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

FIRST APPEAL NO.466 OF 2009

. Sau. Lata Shamkant Bagade
Age : 42 years, Occ : Household,
R/o Chasnali, Tq. Kopergaon,
Dist. Ahmednagar.

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

VERSUS

1. Karmjit Kaur W/o Dilbar Singh
R/o C5/19/31/Sector No.3,
C.B.D. Belapur Navi Mumbai
Dist. Thane (Maharashtra)

2. Branch manager,
The New India Assurance Co. Ltd.,
Branch Shrirampur, Dr. Chatuphale Marge,
Tq. Shrirampur, Dist. Ahmednagar.

**.. RESPONDENTS
(ORIGINAL OPPONENTS)**

...

Mr.N.C. Garud, Advocate for the appellant.
Mr.V.R. Mundada, Advocate for respondent No.2.

...

CORAM : V.L. ACHLIYA, J.

**RESERVED ON : 28.11.2019
PRONOUNCED ON : 24.07.2020**

JUDGMENT:

. Being aggrieved by the impugned judgment and award dated 06.09.2008 passed by learned Member, Motor Accident Claims Tribunal, Shrirampur in Motor Accident Claims Petition No.85/2006, the appellant (original claimant) has 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 appellant and learned counsel representing respondent no.2. Perused the record and proceedings.

4. In view of the challenge raised in appeal confines to quantum of compensation, it is not necessary to deal with the aspects other than quantum of compensation awarded by the Tribunal. The appellant-claimant along with her deceased husband filed application

U/Sec. 166 of the Motor Vehicle Act, 1988 (Hereinafter referred to as "the M.V. Act) seeking compensation of Rs.5,00,000/- on account of accidental death of her son Nitin Shamkant Bagade (hereinafter referred to as "deceased") who died on 21.02.2006 in an accident occurred at about 8.30 p.m. on Nagar-Manmad Road near village Pimpalas within the jurisdiction of Police Station Rahata, Dist. Ahmednagar. At the time of accident, the deceased was claimed to be proceeding on motorcycle bearing No.MH-17 U-1131 as pillion rider and Sunil Vithalrao Dive, the maternal uncle of the deceased was driving said motorcycle. The offending vehicle i.e. the truck bearing registration No.MH-04-BV-0658 owned by respondent no.1 and insured with respondent no.2 alleged to have given dash to said motorcycle, which resulted into instant death of deceased. According to the claimants, the accident was due to sole negligence and fault on the part of Pargat Sing Mohan Singh-the driver of truck. He was charge-sheeted for committing offences punishable U/Sec. 304-A, 279, 337, 338, 427 of the Indian Penal Code for causing accidental death of the deceased.

5. The claimants have claimed that the deceased was only male person in the their family to look after the claimants. At the time of accident, the deceased was aged 17 years and studying in 10th standard. The deceased was desirous to join the I.T.I. after passing 10th standard examination. He had planed to undergo course in Tools and Diamaker conducted by I.T.I. After passing I.T.I. the deceased was expected to earn Rs.10,000/- to Rs.15000/- per month. On accidental death of deceased the claimants have claimed lumsum compensation of Rs.5,00,000/- as pecuniary and non-pecuniary

damages. They have claimed that the truck involved in accident was owned by the respondent no.1 and insured with respondent no.2.

6. The case proceeded *exparte* against respondent no.1. The respondent no.2 - insurance company resisted the claim petition by filing written statement. The respondent no.2 has denied the entire case of the claimants including accident, involvement of vehicle and death of deceased in accident.

7. During the pendency of claim petition, the husband of claimant no.2 expired and therefore the name of claimant no.1 came to be deleted. In order to prove her case, the appellant has examined herself as PW-1 and deposed as per facts pleaded in the petition.

8. The tribunal has partly allowed the claim application and awarded the compensation of Rs.1,52,000/- (inclusive of N.F.L.) making the respondent nos.1 and 2 jointly and severally liable to pay the compensation. Being aggrieved, the appellant-original claimant no.2 has preferred this appeal.

9. Learned counsel for the appellant assailed the reasons and findings recorded by the Tribunal with contention that the Tribunal has erred in considering the notional income of deceased as Rs.15,000/- per year. It is submitted that tribunal ought to have considered the notional income of deceased as Rs.3000/- per month and should have applied the multiplier of 18 in assessment of compensation. It is submitted that considering the overall facts of the case and evidence adduced, the Tribunal ought

to have awarded Rs.6,48,000/- as compensation payable to claimants. In support of submissions advanced learned counsel has relied upon following rulings : -

(i)***Munuswamy and others V/s Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd.,*** reported in ***2018(4) Mh.L.J. 543.***

(ii) The judgment and order dated 15.05.2009 in the case of ***R.K. Malik & Anr. V/s Kiran Pal and others*** **in Civil Appeal No.3609/2009 and Civil Appeal No.3607/2007.**

(iii) Judgment and order dated 15.02.2018 passed by the Madras High Court in the case of S. Sumathi V/s G. Anbalagan and others in C.M.A. No.1323/2017 and C.M.P. No.2420/2017

(iv) The judgment and order dated 09.01.2017 passed by the Madras High Court in the case of The General Manager, Tamil Nadu State Transportation V/s J. James C.M.A.

(MD) No.1434/2016 and C.M.P. (MD) No.11937/2016.

10. On the other hand, learned counsel for the respondent no.2 - insurance company supported the judgment and award passed by the Tribunal. It is submitted that the reasons and findings recorded by Tribunal are in consonance with the rival pleadings and evidence adduced in the case. It is submitted that there is absolutely no perversity in any of the reasons and findings recorded by the Tribunal so as to call for interference in exercise of appellate jurisdiction of this Court. It is pointed out that in the cross-examination, the claimant (PW-1) has admitted that her deceased son failed in 10th standard and deceased was not her only son. She has admitted that beside deceased, she has one son and daughter and both of them are married. She has further deposed that her son is working as a teacher.

11. I have carefully considered the submissions advanced by learned counsel in the light of rival pleading and evidence adduced in case as well as reasons and findings recorded by tribunal. The tribunal has awarded the compensation of Rs.1,52,000/- by considering the notional income of the deceased as Rs.15,000/- per month and applied the multiplier of 15 by considering the age as 17 years. The Tribunal has determined the compensation on the basis of structured formula provided in Schedule-II of Section 163-A of the M.V. Act. The Tribunal has observed that the claimants have failed to adduce any evidence to prove the income of the deceased as well as age. The tribunal has considered the age of deceased as 16-17 years and applied the multiplier of 15 as applicable to persons below 18 years. By treating the deceased as non-earning person

considered his notional income as Rs.15,000/- per year. By making deduction to the extent of 1/3rd towards the personal expenses from the notional income of deceased, the tribunal has assessed the monitory loss of income as Rs.1,50,000/- (15,000/- - 5000/- = 10,000/- X 15 = Rs.1,50,000/-) and further awarded sum of Rs.2,000/- towards funeral expenses.

12. The submissions advanced by learned counsel for the appellant are totally absurd. There is no specific pleadings in the petition as to age and income of deceased. So also no grounds raised to that effect in appeal. Although the claimants have claimed that the deceased was studying in 10th standard, they have not mentioned the date of birth of deceased in the Petition. So also no documentary evidence adduced to show the exact age and educational qualification of deceased. In the claim petition, the deceased

was claimed to be aged 17 years. At no point of time, the claimants have claimed the notional income of the deceased as Rs.3,000/- per month. If the deceased has failed in 10^{th} standard then certainly the evidence was available in respect of age of the deceased. For the reason best known to them, they have with held that evidence. In the cross-examination, the claimant/appellant has admitted that the deceased had failed in 10^{th} standard examination.

13. In claim application as well as affidavit by way of examination-in-chief filed by the claimant, the deliberate attempt has been made to pretend that the deceased was the only son of the claimant and his death resulted in taking away their support in old age. In cross-examination, claimant/PW-1 has admitted that she is having one son who is serving as a teacher and one

daughter. Both of them are married.

