NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 502 of 2013

1. Sumit Bokade aged about 23 years S/o Late Shri Ramchandra Bokade
2. Ankit Bokade, S/o Late Shri Ramchandra Bokade aged about 20 years

   Address of both the applicants R/o Tilak Nagar, Chatapara Nagar P.S. City Kotwali, Tahsil and District, Bilaspur C.G.

------Appellants

VERSUS

1. Kodiba Pandurang Salunke S/o Late Shri Pandurang aged about 37 years residence of Durga Amba Travels, Fatima Bai, mentioned Dr. Ambedkar Road Parel, Mumbai Maharashtra Pin 400012
2. M/s Durga Amba Travels Subhangi V. Kudir 3, Supari Wala Mentioned First Floor Dr. B.R. Ambedkar Road Parel, Mumbai Maharashtra Pin 40012
3. New India Insurance Company Limited, Divisional Manager, Rajendra Nagar Chowk, Nagar Tahsil and District Bilaspur Chhattisgarh
4. Ganesh Manohar Rao Goge, S/o Manohar Rao Goge residence C/o Parvin D Wanare 133, Datta nagar Sanjay Nagar Akola Maharashtra Pin 444001
5. I.C.I.C.I. General Insurance Company Limited, Manager, Lal Shopping Complex, G.E. Road Nagar Tahsil Bilaspur Chhattisgarh.

-------**Respondents/ non-applicant No. 1 to 5**

For Appellants : Mr. Dhiraj Kumar Wankhede, Advocate.
For Respondent 3 : Mr. Azad Siddiqui, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.

26/05/2020

1. Being aggrieved by the quantum of award dated 16-10-2012 passed by Fifth Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.49/11, the Appellants/Claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. Facts relevant for disposal of this appeal are that on 24-12-2010 at about 11:15 p.m. when Ramchandra Bokade his wife Sheela and his daughter Harshali *alias* Pooja were traveling by *Tavera*-four wheeler bearing registration No. MH30-P-4790 from Trimbakeshwar to Shirdi along with others. On the way when their vehicle reached near Dorikhurd at Nashik-Pune road, one bus bearing

registration No. MH01-L-7515 (for short “offending Bus”) driven by Non-applicant No.1/Respondent No.1 dashed the *Tavera* in which Ramchandra Bokade, Sheela Ramchandra Bokade and Harshali *alias* Pooja Bokade died. The accident was reported to the Police Station Vavi, District Nasik, Maharashtra, based on which crime was registered under Sections 279, 304A, 337, 338 and 427 of IPC. The Appellants/Claimants filed claim application under Section 166 of the Motor Vehicles Act, pleading therein that deceased Ramchandra Bokade and Sheela Ramchandra Bokade were their parents and deceased Harshali *alias* Pooja Bokade was sister. Income of the deceased Ramchandra has been shown to be Rs. 5,00,000/- per annum from his employment with South Eastern Coalfields Limited, Kushmunda as Welder and claimed for Rs. 38,50,000/- against his death. Deceased Sheela Ramchandra has been shown to be a house wife and claimed for Rs. 10,00,000/- against their death. Similarly, against the death of Harshali *alias* Pooja they have claimed for Rs. 5,00,000/- as compensation mentioning that deceased Harshali *alias* Pooja was a meritorious student and could have entered into the field of doctor or engineer. The Claimants have filed one claim application and claimed separate amount of compensation on account of death of their three family members i.e., father, mother and sister.

3. Non-applicants No. 1, 2 and 4 did not appear before the Tribunal and were proceeded *ex parte.*

4. Non-applicant No.3/Respondent No.3 submitted reply to the claim application and objected the claim made by the Appellants-Claimants in one application against the death of their three family members jointly to be not maintainable, document to prove the income of the deceased Ramchandra is not produced. The driver of *Tevera*-four wheeler was negligent and liable, vehicle was insured with Respondent No.5/Non-applicant No.5. Amount of compensation claimed by the Appellants/Claimants is highly exaggerated, accident was a result of head on collision of two vehicles, there was no valid and effective driving license with Non-applicant 1/Respondent No.1, i.e. driver of the offending bus, there was no valid

fitness and permit of the offending bus due to which there was breach of conditions of insurance policy.

