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

FIRST APPEAL NO.1419 OF 2004

Ramdas S/o Kushalchand Zarwal
(Deceased) Through L.Rs.

1A. Prakash Ramdas Zarwal
Age : 59 years, Occ : Agriculture,

1B. Shakuntala Gulabchand Mohar
Age : 51 years, Occ : Household,

1C. Shoha Shantilal Teli
Age : 47 years, Occ : Household,

1D. Usha Shankar Mahure
Age : 44 years, Occ : Household,

1E. Kailas Ramdas Zarwal
Age : 59 years, Occ : Household,

All R/o Ajantha, Tq. Sillod,
Dist. Aurangabad.

2. Gayabai W/o Ramdas Zarwal
Age : 54 years, Occ : Household,
R/o As above. .. **APPELLANTS**
(Ori. Claimants)

VERSUS

1. Jogindersingh S/o Pritamsingh Punjabi
Age : Major, Occ : Driver,
R/o T.P. Nagar, Indore

2. Jasbindersingh S/o Triloksingh
Age : Major, Occ : business,
R/o C-20, HIB Colony, In front of
Sundaram Finance, Indore
(Appeal dismissed as against Respondent Nos.1 and 2 vide Registrar's Order dated 02.09.2008.)

3. United India Insurance Co. Ltd.,
through Divn. Manager, Aurangabad.

4. Abdul Ayyubkhan s/o. Kadarkhan
age : major, Occ : Business,
R/o At post Mannad, Dist. Aurangabad.

5. National Insurance Co. Ltd.,
through Divl. Manager, Aurangabad.

.. **RESPONDENTS**
(ORIGINAL RESPONDENTS)

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Mr.R.K. Lakhotiya a/w Mr.R.A. Karwa, Advocates for the appellants.
Mr.A.B. Gatne, Advocate for respondent no.3.
Mr.A.D. Soman h/f Mr.D.V. Soman, Advocate for respondent no.5.

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CORAM : V.L.ACHLIYA,J.
RESERVED ON : 08.08.2019
PRONOUNCED ON:24.07.2020

JUDGMENT:

. Being aggrieved by the impugned judgment and award dated 21.06.2004 passed by the Member, Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claims Petition No.138/2001, the appellants (original claimants) have preferred this appeal seeking enhancement of compensation.

2. For the sake of brevity and convenience, the parties to appeal are referred as they are referred in the judgment of the Tribunal.

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

4. In view of the challenge raised in appeal confines to quantum of compensation awarded by the Tribunal, it is not necessary to discuss the facts in detail.

5. The claimants have filed Claim Petition under section 163-A of the Motor Vehicles Act, 1988 (Hereinafter referred to as “the M.V. Act) claiming compensation of Rs.4,34,000/- on account of death of their son deceased Vilas Ramdas Zarwal, who died in motor vehicle accident occurred on 27.11.2000

at about 5.30 a.m. on Mumbai-Agra road near Old Haryana Hotel, Shirpur Police Station, Shirpur, Dist. Dhule. The claimants have claimed that at the time of accidental death the deceased was 21 years old and serving with Rahul Printing Press at Kannad as a Screen Printer and receiving Rs.3000/- per month as a salary from his employer. He had passed B.A. final year examination in the month of June, 2000. So also he had passed Screen Printing Examination conducted by Kohinoor Technical Institute in the month of August, 1998.

6. The respondent nos.3 and 5 opposed the Claim Petition with contention that the claim made by the claimants is excessive and on higher side. They have denied the case of claimants that the deceased was working with Rahul Printing Press at Kannad and earning Rs.3,000/- per month as a salary.

7. In order to prove their case, the claimants have examined Ramdas Khushalchand Zarwal – PW-1 (original claimant no.1 and father of the deceased) and further examined Shankar Narayan Mahure-PW-2, the employer of the deceased. The respondents have not examined any witness.

8. On due analysis of the rival pleadings and oral and documentary evidence on record, the Tribunal has awarded compensation of Rs.1,14,500/- with interest @ 6% p.a. from the date of application till its realization with proportionate costs, making the respondent nos.1 to 5 jointly and severally liable to pay compensation. Being aggrieved the appellants-claimants have preferred this appeal seeking enhancement of compensation.

