IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.408 OF 2007

New India Assurance Co. Ltd
Zendigate, Behind Hotal Ashoka,
Ahmednagar, through its
authorised Signatory,
Mr. Hiralal S/o Namdeo Vispute
Age 53 years, Occ. Service,
Asstt. Managar, New India Assurance
Co. Ltd. R/o. Aurangabad. ... Appellant
Orig. Resp. No.2

Versus

1. Sangita wd/o Gulab Raskar
Age 31 yrs. Occ. Household

2. Vishal s/o Gulab Raskar
Age 11 yrs, Occ. Student,
minor U/g of Resp. No.1, Mother

3. Komal d/o Gulab Raskar
Age 6 yrs, Occ. Student,
minor U/g of Resp. No.1 Mother

4. Nanabhau Khandu Raskar (Dead)
Age 70 yrs, Occ. Nil

5. Radhabai w/o Nanabhu Raskar
Age 65 yrs, Occ. Nil

All R/o Jawale, Tq. Parner,
Dist. Ahmednagar. ... Orig Claimants

6. Mahadu Baburao Wadghule,
Age 49 yrs, Occ. Truck owner
R/o Takali bhima, Tq. Shirur,
Dist. Pune. ... Respondents /
Orig. Claimants &
Resp. No.1.

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Mr. Dhananjay Deshpande, Advocate for the Appellant
Mr. B.N. Palve, Advocate for Respondent Nos.1 to 3 and 5.

...

CORAM : V.L. ACHLIYA, J.
DATED : 07th JANUARY, 2020

JUDGMENT:-

. Being aggrieved by the judgment and award dated 19.12.2006 passed by learned Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.237/2001, thereby partly allowed the claim of the original claimants, the present appellant/original respondent no.2, preferred this appeal.

2. Heard the learned counsel for the appellant and respondents. Perused the Record and Proceedings.

3. In brief, it is the contention of the learned counsel for the appellant that the Tribunal has erred in considering the future income / prospective income of the deceased for the assessment of compensation. It is submitted that the compensation ought to have considered only on basis of monthly salary/income of the deceased. The Tribunal has assessed the compensation by considering the increase in salary in future at the rate of Rs.2,000/- per month from the date of accident. The interest is also awarded on the

amount determined as a compensation by considering the future prospects with effect from date of application for compensation. It is further contended that the Tribunal has also overlooked the pension, the widow of the deceased, receiving after the death of deceased while assessing the compensation.

4. On the other hand, the learned counsel for the respondents-claimants supported the judgment and award passed by the Tribunal. It is submitted that the judgment and award passed by the Tribunal is well reasoned and suffers from no perversity so as to call for interference in exercise of appellate jurisdiction. It is submitted that the deceased was serving as a Assistant Teacher and drawing a monthly salary at the rate of Rs.9121/- per month. He was also an agriculturist and earning Rs.15,000/- per annum by cultivating the land. At the time of accident, the deceased was 31 years old. He was in regular employment. He had good prospects and promotional chances to be promoted to higher post and scale in his long standing future career of more than 27 years. The Tribunal has taken into consideration the future prospects and substantial increase in salary to take place in future. It is submitted that the consideration

of future prospects while assessing compensation is in tune with the catena of decisions of the Apex Court. In this context, the learned counsel referred and relied upon the decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. It is submitted that the Apex Court has ruled that While assessing the compensation, an addition of 50% of actual salary to the income of the deceased be considered towards future prospects, where the deceased had a permanent job and below 40 years of age. In this background, the learned counsel submits that the appeal is devoid of merits and liable to be dismissed.

