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

**FIRST APPEAL NO. 1667 OF 2019
WITH
CIVIL APPLICATION NO. 2623 OF 2016
IN
FIRST APPEAL NO. 1667 OF 2019**

The New India Assurance Co. Ltd.
Add: No.45, 5th Floor, Moore Street,
Chanai – 600 001 having its Regional
Office at Sharda Centre, Erandwane,
Pune – 4.

... Appellant/
Applicant

Versus

1. Mr. Ashish Ravindra Kulkarni,
Age 22 years, Occ. Student,
R/at. S. No. 44/3, Shri Mangal,
Erandwane, Surekh Housing Society,
Pune.
2. Mr. Sivaguru Somasundaram
Age 24 years, Occ. Driver,
R/at Lalbahadur Street,
Nillathukudi, Mayitaduthrai.
3. Mrs. D. Vadhya,
Age Adult, Occ. Business,
R/at. 15, Raddiar Street,
T.N. Palayam Bahour,
Dist. Pondicherry,
VT 607402.

... Respondents

.....

Mr. Ketan Joshi for the Appellant.

Mr. Vishwanath S. Talkute for the Respondent No.1.

.....

CORAM : R.D. DHANUKA, J.

RESERVED ON : 27th NOVEMBER, 2019

PRONOUNCED ON : 19th DECEMBER, 2019

JUDGMENT :

. By this First Appeal filed under Section 173 of Motor Vehicles Act, 1988, the appellant (original opponent no.3) has impugned the judgment and award dated 28th July, 2015 passed by the Motor Accident Claims Tribunal (MACT), Pune in Motor Accident Claim Petition (MACP) No. 130 of 2009, allowing the said claim petition filed by the respondent no.1 partly and directing the original appellant and respondent no.2 to pay jointly and severally compensation of Rs.5,95,000/- including the interim compensation awarded under Section 140 of the Motor Vehicles Act along with cost and interest @ 6% per annum from the date of petition till realization of entire amount to the respondent no.1 (original applicant). By consent of the appellant and the respondent no.1, who is contesting party, appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this appeal are as under:-

2. It was the case of the respondent no.1 that he along with his family members were proceeding in Indica Car bearing registration no. TN-10-T-6077 towards Pondicherry from Chennai. It was the case of the respondent no.1 that the driver of the said car was driving in slow and moderate speed by observing the traffic rules and regulations. At about 15:30 hours, when the said car reached at East Coast Road, Salavankuppan, opposite Tiger Caves, Tamilnadu, one Innova Car bearing registration no. PY-01-AC-4466 (hereinafter referred as “offending vehicle”) came from opposite direction in

very high and excessive speed. Due to such high speed, the driver of the offending vehicle could not control his vehicle and went to the wrong side of the road and gave violent dash to the said Indica Car, wherein the respondent no.1 with his family members were travelling. As a result of such violent dash, respondent no.1 and his family members sustained injuries. Driver of the Indica Car also sustained injuries. Father of the respondent no.1, Ravindra Kulkarni, his brother Aniket Kulkarni and driver Selven died on the spot. Mother of the respondent no.1, Shailaja Kulkarni was severally injured and subsequently died.

3. After investigation, the Police from Mamallapuram, Dist. Kancheepuram registered a crime against the driver of the offending vehicle. Respondent no.3 herein (original opponent no.2) was the registered owner of the offending vehicle and it was insured with the appellant at the relevant time. The respondent no.1 filed claim petition before the MACT, Pune bearing MACP No. 130 of 2009. The opponent no.1, who was the driver of the offending vehicle was deleted from the cause title of the claim petition subsequently. Respondent no.3 did not appear before the Tribunal in spite of service of notice. The matter proceeded *ex-parte* against her.

4. The appellant (original opponent no.3) filed a written statement before the Tribunal. In the said written statement, the appellant admitted that the said offending vehicle was duly insured with it at the relevant time

covering the date of accident. The appellant also raised an objection that the insured and insurer of the vehicle which met with an accident were not joined as parties to the said claim petition and thus the said claim was bad for non-joinder of necessary parties and it deserves to be dismissed on this ground also. The appellant also denied that the accident took place due to rash and negligent driving on the part of the driver of the said offending vehicle or that the said car was driven in high and excessive speed and thus the said driver of the said offending vehicle lost his control.

