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

First Appeal No. 0508 of 2019

District : Dhule

1. Nandini Deepak Patil,
   Age : 27 years,
   Occupation : Nil.

2. Heemani Deepak Patil,
   Age : 06 years,
   Minor through guardian,
   Applicant no.01.

3. Yuvraj Narayan Patil,
   Age : 66 years,
   Occupation : Nil.

4. Sau. Hirabai Yuvraj Patil,
   Age : 61 years,
   Occupation : Household.

   All R/o. Bhadane,
   Taluka & Dist. Dhule.

.. Applicants (Original claimants)

versus

1. Subba Rao R, Peraiah,
   Age : Major,
   Occupation : Owner,
   R/o. 3-1-12-17,
   Ward No.30,
   Ongole Prakasam Ongole,
   State - Andhra Pradesh.

2. The Oriental Insurance Co. Ltd.,
   through Manager,
   Oriental Insurance Co. Ltd.,
   Branch Office, Dhule.

.. Respondents

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Mr. Mahesh H. Patil, Advocate, for the appellants.

Respondent no.01 served (Absent).

Mr. Rameshwar F. Totla, Advocate, for respondent no.02.

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CORAM : SMT. VIBHA KANKANWADI, J.

Date of reserving the judgment : 12th June 2019

Date of pronouncing the judgment : 26th June 2019

JUDGMENT :

01. Present appeal has been filed by the original claimants challenging the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Dhule, in Motor Accident Claim Petition No. 149 of 2010, dated 25-08-2015, on the ground that whatever has been awarded, is not just compensation. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. The claimants had come with a case, that deceased Deepak Yuvraj Patil was the husband of claimant no.01. Claimant no.02 is the daughter of claimant no.01 and deceased Deepak. Claimants no.03 and 04 are the parents of Deepak. Deepak was coming on the motorcycle bearing no. MH-18/U-7468

on 10-01-2010 from June-Bhadane road. He was going towards Ner. When he reached on national highway no.06 near Ner Shivar around 09.30 a.m., he was dashed by truck bearing no. AP-27/X-1139 which had come from the opposite direction. Deepak had sustained serious injuries and was then admitted to Sanjivni Hospital, Dhule. However, later on he succumbed to those injuries. It was contended that the said accident had taken place due to the negligence on the part of the driver of the truck. The truck was owned by original opponent no.01 and was insured with opponent no.02. It was stated that deceased was 30 years of age working in Sresta Natural Bio-Products Pvt. Ltd. and was getting salary of Rs. 7,203/- per month. He was also an agriculturist and was getting Rs. 3,000/- per month from agricultural lands and, therefore, claimants had claimed compensation of Rs. 10,00,000/-.

03. The matter proceeded ex parte against opponent no.01. Opponent no.02 - Insurance Company filed written statement and denied all the contentions. It was specifically denied that the accident had taken place due to the rashness and negligence on the part of the truck driver. Age, occupation and income of the deceased was challenged.

04. Taking into consideration all rival contentions, issues were framed. Claimants led oral as well as documentary evidence; whereas opponent no.02 did not lead any evidence. Taking into consideration the evidence, the learned Tribunal partly allowed the petition; compensation of Rs. 9,25,000/- was granted, excluding the amount of compensation of '*no fault liability*'. Interest has been awarded at the rate of 8 % per annum from the date of filing of the petition till actual realization of the entire amount.

05. As aforesaid, original claimants have filed this appeal contending that the calculation of compensation has not been properly made by the learned Tribunal. It has been contended that the amount of the salary has been wrongly deducted and the computation of the compensation has been made at the rate of Rs. 3,268/-. Further, future prospectus have also not been considered. If the calculation is done in right way and taking into consideration various judgments of the Hon'ble Supreme Court, only professional tax of Rs. 225/- is to be deducted from the gross salary and, therefore, the total amount of compensation would come to Rs. 18,50,000/-.

06. By order dated 03-04-2019, this Court had

put the parties to notice, that the matter would be decided finally at the stage of admission only. Accordingly, submissions have been made.

