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

FIRST APPEAL NO.274 OF 2003

1. Aruna W/o Achyutrao Deshpande
Age : 38 years, Occ : Household,
R/o Kol Pimpri, Tq. Kaij,
Dist. Beed.

2. Ku. Jagruti D/o Achyutrao Deshpande
Age : 17 years, Occ : Education,

3. Ku. Kirti D/o Achyutrao Deshpande
Age : 14 years, Occ : Education,

4. Ku. Amruta D/o Achyutrao Deshpande
Age : 12 years, Occ : Education,

(Appellants Nos.2 to 4 Minor,
Under Guardianship of Mother i.e.
Appellant No.1.

**..APPELLANTS
(Ori. Claimants)**

VERSUS

1. Maharashtra State Road Transport
Through the Divisional Controller,
Beed.

2. The Depot Manager,
MSRTC, Dharur, Dist. Beed.

**..RESPONDENTS
(Original Respondents)**

…

Mr.S.S. Dargad a/w Mr.S.G. Chapalgaonkar, Advocate for appellants.
Mr.A.B. Dhongade, Advocate for respondent no.1

...

CORAM: V.L. ACHLIYA, J.
DATED : 23.01.2020

JUDGMENT:

. Being aggrieved and dissatisfied by the judgment and award dated 08.07.1999 passed by the learned Member, Motor Accident Claims Tribunal, Beed in M.A.C.P. No.133/1991, the appellants (original claimants) have preferred this appeal seeking enhancement of compensation.

2. Heard the learned counsel for the appellants and the learned counsel representing respondent no.1. Respondent no.2 though served absent. Perused the Record and Proceedings.

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

4. In view of challenge raised in appeal confines to quantum of compensation, it is not required to deal with the facts of case in detail.

5. Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of Claim Application.

6. The claimants (appellant nos.1 to 4) are the legal heirs and dependents of deceased Achyutrao Deshpande (hereinafter referred to as "deceased"), who met with motor vehicle accident on 17.08.1991. It is alleged that on the date and time of accident, while deceased was returning to his village Kolpimpri from Adas and proceeding on bicycle, the Bus bearing registration no.MH-31/8644 owned by respondents gave dash to deceased causing his death on spot. It is

claimed that at the time of accident, the deceased was 35 years of age and serving as a Sanitary Inspector in the Health Department of Zilla Parishad, Beed. He was receiving Rs.2,500/- per month as salary. On account of accidental death, the claimants have filed claim application under section 166 of Motor Vehicle Act seeking compensation of Rs.5,00,000/- with future interest @ 15% p.a. The claimant no.1 claims to be wife of deceased. The claimant nos.2 to 4 are claimed to be minor children of deceased. All of them claimed to be wholly dependent upon the income of the deceased.

7. The respondents have resisted the claim application with contention that the accident was occurred due to sole negligence on the part of the deceased. They have denied that the accident was caused due to any fault and rash and negligent driving on the part of

driver of Bus. In order to prove its case, the claimants have examined Aruna Deshpande, the wife of the deceased i.e. claimant no.1. Respondents have examined Bhanudas Baliram Bachate, the driver of S.T. Bus in support of defence of the respondents.

8. On due consideration of rival pleadings and evidence adduced, the Tribunal has partly allowed the claim application and awarded the compensation of Rs.2,05,000/- making the respondents liable to pay the same jointly and severally with future interest @ 12% p.a. from the date of application till its realization with proportionate costs. Being aggrieved, the appellants (original claimants) have preferred this appeal.

9. The learned counsel for the appellants assailed the reasons and findings recorded by the Tribunal and contended that

the assessment of compensation is not in accordance with law. It is submitted that the Tribunal has wrongly considered the age of the deceased as 40 years and applied the multiplier of 12. So also the Tribunal has erred in making deduction to the extent of 1/3rd by overlooking the fact that the claimants were totally dependent upon the income of deceased. It is further contended that the Tribunal also failed to consider the future prospects of deceased and assess the income accordingly. By referring the decision of 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 submits that applying the guiding principles laid down by the Apex Court in assessment of compensation, the appellants are entitle to receive compensation of Rs.5,99,200/- as pecuniary and non-pecuniary loss.

10. On the other hand, learned counsel for the respondent no.1 supported the judgment and order passed by the Tribunal and submits that the assessment of compensation made by the Tribunal is in consonance with the pleadings and evidence on record and calls for no interference in exercise of appellate jurisdiction of this Court. It is submitted that though the appellants-claimants have approached with the case that the deceased was 35 years of age and serving as Sanitary Inspector in Health Department of Zilla Parishad, Beed, the claimants have failed to produce the documentary evidence to prove the age of the deceased as 35 years. Neither birth certificate of deceased nor the extract of service book of the deceased has been produced on record to prove the exact age of the deceased on the date of accident. Therefore, considering the probable age of

the deceased as 40 years, the Tribunal has assessed the compensation. It is contended that the award passed by the Tribunal is in consonance with the evidence adduced in the case and calls for no interference in exercise of appellate jurisdiction of this Court.