5. The Tribunal framed five issues for determination. The respondent no.1 entered the witness box, who was an eye witness to the accident who was cross-examined by the appellant through its advocate. The respondent no.1 produced various documents in evidence before the Tribunal including an FIR. In his examination-in-chief, the respondent no.1 deposed, as to how the accident took place due to negligence on the part of the driver of the offending vehicle. The Tribunal held that the accident was as a result of the sole negligence on the part of the driver of the offending vehicle. The Tribunal also considered the Inquest Panchanama and held that it was clear that the deceased Shailaja Kulkarni had sustained multiple injuries and was admitted in CMC Hospital at Chengalattu, where she died. The postmortem report disclosed that she had abrasions on right chest, fracture towards middle 1/3rd right femur and middle 1/3rd left tibia, fracture of 8th ribs and other injuries. The death was caused due to shock due to multiple injuries. It

is held that all such injuries of the said Shailaja Kulkarni were in the said road accident which was due to rash and negligent driving on the part of the driver of the offending vehicle.

6. It is held by the Tribunal that since the accident had taken place due to the sole negligence on the part of the driver of offending vehicle and no negligence could be attributed to the driver of Indica Car. The driver, owner and the insurer company of Indica Car were not the necessary parties and thus the said claim petition was bad for non-joinder of necessary parties. The said Tribunal also held that the appellant had not proved any statutory defence and thus the owner of the said offending vehicle and the appellant were jointly and severally liable to pay the compensation to the respondent no.1. The said Tribunal allowed the compensation in the sum of Rs.5,95,000/- in favour of the respondent no.1 and against the respondent no.3 (original opponent no.2) and the appellant herein jointly and severally.

7. Mr. Ketan Joshi, learned counsel for the appellant invited my attention to some of the findings rendered by the said Tribunal and submits that the finding that the appellant had not proved any statutory defence, is not correct. He submits that the Tribunal has though held that there was no direct evidence about the income of the deceased Shailaja Kulkarni and at the relevant time she had already left her job as Librarian, the Tribunal has considered her monthly gross income at Rs.5,000/- per month and thereafter

had applied multiplier of 13 after granting compensation of yearly dependency. He submits that since the said deceased was admittedly not carrying out any business, the Tribunal at the most could have considered the gross monthly income at Rs.2,000/- and not Rs.5,000/- as awarded by the Tribunal.

8. It is submitted by the learned counsel that the Tribunal has also awarded Rs.25,000/- towards funeral expenses, Rs.50,000/- towards love and affection. Such allowances could not be more than Rs.70,000/- and is contrary to the judgment of Supreme Court in case of ***National Insurance Company Ltd. v/s. Pranay Sethi and Ors., (2017) 16 SCC 680.***

9. Learned counsel for the appellant submits that the driver of the offending vehicle was fully drunk and therefore he was ultimately charge-sheeted under Section 185 of the Motor Vehicles Act, 1988 along with Section 279 of the Indian Penal Code, which itself is a Criminal Act and thus the appellant being insurer, there could not be any vicariously liability of the appellant for an unauthorized and illegal act on the part of the driver. It is submitted by the learned counsel that the role of the appellant contemplated under the provisions of Motor Vehicles Act, 1939 as well as 1988 was of the indemnifier to the insured. He submits that the Tribunal thus could not have held that the appellant is liable to pay any compensation to the respondent no.1 in view of the driver of the offending vehicle being drunk at the time of

driving. Reliance is placed on the judgment of this Court in case of ***Maimulna Begam v/s. Taju, 1989 (1) B.C.R. 673.***

10. Mr. V. S. Talkute, learned counsel for the respondent no.1 on the other hand strongly placed reliance on the findings rendered by the Tribunal in support of his submissions. He submits that the respondent no.1 was the eye witness to the accident and was examined as a witness. No evidence was led by the appellant before the Tribunal. He submits that the Tribunal has considered the entire evidence led by the respondent no.1 including the documentary evidence and has rightly held that the accident was the result of sole negligence of the driver of the said Innova Car bearing registration no. PY-01-AC-4466. Learned counsel placed reliance on the judgment of Division Bench of this Court delivered on 30th November, 2018 in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** which judgment was in the First Appeal filed by the appellant herein impugning the judgment and order dated 28th July, 2015 passed by the MACT, Pune arising out of the same accident.