9. Learned counsel for the appellants –

claimants assailed the impugned order with contention that the Tribunal has grossly erred in applying the multiplier of 10 and considering the notional income of the deceased as Rs.15000/- per year for the purpose of assessment of compensation. By referring to the decision in the case of **Smt.Sarla Verma and others V/s Delhi Transport Corporation and Anr.** reported in **(2009)6 SCC 121** and the broad principles laid down by the Apex Court in the case of **National Insurance Company Limited V/s Pranay Sethi and others** reported in **2017(16)SCC 680,** the learned counsel submitted that the Tribunal ought to have applied the multiplier of 18 and considered the income of the deceased as Rs.3000/- per month on the basis of evidence adduced in the case. It is further submitted that the Apex Court in the case of **Joginder Singh and another V/s ICICI Lombard General Insurance Company** reported in

AIR 2019 SC 3814 ruled that in view of the Constitution Bench decision in the case of **National Insurance Company Ltd., V/s Pranay Sethi and others (supra),** it is the age of the deceased which has to be taken into consideration and not the age of the dependent/s for the purpose of selection multiplier in assessment of compensation. It is further submitted that considering the deceased being educated self employed person with 21 years of age, the income to the extent of 40% to be added to the existing income of deceased. After making the deduction to the extent of 50% towards personal expenses of the deceased and and awarding Rs.75,000/- under the conventional head as non-pecuniary damages, the Tribunal ought to have awarded total compensation of Rs.5,28,600/- with interest @ 9% p.a. from the date of application till its realization.

10. On the other hand, the learned counsel for the respondents supported the impugned judgment and award passed by the Tribunal. It is submitted that the deceased being bachelor and the claimants being in the age group of 55-60 years, the Tribunal was fully justified in applying multiplier of 10 for the purpose of assessment of compensation based upon the age of the claimants. It is further submitted that the evidence adduced as to the income of the deceased not sufficient to accept that deceased was earning Rs.3,000/- per month. In that view, the tribunal is justified in considering the notional income of the deceased as Rs.15,000/- per year as provided under clause (6) of Schedule-II to the M.V. Act.

11. In support of the submission that in the case of bachelor the multiplier

to be selected on the basis of age of the victim, learned counsel for the respondent no.3 has referred and relied upon the decision in the case of ***Reshma Kumari and others V/s Madan Mohan and another*** reported in ***(2013) 9 SCC 65*** and ***National Insurance Company Limited V/s Shyam Singh and others*** reported in ***(2011) 7 SCC 65.*** Learned counsel further placed reliance on the decision of this Court (Coram:Shalini Phansalkar Joshi,J) in the case of ***United India Insurance Company Ltd., V/s Sobha Amarsingh Rajput*** reported in ***2016 DGLS (Bom.) 1700.***

12. I have carefully considered the submissions advanced in the light of rival pleadings and oral and documentary evidence adduced in the case. In my view, the Tribunal has grossly erred in determining the compensation by considering the notional income of the deceased as Rs.15,000/- per

year as well as applying the multiplier of 10 based upon the age of claimants.

13. Perusal of the record and proceedings spell out that the appellants-claimants had filed an application U/Sec. 163-A of the M.V. Act i.e. determination of compensation on the basis of structured formula provided under Schedule-II of the M.V. Act. In view of claim being made U/Sec. 163-A of M.V. Act, the Tribunal was bound to follow the procedure prescribed in determination of compensation provided under Schedule-II of M.V. Act. The Tribunal ought to have selected the multiplier as provided under Schedule-II based on age of victim. Similarly, tribunal erred in considering notional income of deceased as Rs.15000/- per year.

14. The notional income of the deceased

can be considered as Rs.15,000/- per year (as provided under clause 6 of the Schedule-II of the M.V. Act) if victim/deceased had no income prior to accident i.e. non-earning person. In the case of earning person, the compensation required to be assessed on the basis of annual income of victim as provided under clause (1) of Schedule-II of the M.V. Act.

15. The claimants have filed application U/Sec. 163-A of the M.V. Act seeking compensation of Rs.4,34,000/- on the basis of the structured formula given under Schedule-II of the M.V. Act. The claimants have claimed that the deceased was working as Screen printer and earning Rs.3,000/- per month as a salary received from his employer. The deceased was qualified person to work as Screen printer. In the year 1998, he had passed the certificate examination in Screen

printing from Kohinoor Technical Institute. The certificate of examination passed produced in evidence at Exhibit-42. So also the deceased was graduate. He had passed B.A. final year examination in the month of June, 2000. The mark sheet of B.A. examination passed in the year 2000 produced in evidence at Exhibit-41. The claimants have also produced income certificate issued by the employer at Exhibit-52.

