IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.194 OF 2007
WITH CIVIL APPLICATION NO. 1230 OF 2007

Smt. Kawita w/o Rajendra Sonwane,
Age : 23 years, Occu.: Household,
R/o.: Amalgaon, Tq. Amlaner, **... APPELLANT**
District Jalgaon. (Ori. Petitioner No.1)

VERSUS

1] Mukthar Khan Khudayar Khan Pathan,
Age : 50 years, Occu.: Service,
R/o Khurshid Ali At and Post Chopda,
District Jalgaon.

2] Secretary,
Maharashtra State Road Transport
Corporation, through its
Divisional Manager,
Divisional Office, Jalgaon. (Ori. Respondents)

3] Bhikanrao Sitaram Sonwane,
Age : 53 years, Occu.: Nil,

4] Sau. Nirmalabai Bhikanrao Sonwane,
Age : 49 years, Occu.: Nil,

Both R/o Amalgaon, Tq. Amalner, **… RESPONDENTS**
District Jalgaon. (Ori. Petitioner Nos.2 and 3)

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Shri Chaitnya Deshpande, Advocate h/f Shri C.R. Deshpande, Advocate for Appellant/Applicant.
Shri M.K. Goyanka, Advocate for Respondent No.2.
Shri M.M. Bhokarikar, Advocate for Respondent Nos.3 and 4.
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WITH

CIVIL APPLICATION NO. 15444 OF 2016
IN X-APEAL (ST.) NO. 33286 OF 2016
IN FIRST APPEAL NO.194 OF 2007
WITH
CIVIL APPLICATIONS NOS.4065/2007 AND 12964/2007
IN FIRST APPEAL NO.194/2007

1] Bhikanrao Sitaram Sonwane,
Age : 54 years, Occu.: Nil,

2] Sau. Nirmalabai W/O Bhikanrao Sonwane,
Age : 50 years, Occu.: Nil,

Both the applicants are residing at Amalgaon,
R/o Amalner, Dist. Jalgaon
District Jalgaon. … **APPLICANTS** (Orig. Claimants)

VERSUS

1] Smt. Kawita w/o Rajendra Sonwane,
Age : 23 years, Occu.: Household,
C/o Ramesh Abhiman Patil,
R/o Hekawadi, Tal and Dist Dhule.

2] Mukthar Khan Khudayar Khan Pathan,
Age : 50 years, Occu.: Service,
R/o Khurshid Ali At and Post Chopda,
District Jalgaon.

3] Secretary,
Maharashtra State Road Transport
Corporation, through its
Divisional Manager,
Divisional Office, Jalgaon. **...RESPONDENTS** (No.1 - Org. Claimant)

…..
Shri M.M. Bhokarikar, Advocate for applicants.
Shri Chaitnya Deshpande, Advocate h/f Shri C.R. Deshpande, Advocate for respondent No.1.
Shri M.K. Goyanka, Advocate for Respondent No.3.
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CORAM: V.L. ACHLIYA, J.

JUDGMENT RESERVED ON 16.01.2020
JUDGMENT PRONOUNCED ON 24.07.2020

JUDGMENT :

1] Being aggrieved by the judgment and award dated 5.12.2006 passed by the learned Member, Motor Accident Claims Tribunal, Amalner Dist.Jalgaon in Motor Accident Claim Petition No.2/2005, the appellant – claimant has preferred this appeal challenging the quantum of compensation awarded.

2] Heard learned counsel appearing for the appellant and respondents. Perused the record and proceedings.

3] Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of claim petition. For the sake of convenience, the parties are referred as they are referred and described in the impugned judgment.

4] The appellant alongwith respondent nos.3 & 4 had preferred petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- on account of accidental death of Rajendra Bhikanrao Sonwane – husband of claimant no.1 Kawita and son of claimant nos.2 and 3, who died in motor vehicle accident on 18.9.2004 on Chopda-Adawad road within the local limits of Police Station, Adawad Tq.Amalner Dist.Jalgaon. The claimants have approached with a case that on 18.9.2004, the deceased Rajendra was proceeding on motorcycle bearing registration No.MH-19-X-107 alongwith Bablu Vikram Naik. The offending vehicle i.e. S.T. Bus bearing registration No.MH-20-D-3957 which was coming from opposite side and driven in an excessive and unmanageable speed, gave dash to the motorcycle, which resulted into accidental death of the deceased Rajendra. The claimants have claimed that at the time of accident, the deceased was 27 years of age and earning Rs.6,000/- per month by doing private job as well as cultivating agricultural land. The claimants were fully dependent on the income of the deceased. The claimant no.1 lost the company of husband at the young age. Similarly, the claimant nos.2 and 3 lost the parental care at their old age. At the time of accidental death of deceased, the claimant no.1 was pregnant. Due to accidental death of her husband, she suffered severe mental shock. On account of accidental death, the claimants have claimed lump sum compensation of Rs.5,00,000/- with interest at the rate of 18% p.a. from the date of application till realization.