5. Respondent 5/Non-applicant 5 also submitted reply to the claim application and while denying all the adverse pleadings made in the claim application but for the admitted facts it was pleaded that the age and income of deceased Ramchandra in the claim application are not correct, it was only Non-applicant 1/Respondent 1, driver of the offending bus was negligent and responsible for the accident. The amount of compensation claimed is highly exaggerated. There was breach of conditions of insurance policy as on the date of accident, the *Tavera*-four wheeler was being used for commercial purpose, there is no relationship of the Claimants or deceased persons with the owner of the *Tavera*-four wheeler and further that on the date of the accident, there was no valid and effective driving license with the driver of the *Tavera*-four wheeler, there is breach of the conditions of the insurance policy.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the claim application filed by the Appellants/Claimants is maintainable, death of Ramchandra, Sheela and Harshali *alias* Pooja took place on account of rash and negligent driving of the offending bus, owned by Respondent 2/Non-applicant 2 and driven by Respondent 1/Non-applicant 1. It was also held that there was no breach of conditions of insurance policy and the principle of contributory negligence is not applicable to the facts of the case and awarded Rs.17,91,528/- as compensation against the death of Ramchandra, Rs. 2,85,400/- against the death of Sheela Ramchandra and Rs. 2,64,000/- against the death of Harshali *alias* Pooja.

7. Learned counsel for the Appellants submits that learned Claims Tribunal committed error in assessing the income of the deceased Ramchandra contrary to the evidence placed on record by the Appellants to prove the income of the deceased Ramchandra. He further points out that the Tribunal has deducted the amount towards Provident Fund as Rs. 4391/-, Family Pension Fund Rs.469/-,

LIC Rs.2669.80/-, Pension Fund Rs.540/-, Cooperative Credit Rs.300/-, Cable TV Rs.125/- and Additional Pension Fund Rs.100/- along with income tax as Rs.2160/-, which was not permissible deduction for calculating the amount of compensation under the Motor Vehicles Act. It was also contended that after the deductions as mentioned above, learned Claims Tribunal further deducted from the net income the amount shown in the pay slip towards earning of the deceased on the head of Sunday/ Holiday wages Rs.4304/-, Double Pay of Rs.5380/- which is arbitrary and erroneous. Learned counsel submits that the Claimants have placed on record Form-16 used for calculation of the income tax of the salaried employee (Ext. P.35), in which the gross income of the deceased has been mentioned as Rs.5,22,674.60/- and net income has been shown Rs.4,74,980/- which could have been taken by the learned Claims Tribunal for assessing the income of the deceased Ramchandra. He points out that the Tribunal has not considered the documentary evidence placed on record (Ext. P.29 to Ext. P.34) by the Claimants in proof of the income of deceased Ramchandra, which are the salary slips and Form-16 showing the income of the deceased as Exts. P.35 & P.36. It is pointed out that except the deduction towards the income tax of the amount mentioned in the salary slip is to be taken as income of the deceased for the purpose of calculating the amount of compensation and for this purpose, he places his reliance on the judgments passed by the Supreme Court in the matter of ***National Insurance Company limited v. Indira Shrivastava and others*** reported in **(2008) 2 SCC 763** and ***Kalpanaraj vs. Tamil Nadu State Transport Corpn.*** Passed in **Civil Misc. Appeal No. 1487 of 1999, decided on 30-01-2002**. He further argued that the Tribunal further erred in not adding any amount to the income of the deceased towards future prospects and to support his contention he places his reliance on ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**. It is also argued that the Claims Tribunal erred in awarding Rs. 15,000/- on other conventional heads which is on lower side. The learned counsel also challenged the award of compensation against the death of Sheela Ramchandra mentioning that the Claims Tribunal has taken the income of the deceased, who was the mother of the Appellants, as Rs.2,600/- per month ignoring that she was a house wife, took care of her family and was engaged in doing household work. He further contended that the Claims Tribunal has not added any amount towards future prospects and further the amount awarded on other conventional heads is on lower side. Similarly, the award of compensation against the death of Harshali *alias* Pooja aged 16 years has been challenged on the ground that the amount of compensation awarded by the Claims Tribunal against her death is on lower side and yearly income of the deceased has been taken as Rs. 15,600/- and by applying the wrong multiplier and not awarding any amount of compensation towards future prospects, lesser amount of compensation has been awarded.