11. It is submitted that the grounds raised in this First Appeal are identical to the grounds raised in the said First Appeal (Stamp) No. 8524 of 2016 which were rejected by this Court after considering the evidence led by the original applicant in the said matter. He submits that the said judgment of the Division Bench of this Court clearly applies to the facts of this case.

He submits that various claims for compensation have been awarded by the Division Bench of this Court to the original applicant including future prospects, loss of dependency, loss of love and affection, funeral expenses, loss of estate, loss of parental and filial consortium. He submits that the Division Bench of this Court awarded the interest @ 7.5% to the original applicant from the date of petition filed before the MACT, Pune till realization.

12. In so far as the allegation of the learned counsel for the appellant that the Tribunal could not have considered the income of the said deceased at Rs.5,000/- per month on the ground that the said deceased had already left the job and was doing household work at the time of her accident is concerned, it is submitted by the learned counsel that the respondent no.1 had produced Form no. 16 of the said deceased which indicated that the said deceased was earning Rs.85,648/- for the account year 2005-2006, her monthly approximately salary was Rs.7,137/- per month in the year 2006-2007. She had however left the job and was doing household work. He submits that the Tribunal has awarded just compensation at Rs.5,000/- per month. Learned counsel submits that the said amount at Rs.5,000/- per month was on lower side.

13. It is submitted that in case of a housewife, income of the deceased housewife has to be computed as 1/3rd of the husband's income. In support

of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of ***Arun Kumar Agrawal and Ors. v/s. National Insurance Company and Others, AIR 2010 SC 3426***. He submits that this Court thus while considering the amount of yearly income thus shall enhance the said compensation awarded by the Tribunal to the respondent no.1 by considering the income of the husband of the said deceased at by taking 1/3rd income thereof in accordance with the principles of law laid down by the Supreme Court in case of ***Arun Kumar Agrawal and Ors.*** (supra). He submits that though no cross-objection is filed by the respondent no.1, since the Tribunal ought to have awarded just compensation to the claimant, this Court while hearing the First Appeal also has to award just compensation on the same principle. Filing of cross-objection is thus not mandatory for the purpose of enhancement of the claim.

14. It is submitted by the learned counsel for the respondent no.1 that the Tribunal could not have deducted 1/3rd amount towards living and personal expenses of the deceased from the gross yearly income, since the deceased Shailaja Kulkarni was housewife.

15. It is submitted by the learned counsel that the Tribunal has awarded interest to the respondent no.1 only @ 6% p.a. which is on lower side. He submits that the Division Bench of this Court in the First Appeal between the same parties arising out of same accident has awarded the interest @

7.5% p.a. This Court thus shall enhance the rate of interest to 9% p.a. or atleast 7.5.% p.a. Learned counsel for the respondent no.1 placed reliance on the judgment of this Court (Aurangabad Bench) in case of ***New India Assurance Company Ltd. v/s. Sunita and Ors.***, decided on 4th January, 2019 in ***First Appeal No. 3001 of 2009*** and in particular paragraph 23 and would submit that this Court in the said judgment had enhanced the rate of interest to 9% p.a.

16. Learned counsel for the respondent no.1 placed reliance on the judgment of this Court (Aurangabad Bench) in case of ***The New India Assurance Company Ltd. v/s. Ujjanwala and Ors.***, decided on 18th September, 2019 in ***First Appeal No. 3160 of 2016*** and in particular paragraph 18 in support of the submission that though the respondent no.1 has not filed any cross-objection, this Court has ample power to enhance compensation to award just compensation even in absence of any cross-objection or cross-appeal.