07. Heard learned Advocate Mr. M.H. Patil for the appellants. Though respondent no.01 is served through paper publication, nobody appears. Heard learned Advocate Mr. R.F. Totla for respondent no.02. Perused the record & proceedings.

08. Taking into consideration the fact that the Insurance Company has not filed any appeal challenging the other findings on the issues, the scope of this appeal is restricted to the quantum of the compensation. Hence, taking into consideration that scope, following points arise for determination. Findings and reasons for the same are as follows :-

> *(I) Whether the learned Tribunal was justified in calculating compensation at the rate of Rs. 3,268/- per month when, in fact, as per the salary certificate, the salary of the deceased was Rs. 7,203/- ?*
>
> *(II) What would be the just compensation ?*

Both the points are taken up together for the sake of convenience and to avoid repetition.

09. It has been vehemently submitted on behalf of the appellants, that though the gross salary of the deceased that has been proved at Exhibit 33 by examining PW 02 Navnath Naik, the learned Tribunal considered only Rs. 3,268/- per month for the calculation purposes. In fact, only statutory deductions ought to have been considered. He relied on the decision in *APSRTC represented by its General Manager & another Vs. M. Ramadevi & others* [(2008) ACJ 930], wherein it was observed, that *the function of the Tribunal is to award just compensation which is reasonable on the basis of the evidence produced on record*. Further reliance has been placed on the decision in *Dolly Swain & others Vs. Nirad Chandra Sahoo & others* [2019(3) ALL MR (Journal) 35], wherein it was held that *the claimants are entitled to compensation under head of non-pecuniary damages to the extent of Rs. 70,000/-*.

10. Apart from oral submissions, written notes of submissions have been made on behalf of respondent no.02, wherein after relying on the decision in *National Insurance Company Limited Vs. Pranay Sethi & others* [AIR 2017 SC 5157], it has been held that the non-pecuniary damages should not exceed Rs. 70,000/- and the submission has been made that

though the Tribunal has granted amount of Rs. 1,00,000/- each for loss of consortium and loss of love and affection as per decision in *Rajesh & others Vs. Rajbir Singh & others* [(2013) 9 SCC 54], in *Pranay Sethi's case (supra)*, it has been held that as the decision in *Rajesh & others (supra)* has not taken note of decision in *Reshma Kumari & others Vs. Madan Mohan & another* [(2013) 9 SCC 65], which was delivered at the earlier point of time, the decision in *Rajesh & others (supra)* is not a binding precedent. Further submission has been made, that in *Pranay Sethi's case (supra)*, directions have been given in respect of computation of the compensation in respect of self-employed person or fixed salary income and that is required to be followed. It was submitted that the deceased was in a private service and it is proved on record that he was having fixed salary and there was no increment. Further, it is stated that the interest that has been charged at 8 % per annum deserved to be modified.

11. The learned Tribunal, while taking into consideration the salary of the deceased, it appears that unnecessary made certain deductions which were, in fact, in respect of house rent allowance, conveyance allowance, special allowance, etc. Various decisions were not at all considered though it appears from the judgment, that they were

cited before the Tribunal. The salary slip Exhibit 33 gives the bifurcation of the amount. It consists of basic + HRA + conveyance + special allowance + PF-Employer contribution + ESI contribution. In fact, the compulsory deduction of professional tax appears to have been not shown in Exhibit 33. But it has come in the cross of PW 02 Navnath, that, that deduction was made. Though it is reflected, then it is required to be now deducted from the gross salary of the deceased in this case. In *Raghuvir Singh Matolya & others Vs. Hari Singh Malviya & others* [(2009) 15 SCC 363], it has been laid down that *"Dearness Allowance, in our opinion, should form a part of the income. House rent allowance is paid for the benefit of the family members and not for the employee alone. .... We, therefore, are of the opinion that 'dearness allowance" and "house rent allowance" payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation."* Further, in *Shyamwati Sharma & others Vs. Karam Singh & others* [2010 ACJ 1968 (SC)], it has been held, *"We, however, make it clear that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans, etc., should not be excluded from the income. The deduction towards income tax / surcharge alone should be considered to arrive at the net income of the deceased."* Therefore, what is permissible to be deducted in this case is, only the amount towards professional tax from the gross salary of Rs. 7,203/-. That amount comes to Rs. 6,978/-. It is rounded up to Rs. 6,980/- per month for calculation purposes.