8. Per contra, learned counsel for Respondent 3/Insurance Company submits that the Claims Tribunal erred in not apportioning the liability for the payment of the amount of compensation among the owner, driver and Insurance Company of both the vehicles, when it is an admitted case that the accident took place on account of head on collision between the two motor vehicles. He submits that there was contributory negligence on the part of the driver of *Tavera*-four wheeler, in which all the deceased persons were traveling, and therefore, Respondents 4 & 5 are also liable to the extent of 50% for satisfying the amount of compensation. He places his reliance upon in the matter of ***Bijoy Kumar Dugar v. Bidya Dhar Dutta and others*** reported in **(2006) 3 SCC 242** and ***Raj Rani and others v. Oriental Insurance Company Ltd. and others*** passed in **Civil Appeal No. 3317 - 3318 of 2009** to support his contention. Learned counsel submits that the Claims Tribunal passed just and reasonable amount of compensations by taking into consideration the income of the deceased persons, considering their occupation, age and the evidence placed on record by the Claimants.

9. We have heard Mr. Dhiraj Kumar Wankhede, learned counsel for the appellants and Mr. Azad Siddiqui, learned counsel appearing on behalf of Respondent No. 3.

10. The submission made by the learned counsel for Respondent 3/Insurance Company that the Tribunal erred in not apportioning the amount of compensation between the owner and the insurer of both the vehicles, who are in party array, is concerned, Respondent 3 cannot raise such an argument in this appeal which is preferred by the Claimants. The Insurance Company has not filed any appeal challenging the impugned award passed by the Claims Tribunal. For the foregoing reasons, the submission made by Respondent 3/ Insurance Company challenging the part of liability part of the award is not sustainable and is hereby repelled.

11. To appreciate the submission made by the learned counsel for the Appellants for enhancement of the amount of compensation against the death of late Ramchandra, father of the Appellants/Claimants, we have gone through the record, where, to prove employment and the income of the deceased, they have placed on record the salary slips (Ext. P.29 to Ext.P.34), copy of Form-16 (Ex. P.35) issued under the signature of Manager (Personnel) Kusmunda Project. They have examined one Sanjay Kumar (AW3) Personnel Manager working at SECL, Kusmunda. Perusal of the copy of Form-16 (Ex. P.35) would show that the income of the deceased Ramchandra has been shown to be Rs.5,64,980/- per annum as gross income and net income/taxable income Rs.4,74,980/- and the tax payable on income has been shown as Rs.32,443/-. Perusal of salary slips of October 2010 (Ext. P-29), June 2010 (Ext. P-30), November 2010 (Ext. P-31), February 2010 (Ext. P-32) and December 2010 (Ext.P-36) would show that late Ramchandra Bokade earned towards Holiday wages, Sunday wages and overtime, double wages. True it is that these three wages as mentioned above are not the fixed salary part but what could not be ignored is that the deceased Ramchandra Bokade was labourious and made extra efforts for increasing his earnings than what was fixed salary. The amount mentioned on the three heads are shown to be varying. The purpose for assessing the total income for calculating the amount of compensation under the Motor Vehicles Act is to compensate the Dependants justifiably even if the loss of life could not be

compensated in terms of money. The object of the Motor Vehicles Act is to compensate the Dependants for the loss of dependency suffered by them. The Hon'ble Supreme Court in the case of **Indira Shrivastava (supra)** has considered the word 'Income' to calculate the amount of compensation under the Motor Vehicles Act.

> “9. The term “income” has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.
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> 19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.
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> 20. The term “income” in P. Ramanatha Aiyar's *Advanced Law Lexicon (*3rd Edn.) has been defined as under:
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> 'The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.'
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> It has also been stated:
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> “ 'Income' signifies 'what comes in' (per Selborne, C.,*Jones* v. *Ogle, 1861-73 All ER Rep 918).* 'It is as large a word as can be used' to denote a person's receipts (per Jessel, M.R., *Re Huggins, Huggins, ex p.,Re. 51 LJ Ch 935).* Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. *Secy. To the Board of Revenue, Income Tax* v. *Al.Ar.Rm. Arunachalam Chettiar & Brothers, AIR 1921 Mad 427.* Ref. *Vulcun Insurance Co. Ltd.* v. *Corpn. of Madras, AIR 1930 Mad 626(2).”*
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> *21.* If the dictionary meaning of the word “income” is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which

> are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."

The Hon'ble Supreme Court in the aforementioned judgment has taken note of the fact that what the person is earning and is benefit to the family or dependents. Income has to be taken after considering the nature of income and its possibility to be of continuing nature.