17. Learned Counsel for the respondent no.1 submits that since the Tribunal had not awarded the compensation under the statutory heads under the provisions of Motor Vehicles Act, this Court has ample power to award such claims even in absence of any cross-objection filed by the original application to do complete justice in the matter.

18. Mr. Ketan Joshi, learned counsel for the appellant in rejoinder submits that since the respondent no.1 has not filed any cross-objection or cross-appeal against the judgment and award of the MACT, Pune, which is impugned by his client, this Court cannot enhance any compensation already awarded by the said Tribunal or ever any new compensation at this stage in the First Appeal filed by his client. In support of this submission learned counsel placed reliance on the judgment of Supreme Court in case of ***Ranjana Prakash and Others v/s. Divisional Manager and Another, (2011) 14 SCC 639*** and in particular paragraphs 6 to 8. He also placed reliance on the judgment of this Court in case of ***United India Insurance Company Ltd. v/s. Rajani Suresh Bhore and Ors., 2018 (6) ALL MR 242*** and in particular paragraphs 2, 21 and 30. It is submitted by the learned counsel for the appellant that since the respondent no.1 even otherwise has not paid any Court fees on the additional claims made across the bar in the First Appeal filed by the appellant, no relief for enhancement of claim can be considered by this Court on this ground also.

19. Mr. Ketan Joshi, learned counsel for the appellant submits that the Special Leave Petition filed by his client against the judgment of the Division Bench of this Court in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** dated 30th November, 2018 is pending before the Hon'ble Supreme Court. He however states that the Hon'ble Supreme Court has not granted any stay on the said judgment or the

operative order enhancing the amount till date. The appellant has already deposited the entire amount awarded by the Tribunal before the MACT, Pune. The respondent no.1 has not withdrawn any amount so far.

20. Mr. Talkute, learned counsel for the respondent no.1 in sur-rejoinder submits that if this Court enhances the claims made by his client at this stage, if any additional court fee is payable by his client, the same would be paid by his client as maybe directed by this Court.

REASONS AND CONCLUSION

21. The appellant has raised an issue during the course of the argument that in absence of any cross-objection or separate appeal preferred by the respondent no.1 impugning part of the judgment and award rendered by the Tribunal, this Court has no power to enhance any claim made across the bar. This Court has already considered the said issue in great detail in the judgment rendered by this Court in case of ***United India Insurance Company Limited v/s. Smt. Kunti Binod Pande*** delivered on 17th December, 2019 in First Appeal (Stamp) No. 5735 of 2016 and has rejected the said arguments. The said judgment is applicable to the facts of this case. In my view, there is thus no substance in this submission of the learned counsel for the appellant.

22. In this case, the claim was made by the legal heirs and representatives of the said deceased. The said deceased along with his family members was going towards Pondicherry from Chennai. The Tribunal after considering the oral and documentary evidence including the evidence of the respondent no.1 (original applicant who was an eye witness) held that the offending vehicle came from the opposite direction in higher and excessive speed when the Indica Car driven by Mr. Selven was in slow and moderate speed by getting correct side of the road. Due to high and excessive speed, the driver of the offending vehicle could not control his Innova car and came to wrong side and gave violent dash to Indica car and as a result thereof, the respondent no.1 and his family members sustained injuries. In the said accident, three persons i.e. Aniket, his father Ravindra and driver Selven died on the spot, Mother of the respondent no.1 Shailaja also died in the hospital due to the said dash and negligent driving of the driver of the offending vehicle. The appellant did not examine any witness before the Tribunal.