16. Beside examining the claimant no.1-Ramdas Khushalchand Zarwal i.e. the father of deceased, the claimants have examined Shankar Narayan Mahure (PW-2) the employer of the deceased to prove the income of the deceased. Both the witnesses have categorically deposed that the deceased was serving as Screen Printer and earning Rs.3000/- per month. By applying multiplier of 17 applicable to the age group of 21-25 as provided in Schedule-II

of the M.V. Act and considering the income of the deceased as Rs.36,000/- per year (Rs.3000/- X 10 = Rs.36,000/-), the claimants have worked out the loss of income as Rs.6,48,000/- as provided under Schedule-II of the M.V. Act. After making deduction to the extent of 1/3rd towards personal expenses of deceased provided under clause (1) of Schedule-II, the claimants have worked out compensation to be payable towards loss of income as Rs.4,32,000/- (Rs.6,48,000-Rs.2,16,000/-). By adding the amount of Rs.2,000/- towards funeral expenses as provided under clause (3) of Schedule-II the claimants have worked out the total compensation payable as Rs.4,34,000/-.

17. The Tribunal has awarded the compensation of Rs.1,14,500/- as against the claim of Rs.4,34,000/- by considering the notional income of the deceased as

Rs.15,000/- per year and further applied the multiplier of 10 by considering the age of claimants no.2 as 54 years. The Tribunal has disbelieved the evidence adduced by the claimants to prove the income of deceased as Rs.3,000/- per month, for the reason the employer of the deceased deposed that he was not maintaining record in respect of payment made to the deceased. By considering the notional income of the deceased as Rs.15,000/- per year and applying the multiplier of 10, the Tribunal after making deduction to the extent 1/3rd towards personal expenses of deceased assessed the compensation to be payable as Rs.1,14,500/- (Rs.1,50,000/--Rs.50,000/- = Rs.1,00,000/- + Rs.14,000/- as per clause 3 of Schedule-II), making the respondents nos.1 to 5 liable to pay the compensation jointly and severally.

18. Learned counsel representing the

appellants and respondents have advanced the submission as if the application filed by claimants filed U/Sec. 166 of M.V. Act. Since the application seeking compensation was filed U/Sec. 163-A of the M.V. Act, the compensation ought to have been determined in terms of structured formula provided under Schedule-II of the M.V. Act. Since the application seeking compensation filed U/Sec. 163-A of the M.V. Act, the Tribunal was bound to follow the procedure as prescribed U/Sec. 163-A of the M.V. Act to determine the compensation. The compensation ought to have been assessed based on structured formula given under the said provision i.e. to follow the Schedule-II of the M.V. Act.

19. If we consider the structured formula provided under Schedule-II of the M.V. Act, then it provides no discretion to Tribunal in the matter of selection of

multiplier. The Schedule-II of the M.V. Act clearly provides that while selecting the multiplier, the Tribunal has to consider the age of the deceased/victim. Considering the age of deceased/victim as 21 years the Tribunal ought to have applied the multiplier of 17 as applicable to the victim in the age group of 21-25 as provided under Schedule-II of the M.V. Act.

20. The Tribunal has erred in placing reliance upon the decision in the case of ***Gulam Khader and another V/s United India Insurance Co. Ltd., and another*** reported in ***2001(1)ACJ 163*** in selecting and applying the multiplier. The decision in the case have no bearing upon the facts of the case as application was filed U/Sec. 163-A of the M.V. Act. Apart from this, the legal position as to selection of multiplier has been set at rest in view of the Constitution Bench

judgment in the case of **National Insurance Company Limited V/s Pranay Sethi and others** reported in **2017(16)SCC 680** wherein the Apex Court has rulled that the selection of multiplier based upon age of deceased and not on the basis of age of dependents/claimants. In the recent decision in the case of ***Royal Sundaram Alliance Insurance Company Limited V/s Mandala Yadagari Goud and others*** reported in **(2019) 5 SCC 554**, the Apex Court had held that even in case of accidental death of bachalor, the multiplier to be selected based upon the age of deceased/victim and not the dependents or claimants. The Court has observed as under :-

> “**8.** The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into

account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

9. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this objection that this Court has endeavoured to settle legal principles in respect of the matter in question.

10. A reading of the judgment in *Sube Singh* shows that where a three-Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon *Munna Lal Jain* which is also a three-Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three-Judge Bench in *Reshma Kumari* v. *Madan Mohan*. The relevant portion of *Reshma Kumari* in turn has referred to *Sarla Verma case* and given its imprimatur to the same. The loss of dependency is thus stated to be

> based on: (*i*) additions/deductions to be made for arriving at the income; (*ii*) the deductions to be made towards the personal living expenses of the deceased; and (*iii*) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and *Reshma Kumari* categorically states that it does not want to revisit the law settled in *Sarla Verma case* in this behalf.
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> **11.** Not only this, the subsequent judgment of the Constitution Bench in *Pranay Sethi* has also been referred to in *Sube Singh* for the purpose of calculation of the multiplier.
>
> **12.** We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three-Judge Benches and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents.

21. In view of the Constitution Bench decision in the case of ***National Insurance Company Limited Vs Pranay Sethi and others (supra)*** and subsequent decision in the case of ***Royal Sundaram Alliance Insurance Company***

Limited V/s Mandala Yadagari Goud and others (supra), the decision in the case of ***Reshma Kumari and others V/s Madan Mohan and another (supra)*** and ***National Insurance Company Limited V/s Shyam Singh and others (supra)*** no more survives.

22. Similarly, the reasons and findings recorded by the Tribunal to consider the notional income of the deceased as Rs.15,000/- per year not sustainable in law in the light of pleadings and evidence as adduced in the case. If we consider the Schedule-II of M.V. Act, then the notional income of Rs.15,000/- p.a. can be considered if the victim/deceased found to be non-earning person. No such case established on the part of the respondents.

23. The claimants have examined Ramdas Khushalchand Zarwal (PW-1) at Exhibit-34-the

father of deceased. He has categorically deposed that the deceased was 21 years of age. In support of oral testimony produced the school leaving certificate of deceased, which mention the date of birth of deceased as 05.04.1979.

24. In that view, it is proved that at the time of accident deceased was 21 years of age. PW-1 has further deposed that the deceased had passed B.A. Degree examination. In support of the same produced the mark-sheet of final year B.A. exam, which is at Exhibit-41. He has further deposed that deceased was doing the work of Screen printing with Rahul Printing Press and receiving Rs.3,000/- per month as a salary from his employer. He has further deposed that the deceased had acquired knowledge of screen printing from Kohinoor Institute at Aurangabad and in support of the same

produced the statement of marks and Certificate of examination passed by deceased and issued by Kohinoor Technical Institute which are at Exhibit-42 and 43 respectively.

25. Thus the documentary evidence clearly spell out that the deceased was 21 years of age and passed certificate examination in Screen Printing way back in the year 1998. So also deceased was graduate and passed B.A. final year examination in the month of June, 2000. If we consider the cross-examination of PW-1 then nothing has been elicited through the cross-examination of PW-1 to discard or to disbelieve the facts deposed as to age, occupation and income of the deceased. Except giving suggestion in denial nothing has been brought through cross-examination to find favour to case of respondents.

26. In order to prove the occupation and income of the deceased, the claimants have examined Shankar Narayan Mahure (PW-2) at Exhibit-50, the owner of Rahul Printing Press at Kannad and the employer of the deceased. He has categorically deposed that he was running the Printing Press at Kannad in the name of Rahul Printing press, which is duly registered under the Shops and Establishment Act. In support of the oral testimony, the witness has produced the licence issued under the Shops and Establishment Act in his name which is at Exhibit-58. He has categorically deposed that the deceased was employed in his Printing Press from the month of May, 2000 till his death and doing the work of Screen printing. He used to pay Rs.3000/- per month to deceased. He deposed that the certificate of income produced at Exhibit-52 was issued by him.

27. If we consider the cross-examination of the PW-2 then nothing substantial has been brought through his cross-examination so as to discard and disbelieve the evidence of PW-2. Except giving suggestion that the deceased was not employed in the shop and the certificate has been issued at the instance of father of the deceased nothing concrete has been brought on record. He has deposed that he has not maintain the record pertaining to payment made to deceased. Only on the basis of this admission, the Tribunal has disbelieved the testimony of PW-2.

