**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.566 OF 2018**
**WITH**
**CIVIL APPLICATION NO.3885 OF 2018**
**IN**
**FIRST APPEAL NO.566 OF 2018**

The New India Assurance Co. Ltd. ...Appellant
Versus
Rajaram Sambhaji Devade and ors. ...Respondents

.....

Ms Poonam Mittal for the Appellant.
Mr. Yuvraj P. Narvankar with Mr. Vasant R. Kadam for the Respondent Nos.1 and 2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED: 21st AUGUST, 2019.**

**ORAL JUDGMENT:-**

Heard finally with the consent of parties.

2. The Appellant herein has challenged the impugned judgment and award dated 3rd November, 2015 passed by the learned Member, Motor Accident Claims Tribunal, Satara, in M.A.C.P. No.4 of 2014. By the impugned judgment and award the Claims Tribunal has awarded compensation of Rs.21,50,000/- with interest @ 9% per annum from the date of filing of the application till its realization.

3. The Respondent Nos.1 and 2, who are the original claimants, are the parents of the deceased Yogesh, who expired as a result of the injuries sustained in a motor vehicular accident on 30/9/2013. It was the case of the Respondent Nos.1 and 2 that on the relevant date the deceased Yogesh was proceeding on his motor cycle from Satara to Pune. When he reached near village Shirval, a truck bearing No.45AQ-3782 came from the rear side at a high speed and dashed against his motor cycle. The deceased-Yogesh sustained multiple injuries and died on the spot.

4. The Respondent Nos.1 and 2 claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle i.e. truck No. 45AQ-3782, which was owned by the Respondent No.3 and insured by the Appellant-Insurance Company. The Respondent Nos.1 and 2-claimed that the deceased was 21 years old. He was a mason and was earning Rs.12,500/- per month. The Respondent Nos.1 and 2 stated that they were totally dependent on the earnings of their son Yogesh. The Respondent Nos.1 and 2 therefore filed an application under Section 166 of the Motor Vehicle Act, 1988 claiming total compensation of Rs.29,50,000/-.

5. The Respondent No.3 did not contest the proceedings. The Appellant-Insurance Company claimed that the driver of the said truck was not holding a valid and effective driving license. The Appellant-Insurance Company therefore disputed its liability to indemnify the insured for breach of terms and conditions of the policy. The Appellant-Insurance Company further denied the income of the deceased and asserted that the claim was exorbitant.

6. Upon considering the evidence adduced by the Respondent Nos.1 and 2, the learned Member of the Claims Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal has held that the Respondent Nos.1 and 2 had proved that the deceased was 21 years of age and was earning Rs.12,500/- per month. The Tribunal added 50% of the actual income towards future prospect and upon deducting 50% towards personal expenses considered monthly income of the deceased as Rs.9,375/- which works out to Rs.1,12,500/- per annum. Applying multiplier of 18, the Tribunal has computed loss of dependency as Rs.20,25,000/-. The Tribunal has also awarded 1,00,000/- towards love and affection and Rs.25,000/- towards funeral expenses and awarded total compensation of Rs.21,50,000/-. Being

aggrieved by this judgment and award, the Appellant-Insurance Company has preferred this appeal.

7. Though the judgment and award has been challenged on several grounds, Ms Poonam Mittal, the learned counsel for the Appellant-Insurance Company has stated that she is restricting the challenge only to the quantum of compensation. It is the contention of the learned counsel for the Appellant that the Tribunal has erred in adding 50% of the actual income towards future prospect and further in awarding Rs.1,25,000 on conventional heads. She states that in terms of the judgment of the Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and Ors. 2017 ACJ 2700*** the deceased being self employed, the Tribunal ought to have added 40% of the established income towards future prospects. She further submits that in terms of judgment in ***Pranay Sethi*** (supra) the Tribunal ought to have awarded compensation of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. She further submits that in view of the judgment of the Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 SCC Online SC 1546*** the Respondent Nos.1 and 2 at the most would be entitled for another Rs.40,000/- each towards loss of filial consortium.

8. The learned counsel for the Respondent Nos.1 and 2 fairly concedes that the Tribunal ought to have added 40% of actual income towards future prospect. He submits that in view of the judgment of the Apex Court in ***Magma*** (supra) the Respondent Nos.1 and 2 are entitled for Rs.40,000/- each towards loss of filial consortium.

9. Perused the records. It is not in dispute that the deceased was 21 years of age and was earning Rs.12,500/- per month. The deceased was a bachelor hence 50% has to be deducted towards his personal expenses. The deceased was working as a mason and being self employed, in view of the decision in ***Pranay Sethi*** (supra) 40% of the established income has to be added towards future prospect. On adding 40% to the established income, the amount works out to Rs.8,750/-. Thus, the annual income works out to Rs.1,05,000/-. Considering that the deceased was 21 years of age and on applying multiplier of 18, the loss of dependency works out to Rs.18,90,000/-.

10. The Tribunal has awarded Rs.1,25,000/- on conventional heads. In view of judgment of the Apex Court in ***Pranay Sethi*** and ***Magma*** (supra) the Respondent Nos.1 and 2 are entitled for compensation of Rs.15,000/- towards funeral expenses and

Rs.15,000/- towards loss of estate and Rs.80,000/- each towards filial consortium. Thus, the Respondent Nos.1 and 2 are entitled for total compensation of Rs.20,00,000/-.

11. Hence, the following order:-

(i) The appeal is partly allowed;

(ii) The compensation payable to the Respondent Nos.1 and 2 is reduced to Rs.20,00,000/-. The other directions as regards interest and cost shall remain the same.

(iii) The impugned judgment and award is modified accordingly.

(iv) Statutory deposit be transferred to the M.A.C.T., Satara.

(v) The balance amount with proportionate interest accrued thereon be refunded to the Appellant-Insurance Company.

(vi) Liberty is granted to the Respondent Nos.1 and 2 to apply before the Claims Tribunal for withdrawal of the compensation.

12. In view of disposal of the appeal, the civil application does not survive and hence stands disposed of.

**(SMT. ANUJA PRABHUDESSAI, J.)**