23. Division Bench of this Court in the judgment dated 30th November, 2018 in case of in ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** First Appeal (Stamp) No. 8524 of 2016 which was arising out of the same accident, dismissed the first appeal filed by the appellant herein. The Division Bench of this Court in the said judgment also allowed the cross-objection filed by the original claimants and allowed

various heads of compensation. Though the appellant has preferred the Special Leave Petition against the said judgment dated 30th November, 2018 passed by this Court, no stay of the said judgment or the operative part has been granted by the Hon'ble Supreme Court till date. Various findings of fact rendered by the Tribunal in the said claim made by the some of these parties have been upheld by the Division Bench of this Court. Mr. Joshi, learned counsel for the appellant could not distinguish the said judgment of Division Bench delivered on 30th November, 2018 in First Appeal (Stamp) No. 8524 of 2016 arising out of the same accident dismissing the first appeal preferred by the appellant and allowing cross-objection filed by the original claimants. The principles of law laid down by the Division Bench of this Court in the said judgment and findings of fact rendered in the matter arising out of the same accident are applicable to the facts of this case. I am respectfully bound by the said judgment.

24. In so far as the judgment of this Court in case of ***United India Insurance Company Ltd. v/s. Rajani Suresh Bhore and Ors.*** (supra) relied upon by the learned counsel for the appellant in support of the submission that in absence of any cross-objection or separate appeal under Order XLI Rule 22 read with 41 and 33 no claim can be enhanced by the First Appellate Court is concerned, this Court has already distinguished the said judgment in the First Appeal (Stamp) No. 8524 of 2016 and has held that the said judgment in case of ***United India Insurance Company Ltd. v/s. Rajani***

Suresh Bhore and Ors. (supra) is per-incuriam. The contention raised by the appellant is rejected in the said judgment delivered on 17th December, 2019.

25. In so far as the submission of the learned counsel for the appellant that though there was no direct evidence led by the respondent no.1 about the income of the deceased Shailaja Kulkarni, the Tribunal has considered her monthly gross income of Rs.5,000/- p.m. is concerned, a perusal of record indicates that the admittedly at the relevant time, the said deceased had left her job as Liberian, might be for the purpose of education of the respondent no.1 herein and his brother. The respondent no.1 had produced Form No. 16 of the said deceased showing that the said deceased was earning Rs.85,648/- for the accounting year 2005-2006. Her approximate salary for Rs.7,137/- p.m. in the year 2006-2007. She left the job and was doing household work. In this circumstances, in my view, the Tribunal has rightly considered the monthly income of the said deceased at Rs.5,000/- p.m. which is reasonable.

26. Mr. Talkute, learned counsel for the respondent no.1 strongly placed reliance on the judgment of Supreme Court in case of **Arun Kumar Agrawal and Ors.** (supra) and would submit that if this Court comes to the conclusion that the respondent no.1 had not produced the proof of income of the said deceased at the time of her death, on the basis of principles of law laid down by the Supreme Court in the said judgment in case of **Arun Kumar Agrawal**

and Ors. (supra), income of the said deceased shall be considered at 1/3rd of the income of the spouse of the said deceased for the purpose of computing the compensation. He strongly placed reliance on paragraphs 60 and 61 of the said judgment. Supreme Court in the said judgment after adverting to the various other judgments including the judgment in case of **Lata Wadhwa v/s. State of Bihar, (2001) 8 SCC 197** has held that it is highly unfair, injustice and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a service of an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife.

27. The Supreme Court in the said judgment held that in its wisdom, the legislature had as early as in 1994, fixed the notional income of a non earning person at Rs.15,000/- p.a. and in case of spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. It is held that though Section 163A does not in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation

payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in Clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgment of Supreme Court in case of ***General Manager Kerala State Road Transport Corporation v/s. Susamma Thomas, U.P.S.R.T.C. v/s. Trilok Chandra, Sarla Verma and Ors v/s. Delhi Transport Corporation and Anr. and Lata Wadhwa*** (supra). In my view, the principles laid down by the Supreme Court in the ***Arun Kumar Agrawal and Ors.*** (supra) apply to the facts of this case.