11. I have carefully considered the submissions advanced and perused the record and proceedings. Since the issue raised in appeal confines to quantum of compensation, I restrict scope of scrutiny of findings of Tribunal and evidence on record to consider adequacy of compensation awarded by Tribunal.

12. The claimants have approached with the case that the deceased was serving in Zilla Parishad as a Sanitary Inspector and receiving monthly salary of Rs.2,500/- per month. They have claimed that at the time of

accident deceased was 35 years old. In order to prove its case, the claimants have examined Aruna Achyutrao Deshpande (PW-1), the wife of deceased i.e. claimant no.1. She has deposed that her deceased husband was serving as Sanitary Inspector in the Health Department of Zilla Parishad, Beed. On the alleged date and time of accident, the deceased was returning from his duty. She has deposed that her husband was 30 years of age and receiving salary of Rs.2,500/- per month. She has further deposed that the deceased was sole earning member in the family. She has produced the copy of F.I.R., spot panchanama, inquest panchanama, death certificate and income/salary certificate of deceased at Exhibit-16.

13. In cross-examination, the witness has deposed that she is unable to tell the date of birth of deceased. There is no

challenge to the facts deposed that her husband was serving in Zilla Parishad as Sanitary Inspector and receiving the monthly salary of Rs.2,500/-. The salary certificate produced at Exhibit-16 spell out that the deceased was receiving salary of Rs.2,446/-, which includes basic pay of Rs.1,560/-, D.A. Rs.796/- and H.R.A. Rs.90/-. Thus if we consider the oral and documentary evidence then though the claimants have claimed that the deceased was 35 years of age, they failed to produce evidence in respect of date of birth of the deceased. The Tribunal has considered the age of the deceased as 40 years for the purpose of assessment of compensation and applied the multiplier of 12 to assess pecuniary loss. In the postmortem certificate of death produced at Exhibit-12, the age of deceased shown as 35 years. Similarly in inquest panchanama, the age of deceased has been recorded as 35 years. In absence of proof of date of birth and exact age of deceased produced by the appellants-claimants, the age of deceased shown in certificate of postmortem report and inquest panchanama should have been relied by the Tribunal.

14. In the case of ***National Insurance Company Limited V/s Pranay Sethi and others*** reported in ***(2017)16 SCC 680,*** the Hon'ble Apex Court has laid down the broad guidelines to be followed in determination of compensation by the Tribunal, which reads as under :-

> "**59.** In view of the aforesaid analysis, we proceed to record our conclusions:
>
> > **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.
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> **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.
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> **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."

15. The multiplier of 16 deserves to be applied in the facts and circumstances of case for the purpose of assessing the compensation. Since the deceased was in the permanent employment of Zilla Parishad, Beed, while determining the compensation, the addition of 50% of actual salary to the income of deceased to be made towards future

prospects of deceased. As all the four claimants were dependent on the income of the deceased, the deduction to the extent of 1/4th required to be made from monthly/early income of deceased towards personal expenses of deceased.

16. In the case of **National Insurance Company Limited V/s *Pranay Sethi (supra),*** the Hon'ble Apex Court has provided for *lum-sum* payment of Rs.70,000/- under the conventional head such as loss of estate, loss of consortium, funeral expenses etc. with periodical revision after every three years by enhancing said amount by 10%. Considering the facts of the present case that accidental death of deceased occurred in the year 1991, I am of the view, the amount of Rs.35,000/- deserves to be awarded under the conventional head such as loss of love and affection, consortium, funeral expenses, loss of estate

etc. be paid to the appellants.

17. In view of above, the the reasonable compensation to be payable to the appellants - claimants worked out as under:-

Sr. No.	**Heads**	**Compensation awarded**
1.	Monthly Income of deceased	Rs.2,450/-
2.	Annual Income of deceased (2450 X 12)	Rs.29,400/-
3.	Addition towards future prospects (i.e. 50% of 29400)	Rs.14,700/-
4.	Yearly loss of income to be considered for assessment (29400+ 14700)	Rs.44,100)
5.	Deduction towards personal expenses of deceased (i.e. 1/4th) (44100-11025)	Rs.33,075/-
6.	Multiplier to be applied (33075 X 16)	Rs.5,29,200/-
7.	Compensation under conventional heads such as loss of love and affection, consortium, funeral expenses and loss of estate etc.	Rs.35,000/-
8.	Total compensation to be awarded	Rs.5,64,200/-

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

ORDER

(i) The appeal is partly allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,05,000/- to Rs.5,64,200/- (inclusive of no fault liability) with interest @7% p.a. from the date of application till its realization with costs of proceedings making the respondents liable to pay the compensation jointly and severally.

(iii) The amount if any deposited and paid in terms of award passed by the Tribunal to be adjusted towards the compensation to be payable in terms of modified award.

(iv) The deficit court fees shall be paid by the appellants-claimants in terms of modified award.

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

(vi) The award be drawn accordingly.

[V.L. ACHLIYA]
JUDGE

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