14. Thus considering the overall facts of the case, the pleadings and evidence adduced in the case, the reasons and findings recorded by the Tribunal cannot be termed as perverse. There is no evidence to show that the deceased was earning person. In fact, it is the case of the claimants themselves that the deceased was student and desirous to join ITI course. In cross-examination, the claimant has admitted that her son has failed in 10^{th} standard examination. In that view, he was not qualified to join I.T.I. course. There is no evidence to show that the deceased was bright student and very good future prospects, so as to assess the income of the deceased Rs.3000/- per month. Deceased was not only son of the claimant. The claimant has admitted in cross-examination that she is having one son and one daughter

and both of them are married. The son of the appellant/claimant is working as a Assistant Teacher. In that view the compensation awarded by the Tribunal by considering the notional income of the deceased as non-earning person as Rs.15,000/- per year cannot said to be totally improper and contrary to law.

15. The rulings as referred and relied by learned counsel for the appellant are clearly distinguishable on facts of the present case. It has been brought through cross-examination appellant-claimant that the deceased has failed in 10^{th} standard examination and he was even not qualified to secure admission to undergo I.T.I. course. There is absolutely no evidence to establish that deceased had bright future.

16. There appears to be mistake on the

part of Tribunal in assessment of compensation. Since the petition filed by the claimant being U/Sec. 166 of M.V. Act, the Tribunal should have followed the procedure as applicable for assessment of compensation to applicable to petition filed U/Sec. 166 of the M.V. Act and not U/sec. 163A of the M.V. Act. The tribunal should not have been selected multiplier as provided under Second Schedule to Motor Vehicle Act. The multiplier ought to have been selected on the basis of age of the deceased in terms of the Constitutional Bench judgment in the case of **National Insurance Company Limited V/s Pranay Sethi and others** reported in **2017(16)SCC 680.** Considering the age of the deceased as 17 years, the multiplier of 18 ought to have been applied by the Tribunal in assessing the compensation. Similarly tribunal has erred in making deduction and awarding compensation as per structured formula given under section

163A of the M.V. Act though the petition was filed U/Sec. 166 of the M.V. Act.

17. Thus considering the overall facts of the case and the evidence adduced in the case, the notional income of the deceased to be considered as Rs.2,000/- per month as wages payable to the daily wage earner working on daily wage as per prevailing minimum wage payable in the year 2006. Thus considering the notional income of the deceased as Rs.2,000/- per month, the yearly income of deceased worked out as Rs.24,000/- per month. In terms of broad guidelines laid down by the Apex Court in the case of **National Insurance Company Limited V/s Pranay Sethi and others (supra),** the income to the extent of 50% deserves to be deducted towards personal expenses of the deceased as deceased was bachelor. In that view, the yearly loss of income on account of accidental death of

deceased to claimants worked out as Rs.12,000/- per year. Thus applying the multiplier of 18 as applicable to the victim/ deceased in the age group of 15 to 20 years, the total loss of income to the claimants on account of accidental death of deceased worked out as Rs.2,16,000/-. Besides the loss of income, the claimants deserves reasonable compensation towards non-pecuniary damages i.e. towards funeral expenses, loss of estate, consortium etc. In the facts and circumstances of the case, the award of Rs.24,000/- towards non-pecuniary damages would met the ends of justice. Thus, the total compensation to be payable by respondents to the claimants worked out as Rs.2,40,000/-.

18. Since the deceased was neither in permanent employment nor self-employed or fixed salaried person no income deserves to

be added towards future prospects.

19. In view of the above, the appeal deserves to be partly allowed. Accordingly, the appeal is partly allowed. The compensation awarded by the Tribunal as Rs.1,52,000/- (inclusive of N.F.L.) enhanced to Rs.2,40,000/- (inclusive of N.F.L.). The amount of Rs.1,52,000/- paid to the claimant to be adjusted in the amount to be payable in terms of modified award. The balance amount due and payable in terms of modified award shall be paid to appellant/claimant with interest @ 7.5% p.a. from the date of petition till its realization with proportionate costs. The appeal is disposed of in above terms. The modified award be drawn in above terms.

[V.L.ACHLIYA]
JUDGE

SGA