

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

FIRST APPEAL NO.578 OF 2019

1 Savitrabai w/o Irwant Aglave,
Age 29 yrs., Occ. Household,

2 Mahadevi d/o Irwant Aglave,
Age 9 yrs., Occ. Nil,

3 Sridevi d/o Irwant Aglave,
Age 5 yrs., Occ. Nil,

Appellant Nos.2 & 3 are minor and
under guardianship of their natural
mother appellant No.1

4 Irabai w/o Lingappa Aglave,
Age 64 yrs., Occ. Nil,

5 Lingappa Bhujang Aglave (dead)
Through his L.Rs. Appellant Nos.1 to 4.

All are r/o Karemalkapur, Tq. Degloor,
Dist. Nanded.

... **Appellants.**

... **Versus** ...

1 Sk. Ateeq Raheman s/o Abdul Raheman,
Age : Major, Occ. Business,
R/o Bagantakli, Tq. Degloor,
Dist. Nanded.

2 United India Assurance Company Ltd.
A company registered under
The Companies Act, 1956,
Through its Branch Manager,
Nanded, Tq. & Dist. Nanded.

... **Respondents.**

...

Mr. S.S. Patil, Advocate for the appellants
Mr. S.R. Bodade, Advocate for the respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 19th JUNE, 2019

PRONOUNCED ON : 04th JULY, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimants claiming enhancement in the compensation.

2 Appellant No.1 is the widow, appellant Nos.2 and 3 are the children, appellant No.4 is the mother of deceased Irwant Lingappa Aglave. Original claimant No.5 was his father, however, it appears that he expired after the Award. They had filed claim petition bearing Motor Accident Claims Petition No.38/2014, under Section 166 of the Motor Vehicles Act for getting compensation on account of accidental death of Irwant Aglave. It will not be out of place to mention here that since the present appeal is only for enhancement, the story is taken in nutshell. Deceased was proceeding with his friend on motor cycle to Degloor on 05.11.2012. They were dashed by

auto bearing No.MH 26/T-7266, which had come from opposite direction in high speed. The said auto was owned by original respondent No.1 and it was insured with respondent No.2-insurance company on the date of the accident. Irwant expired on the spot in the said accident. It is stated that the said accident had occurred due to negligence on the part of auto driver, who was prosecuted later on by police. Deceased Irwant was a labour earning Rs.3,000/- per month and he was aged 29 at the time of accident. They had claimed compensation of Rs.6,00,000/-.

3 The petition was resisted by both the respondents by filing separate written statement. All the averments in the petition were denied. Age, income and occupation of the deceased was denied. The allegations in respect of negligence of the auto driver are also denied. The insurance company had taken statutory defence.

4 Taking into consideration the rival contentions, issues were framed. Evidence has been led by the claimants only. Taking into consideration the evidence, the learned Tribunal had partly allowed the claim and directed respondent Nos.1 and 2 to pay compensation of Rs.3,94,000/- inclusive of No Fault Liability amount and the interest was awarded @ 7.5 % per annum, from the date of the petition till actual realization of the amount,

if the compensation is not paid within two months from the date of the order. The Award was passed by learned Member, Motor Accident Claims Tribunal, Biloli, Dist. Nanded on 04.04.2015 and the same is challenged to the extent of quantum by the appellants in this appeal.

5 It will not be out of place to mention here that none of the respondents have challenged the Award on other findings and therefore, taking into consideration the scope of the appeal following point arise for determination. Findings and reasons for the same are as follows.

Whether the Tribunal had calculated the amount of compensation properly ? If no, then what would be the just amount of compensation ?

REASONS

6 It has been submitted on behalf of the appellants that the learned Tribunal has not awarded any amount towards future prospect and the multiplier ought to have been applied as “17” taking into consideration the age of the deceased. Further, taking into consideration the fact that there were five family members depending on the deceased, the deduction ought to have been $\frac{1}{4}^{\text{th}}$. So also, under non pecuniary damages a very meagre amount has been given. It was submitted that the calculation ought to have been on

the basis of the decision in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in 2009(6) SCC 121. He further submitted that since now the decision in **National Insurance Company Limited vs. Pranay Sethi and another** reported in (2017) 16 SCC 680 is holding field, the calculation should be done on the basis of the said decision of Full Bench of the Hon'ble Supreme Court.

7 Per contra, the learned Advocate appearing for the respondent No.2 submitted that the learned Member, Motor Accident Claims Tribunal has taken into consideration the evidence on record and has correctly assessed the compensation which requires no interference at all.