12. So far as the present case is concerned, deceased Ramchandra Bokade was working with South Eastern Coalfields Limited where there is always availability of overtime working or holiday/ Sunday working to earn wages. Holiday wages are not available in every month but the Sunday wages and overtime as appearing in the salary slips, were available in almost every month.

13. The Hon'ble Supreme Court has considered the deductions required to be made for employee or any other person to calculate the actual income which they will be taking home for the benefit of the family members. The deduction towards Pension, Provident Fund and LIC are the deductions which are returnable to employee of his family and therefore, though these deductions are shown to be made in salary slip are not to be deducted from income of the deceased for the purpose of calculating the amount of compensation. Any other deductions which are made and benefit the family are not to be deducted from the income. The deductions under the head of GPF, LIC, Family Pension Fund, Cooperative Credit, Cable TV, Additional Pension Fund are not required to be deducted from the income of the deceased, though shown to be deducted in the salary slip. The deductions are made for the benefit of the deceased and his family members because those amounts are for their enjoyment or to be returned after the particular period or at the time of retirement of the employee, even the deductions towards the LIC are for future benefit. All the above deductions shown in the salary slip to be treated as the income of the deceased as the total amount deposited by the deceased is to be returned to him and to his family members

after maturity of policy after any unfortunate incident, covered under the policy. The Hon'ble Supreme Court in the matter of **Indira Shrivastava (supra)** has held thus:

> "12. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family."

14. The salary slip of the deceased Ramchandra Bokade would show following heads of income and the deductions in the salary slip of November 2010, just a prior month of unfortunate death late Ramchandra Bokade, as under:

Basic Pay : 19154.61	Holiday Wages : 2077.13	PF dedn : 4279	Staff bus/JRC : 10	
S.d.a : 343.82	Sunday wages : 4154.26	F.p.f. dedn : 457	Cable TV :125	Addl Pen Fund : 100
V.d.a. : 8542.80	Ot double pay : 5192.80	LIC dedn : 2669.80	Dbf dedn :20	Income Tax: 2940.00
Addl Increment : 100			Co-op credit :300	
Trans. Subsidy : 607.50			Pension fund CI : 540	

Pf gross : 39465.42 Employer pf : 4736.00 Total earning : 40173.02 Total ded. : 11627.35
Net pay : 28546.00 Gr. Inc.: 342631.77 PF : 34788.00 FPF : 3716.00 I.Tax :16326.00 LIC : 24096.00

The earning of the deceased employee on the head of Sunday wages and overtime double wages is shown in all the salary slips produced as evidence. The last salary slip of 2010 i.e. December 2010 shows the income as:

Basic Pay : 21282.90	Holiday Wages :	PF dedn : 4550.00	Staff bus/JRC : 10	
S.d.a : 382.02	Sunday wages : 4304.66	F.p.f. dedn : 486.00	Cable TV :125	Addl Pen Fund : 100
V.d.a. : 10620.00	Ot double pay : 5380.80	LIC dedn : 2669.80	Dbf dedn :20	Income Tax: 2920.00
Addl Increment : 100.10			Co-op credit :300	
Trans. Subsidy : 360.00			Pension fund CI : 560.00	

Pf gross : 41970.38 Employer pf : 5036.00 Total earning : 42430.48 Total ded. : 11927.35
Net pay : 30503.00 Gr. Inc.: 385062.25 PF : 39338.00 FPF : 4202.00 I.Tax :19246.00 LIC : 26766.30

To award just and proper amount of compensation, the income from Sunday wages and the overtime double wages which were not fixed income as there was no certainty of working, but looking to the nature of institution, availability of the chances to earn those natures of wages, in the opinion of this Court, we find it appropriate to consider 1/3rd of the earning of the Sunday and overtime wages as income of the deceased for the purpose of calculating the amount of compensation. The earning from Sundays and overtime in last salary drawn (Ext.P-36) comes to Rs.4,304.66+Rs.5,380.80= Rs.9685.46/-, one-third of which equals to Rs.3,228.48/-. The total income of the deceased employee for the purpose of calculating the amount of compensation will be Rs. 21,282.90+ Rs. 382.02+Rs. 10,620+Rs. 3,228.48 =Rs. 35,513.40/- rounded off to as Rs. 35,513/-.

15. From the above, income of the deceased to be held as Rs. 35,513/- per month, only the statutory deductions are to be made and the deductions which are made for the expenses of the employee were only for Staff Bus and Income Tax.