28. Madhya Pradesh High Court in case of ***Jaswant and Others v/s. Ummed Singh and Others*** in an unreported judgment delivered on 23rd May, 2017 after adverting to the several judgments of Supreme Court including judgment in case of ***Lata Wadhwa*** (supra) has held that Delhi High Court also considered Schedule II Clause 6 of the Motor Vehicles Act and has held that the Court cannot loose sight of the fact that Schedule II was inserted vide Act of 1994 with effect from 14th November, 1994. As on the date of the judgment, 23 long years had already passed. Prices of the daily need articles have undisputedly gone up by many times and since Clause 6 (A) of Schedule II is merely getting factor, therefore the rise in price of the daily needs and goods are certainly required to be taken into consideration while assessing income of a non earning person. It is held by the Madhya Pradesh High Court that taking guidance from Clause 6 of

Schedule II, this Court must assess the services rendered by a house wife in the monetary form for assessment of the compensation. For assessing value of the services rendered by the house wife, surrounding circumstances, status of the parties, the area where the claimants are residing etc are some of the factors which are required to be taken into consideration. It is held that the services rendered by a house wife whether she is residing in a rural area or in a urban area are beyond the assessment because her love, affection, care etc cannot be assessed in terms of money.

29. In the said judgment, Madhya Pradesh High Court also has held that the maintenance of wife is the primary obligation of the husband and therefore, it cannot be said that if the house wife is residing in the house or is having meals or is getting clothes etc, then, certain amount under the head of personal expenses should be deducted from the income of the deceased so assessed on the basis of the services rendered by her for her family members. It is held that when the income of deceased house wife is assessed on the basis of the services rendered by her in the capacity of a house wife, then no deduction may be made under the head of personal expenses. I am in agreement with the views expressed by the Madhya Pradesh High Court in case of ***Jaswant and Others v/s. Ummed Singh and Others*** (supra).

30. The respondent no.1 however has not produced any proof of the income of the husband of the said deceased at the time of her death. Though

this Court is of the view that in case of house wife, income of such house wife who has expired, for the purposes of computation of compensation, 1/3rd of the income of her spouse has to be considered for the purpose of computation of income, since the respondent no.1 has not produced any proof of the income of the husband of the said deceased at the time of her accident, I will consider whether income of the said deceased considered at Rs.5,000/- p.m. in facts and circumstances of this case would be 'just compensation' or not.

31. A perusal of the record indicates that the said deceased was already working prior to her accident for quite sometime. The respondent no.1 had produced Form No.16 indicating the monthly approximate salary at Rs.7,137/- p.m. in the year 2006-2007. She however had left the job and was doing household work. The Tribunal in my view thus was justified in awarding 'just compensation' in favour of the respondent no.1 by considering the income of the said deceased at Rs.5,000/- p.m. which amount was reasonable amount considering the past income of the deceased. However, while considering the monthly income at Rs.5,000/- p.m., the Tribunal considered 1/3rd deduction towards living and personal expenses of the deceased from Rs.60,000/- which was considered as an yearly income.

32. In my view, the principles of law laid down by the Madhya Pradesh High Court in case of ***Jaswant and Others v/s. Ummed Singh and Others***

(supra) would apply to the facts of this case. The said deceased being a house wife, no deduction from the yearly income computed at Rs.60,000/- thus ought to have been made by the Tribunal for deciding loss of dependency. This part of the judgment and award is thus modified. In my view, the Tribunal ought to have applied the multiplier of 13 to the loss of dependency of Rs.60,000/-. The total loss of dependency of the respondent no.1 thus would be Rs.7,80,000/-.

33. In so far the submission of the learned counsel for the appellant that the driver of the offending vehicle was fully drunk and he was ultimately charge-sheeted under various provisions of Motor Vehicles Act, 1988 and Indian Penal Code and thus appellant could not be vicariously liable is concerned, it is not in dispute that the appellant did not lead any oral or documentary evidence before the Tribunal. This issue was also raised by the appellant in First Appeal (Stamp) No. 8524 of 2016 in ground C, E, F and J. The Division Bench of this Court in the said First Appeal arising out of the same accident has held that the appellant had not pleaded the case sought to be urged by the said ground in the written statement and has also not led any evidence in rebuttal. The appellant thus would not be entitled to raise the said grounds. In any event, the said grounds do not fall within the statutory defences which are available to an insurer under Section 149 of the Motor Vehicles Act. The said judgment of the Division Bench applies to the facts of this case. I am respectfully bound by the said judgment.