5] The claim petition proceeded *ex-parte* against the respondent no.1 – driver of the S.T. Bus.

6] The respondent no.2 – Maharashtra State Road Transport Corporation, the owner of the Bus, contested the claim petition. In brief, the respondent no.2 has denied that the accident in question occurred due to rash and negligent driving on the part of driver of the S.T. Bus. According to respondent no.2, the accident occurred due to rash and negligent driving and sole negligence on the part of the deceased who was driving the motorcycle. The respondent no.2 denied the case of the claimants that the deceased was earning Rs.6,000/- per month by doing private job as well as cultivating the agricultural land.

7] In order to prove the case of the claimants, Kawita Sonwane – wife of the deceased Rajendra stepped into witness box and deposed as per their case. No evidence was adduced on the part of the respondents.

8] On due consideration of rival pleadings and the oral and documentary evidence adduced in the case, the Tribunal held that driver of the S.T. Bus was solely responsible for causing accidental death of the deceased. The Tribunal has awarded the compensation of Rs.2,22,000/- inclusive of No Fault Liability. For the award of compensation, the Tribunal has considered the notional income of the deceased as Rs.18,000/- per year and after making deduction to the extent of 1/3rd towards personal expenses of the deceased, applied the multiplier of 18 and assessed the pecuniary loss caused to claimants as Rs.2,16,000/- [18000-6000 = 12000 x 18 = 2,16,000] and towards non-pecuniary loss, awarded Rs.2,000/- each as funeral expenses, loss of consortium, loss of estate and awarded total compensation of Rs.2,22,000/- (inclusive of N.F.L.). After allowing the deduction of Rs.50,000/- paid u/s 140 of the Motor Vehicles Act, the Tribunal has passed the award to pay Rs.1,72,000/- to claimants with interest at the rate of 6% p.a. from the date of petition till its realization making the respondent nos.1 & 2 jointly and severally liable to pay the same. The amount of compensation has been apportioned amongst the claimants in equal proportion. Aggrieved by the quantum of compensation of Rs.2,22,000/- awarded as well as order passed by the Tribunal to pay compensation in equal proportion, the appellant – original claimant no.1 has preferred this appeal.

9] Learned counsel for the appellant / claimant assailed the impugned judgment and award passed by the Tribunal with contention that the Tribunal has erred in assessing the compensation by considering the notional income of the deceased as Rs.18,000/- per year. It is submitted that the claimants have adduced cogent and convincing evidence to prove that the deceased was earning Rs.6,000/- per month by doing private job as well as cultivating land. It is submitted that the Tribunal also failed to consider the future prospects of the deceased. The Tribunal also erred in not considering the future prospects of the deceased and increase in income of the deceased in future. It is submitted that the claimant being widow aged 22 years, the Tribunal erred in apportionment of compensation in equal proportion amongst the claimants. By referring the decision in the case of *National Insurance Company Limited V/s Pranay Sethi and others* reported at **(2017) 16 SCC 680,** the learned counsel submits that the compensation awarded by the Tribunal deserves to be re-assessed.

It is submitted that re-marriage of the appellant – claimant no.1 would not defeat her right to receive compensation on account of accidental death of her husband.

10] On the other hand, learned counsel for the respondent no.2 supported the judgment and award passed by the Tribunal. It is submitted that though the claimants have approached with a case that the deceased was earning Rs.6,000/- per month by doing private job and cultivating land, the claimants have failed to produce any evidence in that behalf. By inviting attention to petition filed, learned counsel pointed out that the claimants have not given particulars as to nature of job of deceased, name of employer and monthly income the deceased was receiving from his employer as well as by cultivating agricultural land. It is pointed out that the claimant no.1 has admitted in her cross-examination that before death of her husband, she was residing in the joint family of her husband and all the affairs of family were looked after by her father in law i.e. the deceased claimant no.2 and her husband used to work in the agricultural field only on holidays. She has admitted that the agricultural land stands in the name of her father in law i.e. deceased claimant no.2. She has also admitted in her cross-examination that there is no evidence to show that her husband was doing private job.