28. It is quite settled position in law that Motor Vehicle Act is a beneficial piece of legislation and is designed in a manner, which relieves victim from ensuring strict compliance provided in law, which otherwise applicable to suits and other proceedings. The fact deposed by PW-2 that he has not

maintained the record in respect of the payment made to deceased not enough to discard and disbelieve the testimony of PW-1 and PW-2 as to the occupation and income of the deceased. It is pertinent to note that the deceased was serving in printing press located at small place. It is nowhere the case that PW-2 was paying income tax and sale tax and required to maintain books of accounts. It is a matter of common knowledge that businessman as that of PW-2 running small business at a taluka place not maintains the books of accounts in regular course of their business. In that view, no much weightage should have been given by tribunal as to non-maintenance of record of payment made to deceased.

29. Considering the fact that deceased was graduate and possessing certificate of Screen printing more than sufficient to

accept the income of the deceased as Rs.3000/- per month. In view of the evidence adduced in the case that the deceased was qualified person to perform job as Screen printer, the case of the claimants ought to have been accepted by the tribunal that the deceased was earning Rs.3000/- per month from PW-2. Thus the reasons and findings recorded by the Tribunal are perverse and based upon improper appreciation of evidence adduced in the case. In that view, the reasons and findings recorded by the Tribunal deserve to be set aside. On the basis of evidence adduced in the case, it is to be held that the claimants have duly proved that the deceased was working as a Screen Printer in the employment of PW-2 and earning Rs.3,000/- per month.

30. In view of the conclusion to which arrived at the award passed by the Tribunal

deserves to be modified and the compensation awarded by the Tribunal needs to be enhanced. Considering the age of the deceased victim as 21 years, the multiplier of 17 required to be applied as applicable to the victims in the age group of 21-25 years as provided under Schedule-II of the M.V. Act. Considering the yearly income of the deceased as Rs.36,000/-, the compensation to be payable worked out as Rs.6,48,000/- in terms of Schedule-II of the M.V. Act. After making deduction to the extent of 1/3rd from the amount of Rs.6,48,000/- towards personal expenses of deceased as provided under clause (1), the compensation to be payable to the claimants towards loss of income worked out as Rs.4,32,000/- (Rs.6,48,000/- - Rs.2,16,000/- = Rs.4,32,000/-). Beside amount of Rs.4,32,000/- the claimants are entitled to receive Rs.2000/- towards funeral expenses as provided under clause (3) of Schedule-II.

Thus the total compensation to be payable to the claimants U/Sec. 163-A of the M.V. Act in terms of Schedule-II of the M.V. Act worked out as Rs.4,34,000/-. Accordingly, the compensation awarded by the Tribunal needs to be enhanced from Rs. 1,14,500/- to Rs.4,34,000/- making the respondents liable to pay the same jointly and severally. In view of death of claimant no.2 during pendency of appeal, the entire amount of enhanced compensation deserves to be payable to claimant no.2 i.e. Gayabai Ramdas Zarwal mother of the deceased victim.

31. In the result, the appeal is partly allowed and following order is passed :-

ORDER

(i) Appeal is partly allowed.

(ii) The award passed by the Member,

Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.138/2001 decided on 21.06.2004 is modified. The amount of compensation awarded by the Tribunal is enhanced from Rs.1,14,500/- to Rs.4,34,000/-, making the respondent nos.3 to 5 jointly and severally liable to pay the compensation with interest @ 6% p.a. from the date of application till its realization with proportionate costs.

(iii) In view of death of claimant no.1 i.e. Ramdas Kushalchand Zarwal, the husband of claimant no.2, the entire amount of enhanced compensation payable in terms of modified award, be paid to the claimant no.2 i.e. Gayabai Ramdas Zarwal.

(iv) The amount in terms of Award passed by the Tribunal if already paid, then the same shall be adjusted towards the amount to be paid in terms of modified award.

(v) The amount due and payable in terms of enhanced compensation be paid to claimant no.2 with interest @6% p.a.

(vi) The additional court fees to be payable in terms of modified award shall be paid within eight weeks from the date of judgment and order passed by this Court.

(vii) Appeal is dismissed as against the respondent nos.1 and 2 in terms of Registrar's order dated 02.09.2008.

(viii) The modified award be drawn in above terms.

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

[V.L.ACHLIYA]
JUDGE

SGA