34. In so far as the income of the deceased considered by the Tribunal in the said judgment and award which was subject matter of the said First Appeal (Stamp) No. 8524 of 2016 is concerned, the Division Bench of this Court in the said judgment has held that though the original claimant had produced various documents in support of the proof of income of the said deceased, in absence of any contra material produced by the appellant, the M.A.C.T. was right in relying upon the said material to come to the conclusion as regards the income of the deceased. The principles laid down by Division Bench of this Court in the said judgment apply to the facts of this case.

35. In so far as the compensation awarded under conventional heads i.e. for loss of consortium, towards funeral expenses and loss of love and affection is concerned, the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and Rs.50,000/- towards love and affection. The Supreme Court in case of ***National Insurance Company Ltd. v/s. Pranay Sethi and Ors.*** (supra) has held that the reasonable figures of conventional heads towards loss of estate, loss of consortium and funeral expenses should be 15,000/-, 40,000/- and 15,000/- respectively. In my view, the said compensation towards conventional heads thus can be modified to Rs.70,000/- as against Rs.75,000/- awarded by the Tribunal.

36. In so far as the interest is concerned, the Tribunal has awarded interest @ 6% p.a. from the date of filing claim petition till realization of entire amount. Mr. Talkute, learned counsel for the respondent no.1 strongly placed reliance upon the judgment of the Division Bench of this Court in case of ***The New India Assurance Co. Ltd. v/s. Mr. Ashish Ravindra Kulkarni and Ors.*** (supra) arising out of the same accident and would submit that interest awarded at 6% p.a. is on lower side which shall be enhanced to 9% p.a. He submits that in any event, since the Division Bench of this awarded interest @ 7.5% on the amount of compensation from the date of application till realization, atleast interest @ 7.5% shall be awarded to the respondent no.1. In my view, since the Division Bench of this Court has awarded interest @ 7.5% from the date of application till realization in the First Appeal arising out of the same accident, I am inclined to modify the rate of interest from 6% p.a. to 7.5% p.a. payable by the appellant from the date of claim application till realization of entire amount. The rate of interest awarded by the Tribunal is accordingly modified.

37. I therefore pass the following order :-

- (a) Operative part of the judgment and award dated 28th July, 2015 passed by the M.A.C.T., Pune is modified as under:-
 - (i) Appellant is directed to pay compensation of Rs.8,50,000/- (including interim compensation awarded under Section 140 of the Motor Vehicles Act), along with cost and

interest @ 7.5% per annum, from the date of claim petition, till realization of entire amount to the applicant, in following manner:-

- (ii) Out of the compensation payable to the respondent no.1, amount of Rs.4,50,000/- be invested in Fixed deposit in the name of respondent no.1 in any nationalized bank of his choice, for a period of three years and balance amount be paid to him by using account payee cheque, after due identification and verification.
- (b) If any additional payment of Court fees is required to be paid by the respondent no.1, in view of the additional compensation awarded by this Court, the respondent no.1 shall pay such additional Court fees upon computation thereof by the M.A.C.T. within two weeks from the date of such computation.
- (c) If there is any any shortfall in the amount deposited by the appellant, the same shall be deposited by the appellant with the M.A.C.T., Pune within two weeks from the date of such computation by the M.A.C.T., Pune. If there is any surplus found by the M.A.C.T., Pune after releasing the payment due and payable to the respondent no.1 out of the amount deposited by the appellant, same shall be refunded to the appellant on production of an authenticated copy of this order.

- (d) First Appeal No. 1667 of 2019 is disposed off on aforesaid terms. There shall be no order as to cost.
- (e) In view of the disposal of the First Appeal, Civil Application No. 2623 of 2016 stands disposed of.
- (f) Parties as well as M.A.C.T., Pune to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)