11] Learned counsel for the respondent nos.3 & 4 (original claimant nos.2 & 3) supported the judgment and award passed by the Tribunal to apportion the compensation in equal proportion amongst the claimants.

12] In view of the challenge raised in the appeal confined to quantum of compensation awarded and order of apportionment passed by the Tribunal, it is not necessary to deal with other aspects of the matter including the negligence and liability of respondents to pay the compensation.

13] If we consider the rival pleadings, then the claimants have approached with a case that the deceased was 27 years of age and earning Rs.6,000/- per month by doing private job as well as cultivating agricultural land. The appellant – claimant no.1 – wife of the deceased stepped into witness box in support of the claim. She has deposed that her husband was earning Rs.5,000/- to Rs.6,000/- per month by doing private job as well as cultivating agricultural land and he was spending entire amount for the maintenance of family. She has deposed that due to the shock caused to her on account of accidental death of her husband, she suffered miscarriage. In the cross-examination, PW1 admitted that she has no documentary evidence to show that her husband was doing private job and earning Rs.6,000/- per month. She further admitted that agricultural land stands in the name of her father in law i.e. the claimant no.2 and her husband was doing the work in the agricultural land only on holidays.

14] Thus, if we consider the pleadings and evidence, then except the statement on oath that the deceased was doing private job and earning Rs.6,000/- per month, no documentary evidence produced to support the testimony of PW1. Neither in the petition nor in the evidence adduced, the claimants have disclosed the name of the employer, nature of employment, the place of employment of deceased and the salary the deceased was receiving from his employer. Similarly, no evidence in the nature of 7/12 extract was produced to prove that the deceased was owner of agricultural land. On the contrary, there is an admission on the part of the PW1 that the entire affairs of the family were looked after by her father in law i.e. the claimant no.2 and the agricultural land stands in the name of her father in law. PW1 has further deposed that her husband used to work in the agricultural land only on holidays. In the light of overall evidence adduced in the case, the Tribunal was justified in disbelieving the case of the claimants that the deceased was doing private job and earning Rs.6,000/- per month.

15] In absence of any cogent and convincing evidence to prove that the deceased was doing the private job and earning Rs.6,000/- per month, the Tribunal has considered the notional income of the deceased as Rs.18,000/- per year i.e. Rs.1500/- per month. After making deduction to the extent of 1/3rd towards personal expenses of the deceased, the Tribunal has considered the yearly contribution of deceased to the claimants as Rs.12,000/-. By applying the multiplier of 18, the Tribunal has assessed the pecuniary loss as Rs.2,16,000/- and further awarded sum of Rs.6,000/- towards funeral expenses, loss of consortium, loss of estate etc.

16] In the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the Constitutional Bench of the Hon'ble Apex Court has laid down following guidelines in determination of compensation, which includes selection of multiplier, deduction to be made towards personal expenses, income to be added towards future prospects and compensation to be awarded under conventional head such as funeral expenses, loss of consortium, loss of estate etc. :-

> "**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 paras 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 para 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."

17] On due consideration of the above quoted principles laid down in the matter of assessment of compensation, I have examined the case of the appellant to determine as to whether the compensation assessed requires any reconsideration. The Tribunal has assessed the compensation by considering the notional income of the deceased as Rs.1500/- per month in absence of any evidence adduced to prove the exact income of the deceased. The Tribunal has applied the multiplier of 18 in determination of compensation. In order to prove the age of the deceased, the claimants have tendered in evidence the school leaving certificate of the deceased, which is filed alongwith list of documents at Exhibit 5. As per the school leaving certificate, the deceased was born on 1.6.1987. The accident in question occurred on 18.9.2004. In that view, the deceased was 27 years of age at the time of accident and the multiplier of 17 deserves to be applied for the victim in the age group of 26 to 30 years.

