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

First Appeal No. 0383 of 2017

District : Ahmednagar

The New India Assurance Company Ltd.,
D.O. No.1, Adalat Road, Aurangabad,
Through its Authorized Signatory,
Ravikant Yadav,
Age : 26 years,
Occupation : Service,
R/o. Aurangabad. .. Appellant (Original respondent no.02)

versus

1. Popat s/o. Rangnath Jadhav,
   Age : 47 years,
   Occupation : Labourer,
   R/o. D-Quarter, Haregaon,
   Taluka Shrirampur,
   Dist. Ahmednagar.

2. Shantabai w/o. Popat Jadhav,
   Age : 46 years,
   Occupation : Household,
   R/o. D-Quarter, Haregaon,
   Taluka Shrirampur,
   Dist. Ahmednagar.

3. Babasaheb s/o. Bhausaheb Chide,
   Age : 50 years,
   Occupation : Tanker Owner,
   R/o. Malwadgaon,
   Taluka Shrirampur,
   Dist. Ahmednagar.

.. Respondents (Nos.01 & 02 - Original claimants & No.03 - Original respondent no.01)

.....

Mr. M.M. Ambhore, Advocate, for the appellant.

Mr. Shaikh Mazhar A. Jahagirdar, Advocate, for respondents no.01 and 02.

Respondent no.03 served (Absent).

.....

CORAM : SMT. VIBHA KANKANWADI, J.

Date of reserving the judgment : 01st July 2019

Date of pronouncing the judgment : 09th July 2019

JUDGMENT :

01. Present appeal has been filed by the original respondent no.02 - Insurance Company, challenging the judgment and award passed by learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar, in Motor Accident Claim Petition No. 178 of 2014 dated 18-02-2016. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. The factual matrix leading to the appeal are, that the present respondents no.01 and 02 filed petition under Section 166 of the Motor Vehicles Act, 1988 to claim compensation from the respondents on account of death of their son Prakash Popat Jadhav in a vehicular accident. They had contended that Prakash was proceeding towards Aurangabad from Haregaon on motorcycle bearing No. MH-17/BC-6622 on 03-10-2014. When he reached near Nagphani area of village Newasa Bk., at that time he was dashed by tanker bearing No. MH-17/T-3225. The driver of the tanker had driven it in rash and negligent manner and

in a very high speed. As a result of the dash, Prakash sustained grievous injuries and died on the spot. Offence was registered against the driver of the tanker. The said tanker was owned by original respondent no.01 and it was insured on the date of the accident with respondent no.02. It was contended that Prakash was 27 years old person working at Dubai in Saudi Arabia and earning around Rs. 80,000/- per month. It is stated that he was working as Project Engineer in a private company at Pune and getting only package of Rs. 3,50,000/-. Both the claimants were dependent on Prakash and, therefore, they had claimed compensation of Rs. 60,00,000/- and restricted the same for the purpose of court-fees for Rs. 50,00,000/-.

03. Respondent no.01 as well as respondent no.02 filed their separate written statement. They have also denied the fact of accident and the manner in which the accident took place, as narrated in the petition. It has been specifically denied that the tanker driver was responsible for the said accident. They have tried to contend that, in fact, the accident took place due to the negligence on the part of the deceased. The Insurance Company has taken statutory defences also.

04. Taking into consideration the rival contentions, issues were framed. Only the claimants

have led oral as well as documentary evidence. Taking into consideration the said evidence as well as after hearing both sides, the learned Tribunal has partly allowed the petition with proportionate costs. Respondents no.01 and 02 were directed to pay compensation of Rs. 45,92,500/-. This award is under challenge in this appeal.

05. Heard learned Advocate Mr. M.M. Ambhore for the appellant and learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for respondents no.01 and 02. Though respondent no.03 was served, he has chosen to remain absent.

06. It has been vehemently submitted on behalf of the appellant, that the learned Tribunal has not considered the evidence properly. It had come on record, that deceased Prakash was a probationer and under such circumstance, addition of 50 % of the income towards future prospectus was against the legal pronouncements by the Hon'ble Apex Court; so also, the non-pecuniary damages have been exorbitantly awarded. It has also been tried to be contended that the point as regards rash and negligent driving by the tanker driver was not proved by the claimants, yet, it has been held that the driver was negligent and then the liability has been fastened. Since the quantum is on higher side, he prayed for reducing it.

07. Per contra, learned Advocate appearing for the original claimants supported the reasons given by the learned Tribunal and submitted that clear calculation has been given as to how the amount of compensation has been arrived at. It requires no interference.