16. Taking into consideration the overall facts and circumstances of the case, evidence produced by the Appellants/Claimants as Ext. P.35 and Ext. P.36 and the statement of AW3 , in the considered opinion of this Court, the income of the deceased can be taken as Rs. 35,513/- per month i.e. Rs. 4,26,156/- per annum excluding the income tax. The deceased on the date of accident was in permanent employment being government servant and aged about 50 years, in view of the above, in the light of law laid down by the Supreme Court in case of **Pranay Sethi (supra),** there will be an addition of 15% of established income of the deceased for calculating his total income i.e. Rs. 4,90,079.4/- [Rs.4,26,156+ 15% of Rs.4,26,156] rounded off to as Rs. 4,90,079/-. The award of compensation on other conventional heads has also been considered and decided by the Supreme Court in the matters of **Pranay Sethi (supra)** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130**. In the recent judgment of **Nanu Ram (supra)**, the Supreme Court has considered the award of three types of consortium, spousal consortium, parental consortium. As the yearly income of the deceased comes to Rs.4,26,156/-, upon adding 15% towards future prospects in the established income, total yearly income comes to Rs. 4,90,079/- as calculated above. The income tax is to be deducted as per the tax slab fixed by the Income Tax Department i.e. upto Rs.1,50,000/- no tax, from Rs.1.50 lakhs to

Rs.3 lakhs, 10%, from Rs. 3 lakhs to Rs. 5 lakhs, 20% tax is payable. The total tax to be deducted comes to Rs. **41017/-** (on the income less than non-taxable income on GPF). The income for computing compensation comes to Rs. 4,49,062/- [Rs.4,90,079-Rs.41,017]. After deducting 1/3rd towards personal and living expenses, the loss of dependency will come to Rs. 2,99,374.67/- [Rs. 4,49,062 - 1/3rd of Rs. 4,49,062] rounded off to as Rs. 2,99,375/-. As on the date of accident, deceased Ramchandra, aged about 50 years, the appropriate multiplier would be 13, by applying the multiplier of 13 on the total loss of dependency will be Rs.38,91,875/- [Rs.2,99,375 x 13]. Apart from loss of dependency, the Claimants will be further entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards parental consortium as held by the Supreme Court in the matter of **Nanu Ram (supra)**. Now the Appellants will be entitled for a total sum of **Rs.39,61,875/-** [Rs. 38,91,875 + Rs. 15,000 + Rs. 15,000 + Rs. 40,000] as compensation against the death of Ramchandra Bokade, less amount already paid.

17. Now, we will consider the amount of compensation awarded to the Appellants-Claimants against the death of late Sheela Ramchandra Bokade, who was shown to be aged about 45 years on the date of accident and was a housewife. The Claims Tribunal assessed the monthly income of deceased Sheela as Rs.2,600/- per month , the income of deceased Sheela assessed by the Claims Tribunal appears to be on lower side for the reason that the deceased being a housewife and the mother of the Appellants, who took care of her family and worked in different capacity from early morning to late night. For housewife, there are no fixed working hours. The Hon'ble Supreme Court in the case of ***Lata Badhawa and others v. State of Bihar and others*** reported in **(2001) 8 SCC 197** has considered the issue of income of a housewife and held the income of a housewife as Rs.3,000/- per month. The income assessed by the Supreme Court in the matter of **Lata Badhawa (supra)** for the accident occurred on 03.03.1989, the appeal of which, was decided in the year 2001. In case at hand, the accident occurred on December, 2010, which is after lapse of two decades from the date

