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

FIRST APPEAL NO.494 OF 2007

1. Kamalabai wd/o Ashok Fursule
a/a 55 years, Occ. Nil
r/o Juna Balapur Naka, Canal Road,
Raghuvir Nagar, Akola

2. Jitendra Ashok Fursule,
a/a 34 years, Occ. Private job,
LRs of Appellant No.2
(1) Deepali wd/o Jitendra Fursule,
Age about 30 years, Occ. Household work,
(2) Priya d/o Jitendra Fursule,
Age about 11 years, Occ. Student,
(3) Vijay s/o Jitendra Fursule,
Age about 8 years, Occ. Student,
(4) Prafulla s/o Jitendra Fursule,
Age about 5 years, Occ. Student,
Nos.2 to 4 minors by next friend
natural mother, Deepali wd/o Jitendra Fursule,
Age about 30 years, Occ. Household work,

All r/o Ayodhya Nagar, Canal Road,
Old City, Akola,
Tq. and Dist. Akola

3. Kishor Ashok Fursule
a/a 31 years, Occ. Nil

Nos. 2 and 3 C/o Rajaram Pali
Devkabai Nagar, Canal Road,
Ta. and Dist. Akola … Appellants.

-vs-

1. The Division Manager,
The Oriental Insurance Co. Ltd.
Rayat Haveli, First Floor,
Old Cotton Market, Akola,
Tq. and Dist. Akola

2. Pushpabai Prabhakarrao Likhitkar
adult, Luxury Mini Bus Owner,

Tq. And Dist. Amravati.
Legal Heirs of respondent No.2.
2A) Anil S/o Prabhakar Likhitkar
Aged 40 years
2B) Pradip S/o Prabhakar Likhitkar
Aged 37 years
2C) Prafulla S/o Prabhakar Likhitkar
Aged 34 years
2D) Rajesh @ Raju S/o Prabhakar Likhitkar
Aged 31 years

All Occ. Business R/o Likhitkar Travels
Ambapeth, Amravati, Tq. & Dist. Amravati … Respondents.

Shri C. A. Joshi, Advocate for appellants.
Shri D. N. Kukday, Advocate for respondent No.1/Insurance Company.

CORAM : A.S.CHANDURKAR, J.
DATE : February 21, 2019

Oral Judgment :

This appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the said Act) seeks enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal, Akola in M.A.C.P. No.151/2005.

2. It is the case of the appellants that the husband of appellant No.1-Ashok was working as Heavy Duty Operator with the Irrigation Department and was getting salary of Rs.10,993/- per month. On 27/02/2005 when said Ashok was travelling in a mini-bus that was proceedings from Akola to Amravati, as a result of rash driving of the said bus the same turned turtle resulting in an accident. Ashok suffered various injuries and he succumbed to the same. According to the appellant said Ashok was aged about 56 years

when the accident took place. In the Claim Petition filed under Section 166 of the said Act, compensation of Rs.15,00,000/- was claimed.

3. In the written statement filed by the insurer-respondent No.1 below Exhibit-14 the claim as made was denied. It was denied that the driver of the said mini-bus was driving the same in a rash and negligent manner. It was however pleaded that the said driver had no valid license and hence there was a breach of the terms of the policy.

4. The appellants led evidence in support of claim for compensation. After considering the evidence on record, it was held that the claimants were entitled to an amount of Rs.5,83,000/- that was payable jointly and severally by the owner of the mini-bus and the insurer. Not being satisfied with the quantum of compensation, this appeal has been filed seeking enhancement in the amount of compensation.

5. Shri C. A. Joshi, learned counsel for the appellants submitted by relying upon the affidavit of the son of the deceased at Exhibit-23 that his father was duly employed and was receiving gross salary of Rs.10,993/- per month. The salary certificate at Exhibit-313 was duly proved by examining a Senior Clerk from Irrigation Department below Exhibit-312. Merely because that witness had stated that the deductions from the salary were Rs.2,939/- per month, that amount was accordingly deducted for determining the net