18] As discussed, the claimants have failed to adduce evidence to prove occupation and income of the deceased. Although the claimants have claimed that the deceased was doing private job, no evidence was adduced in that respect. In the petition as well as evidence, the claimants have not disclosed the name of employer, nature of employment, monthly income the deceased was earning by doing private job. The witness examined on behalf of claimants has admitted in the cross-examination that the agricultural land stands in the name of her father in law i.e. original claimant no.2 and her husband was working in agricultural land only on holidays. In absence of any cogent and convincing evidence to prove the income of the deceased as claimed in the petition, the Tribunal has notionally assessed the income of the deceased as Rs.1500/- per month. After allowing the deduction of 1/3rd towards personal expenses of the deceased, assessed the yearly loss as Rs.12,000/- per year. Applying the multiplier of 18, the Tribunal assessed the compensation to be payable as Rs.2,16,000/- and further awarded Rs.6,000/- under the conventional head towards funeral expenses, loss of consortium, loss of estate etc. In my view, there is no justification to assess the notional income of the deceased as Rs.1500/- per month. The deceased was aged 27 years. He was hale and hearty. As per the notification dated 23.3.2001 issued by the State Government minimum wages payable to the daily wagers were fixed at the rate of Rs.45/- per day. Considering that the accident occurred in the year 2004, the notional income of the deceased deserves to be considered more than Rs.45/- per day. In that view, the notional income of the deceased in the year 2004 deserves to be considered as Rs.2,000/- per month. Thus, considering the monthly income of the deceased as Rs.2,000/- and deducting the amount to the extent of 1/3rd from said amount, the monthly contribution of deceased to his family i.e. the claimants, worked out as Rs.1334/- (Rs.2000 – Rs.666 = Rs.1334). Thus, the yearly contribution of the deceased to his family worked out as Rs.16,008/-. Since the deceased was not having any permanent job nor he was self-employed person, no income deserves to be added towards future prospects. Thus, applying the multiplier of 17 as applicable to the victim in the age group of 26 to 30 years, the pecuniary loss caused to the claimants worked out as Rs.2,72,136/- (Rs.16008 x 17 = Rs.272136).

19] The quantum of compensation awarded towards non-pecuniary loss also needs to be re-assessed and enhanced. The deceased was 27 years of age. At the time of incident, the claimant no.1 was 22 years of age and carrying pregnancy from the deceased. Due to mental shock caused due to accidental death of her husband, the pregnancy of appellant – claimant was aborted. She has lost the company of her husband at such young age of 22 years. The claimant nos.2 & 3 lost their shelter at their old age. In the case of *National Insurance Company Limited V/s Pranay Sethi and others* (supra), the Hon'ble Apex Court has fixed the amount of Rs.70,000/- to be payable under the conventional head such as funeral expenses, loss of consortium and loss of estate etc. In the facts and circumstances of the case, I am of the view that compensation of Rs.70,000/- deserves to be awarded to claimants under the conventional head such as loss of estate, loss of company, consortium, funeral expenses etc. Thus, the total compensation to be payable to claimants worked out as Rs.3,42,136/- (inclusive of N.F.L.).

20] In my view, the order of apportionment of compensation passed by the Tribunal is not sustainable under the given facts and circumstances of the case. At the time of accidental death of deceased, the appellant – claimant no.1 was aged 22 years. She lost her husband at such young age. At the time of accident, she was pregnant. Her pregnancy aborted due to mental shock sustained on account of accidental and untimely death of her husband. She was required to undergo great sufferings on account of accidental death of her husband. It is very difficult for a woman to survive without husband at such young age. She was fully dependent upon the income of the deceased. The claimant nos.2 & 3 are the parents of the deceased. They are having sufficient means for their survival. The agricultural land stood in the name of claimant no.2. It has come on record that affairs of the family were looked after by claimant no.2. In that view, the apportionment of compensation made by the Tribunal in the ratio of 1/3rd is not justified in the facts and circumstances of the case. In my view, the compensation deserves to be apportioned in the ratio of 50% to the claimant no.1 and balance 50% to the claimant nos.2 & 3.

21] In the result, the appeal deserves to be partly allowed. Accordingly, following order is passed.

O R D E R

A] The appeal is partly allowed with proportionate costs.

B] The compensation of Rs.2,22,000/- (inclusive of NFL) awarded by the Tribunal is enhanced to Rs.3,42,136/- (inclusive of NFL) making the respondent nos.1 & 2 jointly and severally liable to pay the compensation with interest at the rate of 6% p.a. from the date of petition till its realization.

C] The amount, if any, deposited in terms of earlier award passed by the Tribunal and withdrawn by the claimants, be adjusted towards the compensation to be payable in terms of order in appeal.

D] The compensation as awarded be apportioned in the ratio of 50% to the appellant – claimant (i.e. wife of deceased / victim) and balance 50% to be paid to respondent nos.2 & 3 in equal proportion.

E] The modified award be drawn accordingly.

F] In view of disposal of appeal, all the pending applications stand disposed of in terms of order in appeal.

G] The appeal is disposed of in above terms.

(V.L. ACHLIYA, J.)