of accident considered by the Supreme Court in the judgment reported in 2001. Taking into consideration the price hike and also increase in wage structure, we deem it fit and proper to assess the income of the deceased Sheela as Rs. 4,000/- per month, the Tribunal has not awarded any amount towards the future prospects as held by the Supreme Court in the matter of **Pranay Sethi (supra)**, the deceased has been shown to be aged about 45 years, and therefore, there will be an addition of 25% of the established income towards future prospects for calculating the total monthly/yearly income of the deceased. The income of the deceased has been assessed as Rs.4,000/- per month i.e. Rs. 48,000/- per annum. By adding 25% towards future prospects, the yearly income comes to Rs. 60,000/-[Rs. 48,000 + 25% of Rs. 48,000]. After deducting 1/3rd of the amount towards personal and living expenses, yearly loss of dependency comes to Rs. 40,000/-[Rs. 60,000 -1/3rd of Rs. 60,000]. Looking to the age as 45 years, the appropriate multiplier would be 14 and by applying the multiplier of 14, the total loss of dependency will come to Rs. 5,60,000/-[Rs. 40,000x14]. Apart from the above, the Claimants will further be entitled for a sum of Rs.70,000/- (Rs.15,000/- towards loss of estate + Rs.15,000/- towards funeral expenses+Rs.40,000/- towards parental consortium). The appellants-claimants will further be entitled for Rs.11,380/- against medical expenses as mentioned in Ext.P-22. Now the Appellants/Claimants will be entitled for a total sum of **Rs. 6,41,380/-** [Rs. 5,60,000+Rs.70,000+Rs.11,380] against the death of late Smt. Sheela Ramchandra Bokade, less amount has already paid.

18. The Claim Tribunal awarded a total sum of Rs.2,64,600/- against death of Harshali *alias* Pooja aged about 16 years by holding the income as Rs. 2,600/- per month i.e. Rs. 31,200 per annum. Learned counsel for the appellants submitted that the income of deceased Harshali *alias* Pooja assessed by the Tribunal is on lower side and further that the Tribunal has not awarded any amount towards future prospects. It is also pointed out that the Tribunal has awarded meagre amount on other conventional heads. It is not in dispute that the deceased was aged about 16 years and the claimants have not filed any

document with regard to her education or her performance to show her merit. The appellants-claimants are elder brothers of deceased Harshali *alias* Pooja, in this petition, they have also claimed compensation against the death of their father and mother as dependents upon them.

19. In view of the above, the question remains whether the appellants-claimants can be held to be dependents on the deceased Harshali *alias* Pooja who was their younger sister and aged about 16 years, in a case where the appellants-claimants are seeking enhancement of amount of compensation on the ground that the Tribunal has awarded meagre amount of compensation? The claim made by the parents of the deceased minor child stands on a different footing then the claim made by the brother(s) or sibling of a deceased minor child. Whether the appellants-claimants have suffered loss of dependency on account of death of their minor sister and they are entitled for the amount of compensation towards loss of dependency? In our opinion, the appellants-claimants who are elder brothers of the deceased minor sister aged 16 years, in the facts of the present case when they have claimed compensation showing that they were dependents upon the deceased parents, the answer will definitely be in negative. The award of compensation by the learned Claims Tribunal is not put to challenge by the Insurance Company, therefore we are not considering the entitlement of the amount of compensation already awarded by the learned Tribunal to the appellants-claimants. But, in view of the grounds raised in the appeal and submissions made by the learned counsel for the appellants, we are only considering whether the award passed by Claims Tribunal against death of Harshali *alias* Pooja requires any interference or not?

20. Looking to the facts of the case that the deceased Harshali *alias* Pooja was a minor younger sister of the appellants-claimants, the appellants-claimants have already claimed for amount of compensation to be dependents on their father and mother, we are of the view that the amount of Rs. 2,64,600/- awarded on account of death of Harshali *alias* Pooja, minor younger sister of the appellants-claimants

do not call for any interference. In view of the above, the submission made by the learned counsel for the appellants for enhancing the amount of compensation awarded on account of death of their minor younger sister does not appeal us and is hereby rejected.

21. Now, the appellants-claimants will be entitled for a total sum of **Rs.39,61,875/-** (In words: Rupees Thirty Nine Lac Sixty One Thousand Eight Hundred Seventy Five), less amount already paid as compensation against the death of their father Ramachandra Bokade; **Rs. 6,41,380/-** (in words: Rupees Six Lac Forty One Thousand Three Hundred Eighty), less amount already paid as compensation against the death of their mother Sheela Ramachandra Bokade and a sum of Rs. 2,64,600/- (in words: Rupees Two Lac Sixty Four Thousand Six Hundred) as compensation as awarded by the Claims Tribunal against the death of their minor younger sister Harshali *alias* Pooja. The amount of compensation will carry interest @ 7.5% p.a. from the date of filing of the claim application till its realization. 50% of the enhanced amount of compensation shall be deposited in any Nationalized Bank in a Fixed Deposit for a period of 5 years. Other conditions imposed by the learned Claims Tribunal will remain intact.

22. The appeal is allowed in part. Impugned award is modified to the extent as indicated hereinabove.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan