**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.51 OF 2005

1. Smt. Latabai Pandit Sapkale
Age 34 years

2. Ashwini @ Rinku Pandit Sapkale
Age 9 years.

3. Punam Pandit Sapkale
Age 7 years,

4. Janabai d/o Paulad Sapkale
Age 44 years,

4A. Priya Pandit Sapkale
Age 6 years,

Nos.2, 3 and 4A minors
through their natural
guardian mother
appellant no.1 Latabai.

All r/o Avane, Taluka and
District Jalgaon.

... **APPELLANTS**
(Orig. applicants)

VERSUS

1. The Divisional Controller,
M.S.R.T.C. Jalgaon

2. Ratansingh Chedusingh Gaur
Age 44 years, Occ. S.T. Bus
Driver, r/o Kadgaon,
Tq. Karjat, Dist. Raigad.

(appeal is dismissed as against
resp. no.2 as per Registrar's
order dated 30.09.2008)

... **RESPONDENTS**
(Orig. opponents)

...

Mr.R.P. Phatke, Advocate for the Appellants.
Mr.M.K. Goyanka, Advocate with Mr. Manoj Shinde, Advocate for Respondent No.1

...

CORAM : V.L. ACHLIYA, J.
DATED : 22nd January, 2020

JUDGMENT:

. Being aggrieved and dissatisfied by the judgment and award dated 05th September, 2000, passed in Motor Accident Claim Petition No.380/1996 by Member, Motor Accident Claims Tribunal, Aurangabad, the appellants – original claimants have preferred this appeal seeking enhancement of compensation.

2. Heard the learned counsel for the appellants and the respondents. Perused the record and proceedings.

3. In view of the challenge raised in this appeal confines to the assessment of compensation made by the Tribunal, it is not necessary to discuss the facts in detail. The appellants – claimants had filed an

application under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of compensation of Rs.5,00,000/- on account of accidental death of Pandit Paulad Sapkale (hereinafter referred as ‘deceased) who died in motor accident occurred on 18.04.1996. The claimants claimed to be legal heirs of the deceased. Claimant no.1 is the wife of deceased and the claimant nos. 2,3 and 4A are the minor daughters of deceased. The claimant no.4 claims to be sister of deceased, who was given divorce by her husband. She was residing with deceased.

4. As per the case of the claimants, the deceased along with four others employees of the Zilla Parishad, Jalgaon were proceeding in jeep bearing registration no. MH-19/N-959 to attend the training programme organised at Bhusawal in connection with Parliamentary election notified by the Election Commission. They were travelling in

jeep belonging to D.R.D.A department of Zilla Parishad, Jalgaon. The deceased was working with Zilla Parishad, Jalgaon as a Clerk. The jeep in which the deceased was travelling alleged to be hit by S.T. Bus bearing registration no. MH-20/D-1893 owned by respondent no.1 and driven by respondent no.2. It is alleged that accident was resulted due to sole negligence on the part of the driver of the S.T. Bus. In the accident, the deceased died on spot. The persons accompanied accompanied with deceased also sustained injuries in the accident.

5. The claimants have claimed the compensation of Rs.5,00,000/- with contention that the deceased was serving as a Clerk. He was in the regular employment of the Zilla Parishad, Jalgaon and receiving monthly salary of Rs.3,000/-. He was born on 01.06.1958 and left more than 20 years service. The Tribunal has assessed the

compensation of Rs.2,48,156/- (inclusive of the amount of Rs.50,000/- awarded under 'no fault liability') with future interest at the rate of 12% from the date of registration of petition till realisation. Being aggrieved, the appellants - claimants have preferred this appeal.

6. Learned counsel for the appellants – claimants assailed the impugned judgment and award passed by the Tribunal awarding the compensation of Rs.2,48,156/- with contention that the assessment of compensation made by Tribunal is against the settled principles of law. It is submitted that, it is settled position in law that except the statutory deductions, no other deductions can be made from the monthly salary of the person, while making assessment of compensation. It is submitted that deceased was drawing salary of Rs.3,470/- per month. In the salary certificate, the take home salary of the

deceased shown as Rs.1,865/- per month after making the deduction of Rs.1,605/-. The amount of Rs.1,605/- shown to be deducted towards repayment of loan to society, G.P.F., recurring deposit, festival advance, L.I.C. premium and profession tax. It is submitted that, except the amount of Rs.40/- to be payable towards profession tax, no other deduction to be made from the salary of the deceased. However, the Tribunal has considered the entire deduction of Rs.1,605/- from salary of deceased as permissible deduction under law and computed the compensation and considered the amount of Rs.1,865/- i.e. take home salary as a basis to assess compensation.

7. It is further contended that the Tribunal has made the deduction to the extent of 1/3rd from the salary of deceased towards personal expenses of deceased. It is submitted that considering the dependency of

five persons, the deduction to the extent of more than 1/4th of the gross salary of the deceased should not have been made by Tribunal. So also, the Tribunal has not considered the future prospects of the deceased, while assessing the compensation.

8. By referring the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** *reported in* ***2017 (16) SCC 680,*** and guiding principles laid down, the learned counsel submitted that the compensation to be payable to the appellants-claimants on account of pecuniary and non pecuniary loss to be reassessed. It is contended that compensation assessed by the Tribunal deserves to be reassessed and enhanced to Rs.7,29,620/-.

9. On the other hand, the learned counsel for the respondent no.1 supported the

judgment and award passed by the Tribunal. It is contended that there is no perversity in the reasons and findings recorded by the Tribunal so as to call interference in exercise of appellate jurisdiction.

10. I have carefully examined the reasons and findings recorded by the Tribunal in assessing the compensation. In support of the claim, the claimants have examined Smt. Latabai Sapkale (D.W.1) – the wife of the deceased. She has deposed as per the case pleaded by the claimants. She has categorically deposed that at the time of accident, her husband was serving as a Clerk in Zilla Parishad, and receiving Rs.3,000/- per month as a salary. She deposed that as per the recommendation of 5th Pay Commission, the deceased would have received the monthly salary of Rs.15,000/- per month. She has deposed that her husband was 34 years old at the time of accident. Nothing has been

brought through her cross-examination to discard her testimony.

11. In order to prove the age of deceased, the claimants have produced copy of school leaving certificate, which is at Exhibit-30, which proves the date of birth of deceased as 01.06.1958. Thus, considering the date of birth of deceased as 01.06.1958, at the the time of accident, the deceased was 38 years of age.

12. In order to prove the income of the deceased, the claimants have examined Nandkumar Pundlik Wani (D.W.2) – the superintendent working with the District Rural Development Agency, Jalgaon. He deposed that as per recommendation of 5th Pay Commission brought in force with effect from 01.01.1996, the deceased was entitled to receive monthly salary of Rs.3,470/- with same deductions. The fact deposed as to

salary of the deceased with effect from 01.01.1996 as per 5th pay recommendation not challenged in cross-examination. Though cross-examination of D.W.2 brought on record that the claimant no.1 got employment on compassionate ground, and receiving salary of Rs.3,000/- per month as a salary.

13. The Tribunal has assessed and award the compensation as under:

Head	Compensation awarded (in Rupees)
Income	3,470 – 1,605 = Rs. 1,865/- per month.
Deduction towards personal expenses	Rs.1,243/- (after deducting 1/3rd i.e. Rs.1,865/-)
Multiplier	16
Loss of future income	(1,243 x 12 = 14,916 x 16) Rs.2,38,656/-
Compensation awarded under the conventional heads as funeral expenses, loss of estate, loss of consortium	Rs.9,500/-
Total compensation awarded	Rs.2,48,156/- (inclusive Rs.50,000/- towards N.F.L. += Rs.1,98,156/- with future interest @ 12% p.a. from the date of registration of claim till realisation and proportionate costs./-

14. The Tribunal has assessed the compensation to be payable to claimants as Rs.2,48,1456/- inclusive of amount of Rs.50,000/- awarded under 'no fault liability'. For the purpose of assessment, the Tribunal has considered the age of the deceased as 38 years and applied the multiplier of 16. So far as the income of the deceased is concerned, the Tribunal has made the deductions of Rs.1,605/- from salary of deceased. In salary certificate (Exhibit-38) the deduction of Rs.1,605 is shown towards contribution paid to Government society, G.P.f., recurring deposit, L.I.C. premium and profession tax. By making the deduction of Rs.1,605/- from Rs.3,470/- the monthly salary of deceased, the Tribunal has considered the take-home salary of the deceased as Rs.1,865/-. After making deduction of 1/3rd from monthly salary amount of deceased towards personal expenses, the Tribunal has

assessed the compensation to be payable as Rs.2,38,656/- towards pecuniary loss and Rs.9,500/- towards funeral expenses, loss of estate, loss of consortium etc. and assessed the total compensation to be payable to claimants as Rs.2,48,156/-.

15. In my view, the assessment of the compensation made by the Tribunal is against the settled principles of law. The deduction of Rs.1,605/- made from the salary of the deceased is unsustainable in law. It is settled position in law that, except the statutory deduction, no other deduction can be made from the monthly income of a salaried person. The salary certificate in respect of income of deceased produced at Exhibit-38 reflects that out of Rs.1,605/- deducted from salary. The said amount of deduction comes to Rs.910/- as deductions made towards government society, Rs.254/- towards G.P.F., Rs.100/- towards the recurring deposit,

Rs.60/- towards festival advance, Rs.241/- towards L.I.C. premium and Rs.40/- towards professional tax. Prior to pay revision, the deceased was drawing 2,892/- as gross salary. On the revision of pay, as per recommendation of 5th Pay Commission, the deceased was entitled to receive Rs.3,470/- per month as salary with effect from 01.01.1996. In that view, except the statutory deduction of Rs.40/- per month, no other deduction to be made from gross salary of deceased. In that view, the Tribunal has committed serious error in deducting Rs.1,605/- from Rs.3,470/- the monthly salary of deceased, while assessing the compensation.

16. The Tribunal has not considered the future prospects of the deceased. Deceased was working in the regular employment of Zilla Parishad, Jalgaon and therefore entitled for addition of income to the extent of 50% of existing income of deceased towards

future prospects of deceased.

17. Similarly, the deductions made to the extent of 1/3rd towards personal expenses of deceased, while assessing the compensation by the Tribunal also against the the settled principles of law. Considering the dependency of the deceased as that of five persons, the deduction on account of personal expenses of deceased could not have been made more than 1/4th of income of deceased.

18. The amount awarded towards non pecuniary loss also deserves reconsideration as same has been awarded without due regard to facts of case. The claimant no.1 is the widow of the deceased. She lost her husband at young age. The claimant nos.2,3 and 4A are the daughters of the deceased in the age group of 2 to 5 years, who lost their shelter at such young age. In that view, the award of compensation of Rs.9,500/- made under the

conventional head such as funeral expenses, loss of estate, loss of consortium etc. also deserves to be enhanced.

19. In the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra), the Hon'ble Apex Court has laid down the broad principles to be followed in the matter of assessment of compensation:

> *"59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
> *59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased*

was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.

> *15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

20. Thus, considering the guiding principles laid down by the Hon'ble Apex Court, the compensation assessed by the Tribunal deserves to be reassessed. In the light of evidence on record the deceased being 38 years of age, the multiplier of 15 required to be applied in the instant case for the purpose of assessment of compensation. The deceased was entitled to receive monthly salary @ Rs.3,470/- per month with effect from 01.01.1996 (as per the revision in pay made as per implementation of 5th Pay Commission). Thus, considering the net salary of the deceased Rs.3,470/- per month and allowing deduction of Rs.40/- per month as statutory deduction towards payment of professional tax, the net monthly income of the deceased worked out as Rs.3,470/- per

month for the purpose of assessment of compensation. In all five dependents were dependent on deceased. In that view, the deduction to the extent of 1/4th from the salary of the deceased to be made towards personal expenses of deceased. Similarly, the compensation assessed by the Tribunal also deserves to be reassessed for not considering the future prospects of the deceased. It is an admitted position that deceased was in permanent employment of the Zilla Parishad, Jalgaon. At the time of accidental death, the deceased was 38 years of the age. Considering the principles laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra), addition in the income of deceased to the extent of 50% existing salary of deceased required to be made towards future prospects. The Tribunal has awarded Rs.9,500/- under the conventional heads such as funeral expenses, loss of estate, loss of consortium. Looking to the fact that claimant no.1 has lost her husband at young age and the claimant nos. 2, 3 and 4A being minor daughters of deceased aged 2 to 5 years, I am of the view the compensation under the conventional head such as loss of company, parental care, loss of estate, loss of consortium and funeral expenses deserves to be enhanced from Rs.9,500/- to Rs.35,000/-.

21. Thus, applying the guiding principles laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra), the compensation to be payable are reassessed as under:

	Heads	Compensation awarded (in Rupees)
A	Income	3470 – 40 = 3,430/-
B	Future prospects	1,715/- (i.e. 50% of the monthly salary)
C	Monthly Income for the purpose of computation	3,430 + 1,715 = 5,145/-

D	Deduction towards personal expenses	1,286/- (1/4th of Rs.35,145/- = 1,286/-)
E	Total income to be considered for assessment	5,145 – 1,286 = 3,859/-
F	Multiplier	15
G	Loss of future income	6,94,620/- (3859 X 12 X 15 = 6,94,620/-)
H	Under conventional heads such as loss of estate, loss of consortium, parental care and funeral expenses etc. Sum to awarded.	35,000/-
I	Total compensation (as the accident has taken place in the year 1996)	7,29,620/- which is rounded as **7,30,000/-** inclusive of amount awarded under N.F.L.

22. In the result, the appeal deserves to be allowed and award passed by the Tribunal needs to be modified. Accordingly the following order is passed:

ORDER

(i) The appeal is allowed.

(ii) The compensation awarded by the Tribunal is modified and compensation awarded by Tribunal is enhanced from Rs.2,48,156/- to

Rs.7,30,000/- (inclusive of amount of Rs.50,000/- paid as N.F.L.) with future interest at the rate of 8% p.a. from the date of petition till its realisation with proportionate costs.

(iii) The amount in terms of modified award shall be payable by respondent nos. 1 and 2 jointly and severally to the appellants - claimants.

(iv) The amount, if any, deposited by the respondents in terms of award passed by the Tribunal be adjusted towards the amount to be payable in terms of modified award.

(v) The appellants – claimants shall pay the deficit court fees in terms of modified award.

(vi) The appeal is disposed of in above terms.

(vii) Modified award be drawn accordingly.

[V.L. ACHLIYA]
JUDGE

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