salary of the deceased. It was submitted that it was only the amount of profession tax that was liable to be deducted. As a result of a larger amount being deducted, the compensation has been determined on the lower side. He therefore submitted that after deducting Rs.200/- towards profession tax the net salary payable would be Rs.10793/-. In the light of the decision in ***National Insurance Company vs. Pranay Sethi 2018 (1) Mh.L.J. 70,*** 15% amount towards future prospects considering the age of the deceased ought to be taken. The same would make the monthly met salary Rs.12,411/-. 1/3rd amount was liable to be deducted towards personal expenses which was Rs.4,095/- per month. The monthly salary therefore would be Rs.8,316/- and the annual salary would be Rs.99,792/-. The multiplier of nine was liable to be taken considering the age of the deceased as 56 years. This would make the total amount to Rs.8,98,128/-. Medical expenses of Rs.2,32,833/- would be admissible in the light of the medical bills placed on record. An amount of Rs.25,000/- for the period of four months spent in the hospital would also be admissible. Under conventional heads an amount of Rs.70,000/- would be payable. This would make the total compensation payable to Rs.12,25,961/-. The amount of Rs.5,83,000/- already awarded by the Claims Tribunal was liable to be deducted thus giving a balance enhanced compensation of Rs.6,42,961/-. It was thus submitted that the aforesaid enhanced compensation was liable to be granted.

6. Shri D. N. Kukday, learned counsel for the respondent No.1 supported the impugned order. According to him the calculation of the amount of just compensation by the learned Member of the Claims Tribunal was reasonable not warranting further enhancement. He submitted that the evidence on record has been rightly considered and the legal position as was prevailing on the date of that adjudication has been rightly applied by the Claims Triubunal. Without prejudice, it was submitted that in case it was held that the net monthly salary of the deceased was Rs.10793/- as contended by the appellants, the amount of income tax along with amount of profession tax was liable to be deducted. Thus, according to him the net salary of the deceased would be lower than the amount of Rs.10793/-.

7. On hearing the learned counsel for the parties, the following point arises for determination :

“ Whether the appellants are entitled for enhanced compensation ? ”

8. Heard the learned counsel for the parties at length and perused the records of the case. The occurrence of the accident as well as other evidence on record is not under challenge by the insured and the insurer. The only aspect to be considered is the quantum of compensation. The salary certificate of the deceased is at Exhibit-313 indicating his gross salary at Rs.10,993/- per month. Profession tax of Rs.200/- is liable to be deducted therefrom. As regards the aspect of deduction of income tax from the

amount of gross salary is concerned, that aspect can be adverted to a bit later. For the present the net salary can be taken at Rs.10,793/-. By applying the law as laid down in ***Pranay Sethi*** (supra) the further entitlement of the claimants can be worked out as under :

Monthly salary Rs.10,793/-, 15% amount towards future prospects considering the age of the deceased would give figure of Rs.12,411/- per month. After 1/3rd amount is deducted towards personal expenses, the figure comes to Rs.4,095/- per month. Thus the monthly salary would be Rs.8,316/- and the annual salary would be Rs.99,792/-. The multiplier of nine is liable to be taken considering the age of the deceased as 56 years. This would make the total amount Rs.8,98,128/-. Medical expenses of Rs.2,32,833/- would be admissible in the light of the medical bills placed on record. An amount of Rs.25,000/- for the period of four months spent in the hospital would also be admissible. Under conventional heads an amount of Rs.70,000/- would be payable. This would make the total compensation payable to Rs.12,25,961/-. The amount of Rs.5,83,000/- already awarded by the Claims Tribunal is liable to be deducted thus giving a balance enhanced compensation of Rs.6,42,961/-.

9. The accident in question had taken place on 27/02/2005. According to the learned counsel for the respondent No.1 the income tax rates applicable for the assessment year 2004-2005 should be taken into

consideration and the same would be about 10% of the income slab as per the rates prevailing at that point of time. It is however to be noted that that aspect would require proper consideration and the same at this stage would not be permissible in view of the insufficient material on record. Moreover, the aspect of standard deductions to which the assessee would be entitled is also a factum that cannot be ignored. The point as framed is accordingly answered by holding that the appellants are entitled for enhanced compensation of Rs.6,42,961/- which is payable with interest at the rate of 8% per annum from 10/06/2005 till realization. It is open for the respondent No.1 to provisionally determine the amount of income tax that is liable to be levied on the enhanced amount of compensation and pay the enhanced compensation to the appellants. At the same time it is also open for the appellants to claim necessary deductions and seek refund if the respondent No.1 determines the amount of income tax payable.

10. First Appeal is accordingly allowed in aforesaid terms with no order as to costs.

JUDGE