08. It can be seen from the record, that since the police papers were produced by the claimants and no contrary evidence was adduced, the learned Tribunal was justified in holding that Prakash died in motor vehicle accident on 03-10-2014 and the said accident was caused by the driver of the tanker. The Insurance Company had not led any evidence to prove that the respondent no.01 had committed any breach of terms of policy. Under such circumstance, the Tribunal was justified in fastening the liability on respondent no.01, being the owner and respondent no.02 being the Insurance Company with whom the tanker was insured on the date of the accident. The liability between respondents has been correctly held as joint and several. These points need not be elaborated in detail taking into consideration the evidence. Hence, no points are framed in that respect. However, taking into consideration the main point that has been agitated about the quantum of compensation, following point arise for determination and reasons for the same are as follows :-

" Whether the Tribunal was justified in granting compensation of Rs. 45,92,500/- to the claimants ? "

09. In order to prove the income of deceased Prakash, claimants have examined PW 02 Mandar Nalawade, Legal Assistant Manager in the head office of Schindler India Pvt. Ltd., Pawai, Mumbai. He has produced on record, the contract and appointment letter given to Prakash. Though it was contended by the claimants that Prakash was serving in Saudi Arabia, it appears that he had left that job and came to India and then had joined Schindler India Pvt. Ltd. on 25-09-2014. The appointment letter, Exhibit 55, makes this fact clear. There is no reference that in the same Company, he was employed in Saudi Arabia. Therefore, this service, which he had taken up with effect from 25-09-2014 was a fresh service and, therefore, we are required to consider what were his service conditions and income from the said service. In his testimony, PW 02 Mandar Nalawade has stated that the package that was offered to Prakash was Rs. 3,50,310/- per annum. To support this fact, there is appointment letter Exhibit 55 and other documents. No doubt, he says that since the deceased was earlier employed in Dubai, he was offered with the said package. Therefore, for our calculation purpose, the package which was offered by Schindler India Pvt. Ltd. is important. Taking into

consideration the said package, it can be seen that as per the then prevalent income tax rules i.e. in the year 2014, deceased was required to pay income tax to the extent of around Rs. 8,000/-. Here, one fact is required to be mentioned that he joined his service with effect from 25-09-2014 and till end of March 2015, he would not have received the entire amount as per the package. But then in subsequent years to come, he would have received that package and under those circumstances, his tax liability would be around Rs. 8,000/- per annum and, therefore, that amount is required to be deducted. The learned Tribunal has not given a thought that the compulsory deductions are required to be deducted while assessing compensation. Therefore, after deducting the income tax, which is inclusive of the professional tax that was required to be paid by Prakash, his salary i.e. gross for our calculation purpose would have been Rs. 3,42,310/- [Rs. 3,50,310/- minus Rs. 8,000/-].

10. The learned Tribunal has given 50 % increase in the income as future prospectus. However, it is to be noted that as per Exhibit 55, appointment letter, Prakash joined the services on 25-09-2014 and as per the condition of service, he would have been on probation for a period of six months starting from the date of joining service. The very much unfortunate part is that within ten days of his

joining the service, he met with the said accident on 03-10-2014 and expired. Therefore, on the date of his death, he was a probationer and that too, having a fixed income. No doubt, that appointment letter says about enhancement and perks to be added, but it was on the basis of his performance. That cannot be considered and added here. Therefore, taking into consideration the decision in *National Insurance Company Limited Vs. Pranay Sethi & others* [AIR 2017 SC 5157], para 64(iv), 40 % of the income is required to be added towards future prospectus. That amount comes to Rs. 1,36,924/- (40 % of Rs. 3,42,310/- per month). Further, deceased Prakash was a bachelor and the claimants are the parents. Under such circumstance, as per the decision in *Pranay Sethi (supra)* and *Sarla Verma & others Vs. Delhi Transport Corporation & another* [(2009) 6 SCC 121], 50 % of the income is required to be deducted towards personal expenditure. That means, 50 % of the income of the deceased Prakash can be said to be the dependency of the appellants. That amount comes to Rs. 2,39,617/-. Deceased Prakash was 27 years old and, therefore, taking into consideration once again the ratio laid down in *Pranay Sethi (supra)* and *Sarla Verma (supra)*, the just multiplier in this case would be '17'. After applying the multiplier, the total loss of dependency or income for the claimants would be Rs. 40,73,489/- [Rs. 2,39,617 X 17].

Further, amount of Rs. 70,000/- only is required to be added towards non-pecuniary damages in view of para 64(viii) of the decision in *Pranay Sethi (supra)*. Therefore, the total amount of compensation to which the claimants are entitled is Rs. 41,43,489/-. It is rounded up to Rs. 41,43,490/-. Point is answered accordingly.

11. Learned Tribunal erred in granting 50 % future prospectus, so also, in giving more amount under the head of non-pecuniary damages. Hence, the appeal deserves to be partly allowed. It is clarified that the interest is awarded at the rate of 09 % per annum. Taking into consideration the fact that the accident had taken place in 2014, the said rate of interest granted is justifiable and, therefore, requires no change.

12. For the aforesaid reasons, following order is passed :-

(a) The appeal is hereby partly allowed.

(b) The judgment and award passed in Motor Accident Claim Petition No. 178 of 2014 by learned Member of the Motor Accident Claims Tribunal, Shrirampur, District Ahmednagar, dated 18-02-2016, is hereby set aside to the extent of quantum and modified as follows :-

" Respondent no.01, being registered owner and respondent no.02, being Insurance Company of the offending vehicle, shall pay jointly and severally to the petitioners, an amount of Rs. 41,43,490/- [Rupees forty one lacs forty three thousand four hundred ninety] (inclusive of amount of Rs. 50,000/-)."

It is clarified that there is no change in the other clauses of the award passed by the learned Tribunal.

(c) There shall be no order as to costs.

(d) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

.....

puranik / resFA383.17