5. I have carefully considered the submissions advanced in the light of judgment and award passed by the Tribunal as well as the law laid down by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** (supra). While assessing the compensation, the Tribunal has thoroughly considered the evidence adduced in the case. The deceased was working in regular employment and serving as Assistant Teacher. Immediately prior to accidental death, the deceased was working as a teacher and drawing monthly salary of Rs.9121/-. The fact to that

effect was duly proved by producing the salary certificate of the deceased for the month of December 2000. After making the statutory deductions, the deceased was receiving salary of Rs.8,329/-. The deceased was 31 years of the age. He had long standing span of more than 26 to 27 years to serve as a teacher. He had good prospects to be promoted over the promotional posts. The deceased was in permanent employment. He has secured B.Sc. Degree in first class with distinction. He was a qualified teacher. He was holding qualification as B.Sc. B.Ed . He was working as Assistant Teacher. At the time of his death, he was 31 years old. He had a chance to receive salary of the post of senior teacher and promotion for the post of Headmaster. Keeping in mind the future prospects of the deceased and increase in salary as a senior teacher, the Tribunal has added Rs.2000/- to monthly salary of deceased, while assessing the compensation. In this context, it is useful to refer the reasons recorded by the Tribunal in para 13 in assessing the compensation and adding Rs.2,000/- per month in the monthly income of the deceased towards future prospects.

> *"13. I have already observed that there is cogent evidence as regards that the deceased was permanent in service who secured First Class with distinction in B.Sc. Degree. He was B.Sc. B.Ed. and working as Assistant*

Teacher. He was 31 years old. The competent person Head master of the said school stated that the deceased would have get promotions Head master in the scale of Rs.7500-12000 and his salary would have been increased by Rs.2500/- p.m. He stated that increment to the post of deceased is Rs.175/- plus dearness allowance and after 12 years of service, he would have get pay scale of senior teacher. Considering his background and aforesaid evidence, the deceased would have get better prospects for promotion. Even taken that promotion would depend upon his ability, confidential reports etc., definitely he would have get regular increments and thereby he would have get pay scale of senior teacher. Considering his age, period of service, his background, it is reasonable and proper that his income would have been increased at least by Rs.2000/- p.m. taking round figure, his income at Rs.10,500/- would have been available for himself and for the family members. Deducting 1/3rd, Rs.7000/- would be the dependency. The Hon'ble Apex Court in Sarla Dixit case supra, held that keeping in view all the future prospects of the deceased, gross monthly income of the deceased wold have shot up to at least double. The facts of the present case are much identical to the case before the Hon'ble Supreme Court. This principle has been followed by the Apex Court itself and also by various High Courts in subsequently cases. As regards the multiplier, considering expectancy considered by the Hon'ble Apex Court in various reported judgments cited above, in this case, the multiplier of 15 is reasonable and proper. As regards income by way of agriculture, the evidence adduced is not cogent and sufficient for the proof that the deceased had a time to look after agriculture. In the evidence, it has come that his place of service was at much distance from his residence. Thus much time should have been consumed for traveling to his service place. The widow has admitted in her evidence that entire family was doing agriculture and even *after demise of the deceased, it is continued. Therefore, though 7 x 12 extract and various bills demonstrate that the family was raising case crops and earning, taking into consideration aforesaid circumstances, hardly it can be accepted that the deceased had any contribution towards cultivation of the agricultural land. So, income available of the deceased in only of salary. I have already observed that monthly dependency is of Rs.7000/- i.e. yearly Rs.84000/- which is multiplied by multiplier 15, so the compensation under the head of pecuniary loss comes to Rs.12,60,000/-. To this, I add Rs.10,000/- towards carrying dead body and expenses incurred for funeral and last rites and Rs.30,000/- towards love and affection, loss of consortium etc. Thus the total compensation comes to Rs.13,00,000/- inclusive of no fault liability."*

6. In the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** (supra), the Hon'ble Apex Court has laid down the following guiding principles to be followed while determining the income and assessment of the compensation on the count of future prospects:-

"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."*

7. In view of the overall facts of the case and the reasons recorded by the Tribunal to add Rs.2000/- per month to monthly income of the deceased towards future prospects is in tune with the settled position of law and based upon evidence on record. The decision in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and others*** (supra) is squarely applicable to the facts and circumstances in case in hand. In that view, the appeal preferred by appellant is devoid of merits. Accordingly, the appeal is dismissed with no order as to costs.

(V.L. ACHLIYA)
JUDGE

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