurance Co. Ltd. Versus Rajani Suresh Bhore, reported in *2017 (5) AIR Bom. R 592,* wherein the original claimants had not filed any appeal claiming enhancement, and therefore this Court had come to the conclusion that claimant neither filed appeal nor cross objection of her own impeaching Judgment, and the appeal that was filed by the insurance company was for reduction of compensation granted, under such circumstance claim of claimant to enhance compensation is not tenable. It is to be noted that, these observations have been made when there was a contrary situation. Here the claimants themselves have filed appeal for enhancement and they are claiming just compensation as per the set principles laid down especially Apex Court and also this Court. Therefore, it cannot be said that, this Court is estopped from taking note of and calculating the just compensation on the basis of the guidelines and just principles laid down by the Apex Court. Therefore, when the claimants are relying on the *Pranay Sethi's* Judgment then they cannot say that to the extent the directions are given to have multiplier on the basis of the Judgment in Sarla Verma's Case (Supra), that should not be made applicable here. Therefore, taking into consideration the direction in para No.64 (i), 1/3 is required to be deducted towards personal expenditure, that amount comes to Rs.22,400/- and therefore the dependency of the claimants would be Rs.44,800/- (67200-22400). Further in view of *Pranay Sethi's case (Supra)* and the age of the deceased, the multiplier that was applied by the Tribunal was “17”. After applying the multiplier the total future loss for the claimants would be Rs.7,61,600/-.

11. Further as regards non pecuniary damages are concerned, it appears that the Tribunal has awarded amount of Rs.55,000/-. According to learned advocate appearing for the appellants it ought to have been Rs.70,000/-. It will not be out of place to mention here that, the testimony of P.W.1 and its reflection in the Judgment of the Tribunal does not show that any estate was left by the deceased. Though the calculation is under different heads and some amount is granted even towards a loss of estate by the Tribunal yet there was no evidence to that effect. As per Pranay Sethi's Judgment amount of Rs.15,000/- is allocated towards loss of estate and when there is no evidence to that effect, the claimants are entitled to get Rs.55,000/- only. So though the particulars deferred, amount is the same which can be awarded to the claimants. Under such circumstance, in all the claimants are entitled to get compensation of Rs.8,16,600/-. Definitely they are entitled to get

enhancement in the compensation which was awarded by Tribunal to them.

12. Further it will not be out of place to mention here that, the appeal has been valued for compensation of Rs.8,00,000/- and as per the guidelines by the Apex Court and the calculation stated above, they are entitled to get more compensation than claimed in the appeal. The deficit court fee is then required to be collected from them for which they can be given time to deposit the same in the Court. When it is the duty of the Tribunal to award just compensation then even if the said amount is restricted, whatever is held to be entitled is required to be granted and then the deficit court fee can be collected from the claimants.

13. Now turning towards the interest that has been granted by the learned Tribunal and the reliance of the claimants on the decision in Munusamy's case (Supra) , it can be said that, the interest that has been awarded @ of 9 % per annum cannot be taken as a ratio as there are no guidelines that, in such matters the interest should be @ 9 %. In this case the High Court had granted the rate of interest at 9 % per annum and what has been observed is that, they are not disturbing the other directions given by the High Court.

Here in the decision of Pranay Sethi's case also, directions were not given in respect of interest to be paid on the amount of compensation. It is to be calculated on the basis of what could have been the interest that could have been earned if that amount would have been kept in bank account. Under such circumstance the rate was awarded by the Tribunal appears to be just which need not be disturbed.

14. Taking into consideration all the reasons stated above, the appeal is required to be partly allowed, hence following order.

ORDER

1) Appeal is hereby partly allowed.

2) The Judgment and award passed in Motor Accident Claim Petition No.100 of 2008 by Member, Motor Accident Claims Tribunal, Jalgaon, on 09-01-2015 is hereby set aside to the extent of quantum only and modified as follows ;

> "The respondents No.1 and 2 jointly and severally do pay compensation of Rs.8,16,600/- (in words rupees eight lakh sixteen thousand six hundred only) to the claimants inclusive of amount of no fault liability."

3) Rest of the award is maintained as it is.

4) The appellants to deposit the deficit Court fee within a period of one (01) month from the date of this order

5) No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.