8 It is to be noted that the claimants themselves had come with a case that deceased was doing labour work and was earning Rs.3,000/- per month. Since said amount of income of the deceased was equivalent to notional income, it was not necessary for the claimants to lead any evidence to prove the income. Therefore, the income of the deceased which has been considered @ Rs.3,000/- per month by the Tribunal is correct. The learned Tribunal has pronounced the Judgment on 04.04.2015 and the decision in **Pranay Sethi's** case (supra) was pronounced on 31.10.2017. But then, at that time, when the Tribunal in this case had pronounced the Judgment, the

Judgments in **Reshma Kumari vs. Madan Mohan**, [2013 (9) SCC 65] and **Rajesh vs. Rajveer Singh**, [2013 (9) SCC 54] were holding field, but the learned Tribunal had not taken into consideration those pronouncements also and has not awarded any amount towards future prospect. Therefore, now, in view of Full Bench decision in **Pranay Sethi's** by Hon'ble Surpeme Court, we will have to calculate the compensation on the basis of the said decision. Since the deceased was self employed, as per para 64 (IV) of the said Judgment and the fact that age of the deceased was between 29-30, especially the age in the Post Mortem report, 40% of the income is required to be added towards future prospect. It will not be out of place to mention here that the learned Tribunal has taken the age of the deceased as 35, but there appears to be no basis for the same. Even if for the sake of argument it is taken that his age was 35, yet as per the said pronouncement, since the deceased was below age of 40, 40% increase in the future prospect is required to be given. Thus, by adding future prospect to the extent of 40% the income of the deceased would be Rs.4,200/- (Rs.3,000/- + Rs.1,200/- i.e. 40% of Rs.3,000/-). Yearly that income will come to Rs.50,400/- (Rs.4,200/- per month X 12 months). Out of the said amount, in view of the decision in **Pranay Sethi** and **Sarla Verma** as well as the fact that the five persons were depending on the income of the deceased; $\frac{1}{4}^{\text{th}}$ of the said amount is required to be deducted towards personal expenditure of the

deceased. That amount comes to Rs.12,600/- and therefore, the dependency of the claimants would be Rs.37,800/- per annum (Rs.50,400 - Rs.12,600). Further, as per the decision in **Pranay Sethi** and **Sarla Verma** and the age of the deceased as 30 given in the Post Mortem Report, the just multiplier in this case would be “17”. After applying the multiplier, the loss of income or the amount of compensation to which the claimants are entitled to would Rs.6,42,600/- (Rs.37,800/- X 17). Further, amount of Rs.70,000/- is required to be added towards non pecuniary damage in view of para No.64(VIII) of **Pranay Sethi's** case. Thus, the claimants are entitled to get total compensation of Rs.7,12,600/-.

9 The learned Tribunal has not calculated the compensation properly and by taking into consideration the said principles of law. Hence, interference is required. Point is answered accordingly. The rate of interest that has been awarded is 7.5 % per annum; which appears to be reasonable taking into consideration that the matter was decided in 2015. Now, as regards apportionment of the compensation is concerned, it requires reapportionment, since the amount of compensation is increased and therefore, the entire Award passed by the learned Tribunal deserves to be set aside and modified. Further, it can be seen that the claimants had claimed amount of Rs.6,00,000/- only. However, they are held to be entitled to get

compensation of Rs.7,12,600/-. Under such circumstance, the deficit Court fee is required to be recovered from them. Tribunal as well as this Court are bound to give just compensation to the applicants. That may be more than demanded by applicants. Question of deficit court-fee will not dis-entitle them from getting adequate and just compensation. Time of two months can be given to appellants to deposit the deficit Court fee.

10 With these observations following order is passed.

ORDER

1 The appeal is hereby allowed with costs.

2 The Judgment and Award passed by the learned Member, Motor Accident Claims Tribunal, Biloli, Dist. Nanded in Motor Accident Claims Petition No.38/2014 dated 04.04.2015 is hereby set aside.

3 Respondent Nos.1 and 2 are directed to pay compensation of Rs.7,12,600/- (Rupees Seven Lac Twelve Thousand and Six Hundred only) to the claimants inclusive of compensation under No Fault Liability, jointly and severally together with interest @ 7.5 % per annum from the date of the petition till actual realization of entire amount.

4 After the said amount is deposited, out of the said amount of compensation, amount of Rs.1,00,000/- each be deposited in Fixed Deposits in the name of claimant Nos.2 and 3, by showing claimant No.1 as their guardian, in any Nationalized Bank of the choice of claimant No.1, till the attainment of their respective majority.

5 Further, out of the said remaining amount, amount of Rs.1,50,000/- be given to share of applicant No.4. Out of amount of her share, Rs.75,000/- be given to her by way of cheque and amount of Rs.75,000/- be invested in her name in Fixed Deposit, in any Nationalized Bank of her choice, for a period of three years.

6 Out of remaining amount, amount of Rs.2,00,000/- be invested in the name of claimant No.1 in Fixed Deposit, in any Nationalized Bank of her choice, for a period of five years.

7 Rest of the entire amount be given to claimant No.1 by cheque.

8 Appellants to pay deficit court-fee within a period of two months from the date of this order.

9 Amount paid by respondents, if any, be adjusted in the amount

now awarded.

10 Award be drawn accordingly.

(Smt. Vibha Kankanwadi, J.)

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