12. Though Deepak was employed in private company, yet, in his examination in chief itself, PW 02 Navnath has specifically stated that Deepak was permanent employee of the company. His said statement has gone unchallenged on record as not even denied in his cross examination by opponent no.02. Therefore, para no.61(iii) from *Pranay Sethi's case (supra)* would be applicable here and para 61(iv), as contended by the learned Advocate for respondent no.02. In view of para 61(iii) of *Pranay Sethi's case (supra)*, 50 % of actual salary to the income of the deceased towards future prospectus where the deceased had permanent job is required to be added. 50 % of Rs. 6,980/- comes to Rs. 3,490/-. By addition, the basic salary for our calculation purpose would come to Rs. 10,470/- (Rs.6,980 + Rs.3,490/-) per month. Yearly it will come to Rs. 1,25,640/- (Rs.10,470/- per month X 12 months). In view of para 61(vi) of *Pranay Sethi's case (supra)*, selection of multiplier would be as per decision in *Sarla Verma & others Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121]. Therefore, taking into consideration the age of the deceased as 30 years,

the just multiplier in this case would be '17'. After applying the multiplier, the total loss for claimants would come to Rs. 21,35,880/-. Out of the same, the deductions would be as per decision in *Sarla Varma's case (supra)*, as stated in para 61(v) of *Pranay Sethi's case (supra)*. The number of dependents in the family of the deceased are 04. Therefore, the deduction would be ¼th. That deduction of ¼th would come to Rs. 5,33,970/- (¼th of Rs.21,35,880/-). The total dependency of the claimants would Rs. 16,01,910/- (Rs. 21,35,880/- minus Rs. 5,33,970/-). Further, as per para 61(viii) of *Pranay Sethi's case (supra)*, the reasonable figures for loss of estate, loss of consortium and funeral expenses would be Rs. 70,000/-. Therefore, in all, the appellants - claimants are entitled to get compensation of Rs. 16,71,910/-. This amount is inclusive of '*no fault liability*' amount which might have been already received by the appellants and also the amount which would have been deposited by opponent no.02 before the Tribunal as per the award.

13. It has been tried to be contended by respondent no.02, that when the claimants themselves had claimed compensation of Rs. 10,00,000/- and the Tribunal had awarded Rs. 9,75,000/-, they cannot ask for enhancement. Such

arguments cannot be accepted for the simple reason that the law requires that just compensation is to be awarded to the claimants and not what the claimants are claiming. Claimants might be claiming less amount under some mistaken belief or mistaken calculation made by the Advocate representing them. That does not estop the Claims Tribunal or even the appellate Court from awarding a just compensation. If all less court-fees is paid, then directions can be given to deposit the deficit court-fee within a reasonable period. Accordingly, in this case, such directions are required to be given.

14. As regards rate of interest is concerned, since opponent no.02 has not filed any appeal, the rate of interest cannot be changed. There, the points are answered accordingly. In view of the fact that the learned Tribunal has not taken into consideration various judgments of the Hon'ble Supreme Court and the latest legal position, the appeal deserves to be allowed.

15. Hence, the following order :-

(a) The first appeal is hereby allowed with costs.

(b) The judgment and award passed in Motor Accident

Claim Petition No. 149 of 2010 by learned Member of the Motor Accident Claims Tribunal, Dhule, dated 25-08-2015, is hereby set aside to the extent of amount of compensation and is hereby modified as follows :-

(b-1) Opponents no.01 and 02 do jointly and severally pay compensation of Rs. 16,71,910/- (Rupees sixteen lacs seventy one thousand nine hundred ten only), inclusive amount under '*no fault liability*' and amount deposited by opponents uptill now, to the petitioners, together with interest at the rate of 8 % per annum from the date of filing of the claim petition i.e. 25-02-2010 till realization of entire amount.

(b-2) As regards apportionment, it should be as per para no.03 of the operative order of the Tribunal.

(c) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

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