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

FIRST APPEAL NO.199 OF 2019

1. Smt. Sonali W/o Gajanan Putthewad
Age : 23 years, Occ : Household,

2. Satish S/o Gajanan Putthewad,
Age : 8 years, Occ : Nil,
Minor U/g of his natural mother
Smt. Sonali W/o Gajanan Putthewad

3. Suryakant S/o Digamber Putthewad
Age : 57 years, Occ : Service,

4. Sow. Priyanka W/o Suryakant Putthewad
Age : 26 years, Occ : Household (Step Mother),
All R/o Digras, Tq. Udgir, Dist. Latur.

..**APPELLANTS**

VERSUS

1. Sham S/o Vishwanathappa Gudale,
Age : 37 years, Occ : Agriculture,
R/o Her, Tq. Udgir, Dist. Latur.

2. Avinath S/o Murlidhar Belkunde
Age : Major, Occ : Business,
R/o Waigaon, Post. Karadkhel,
Tq. Udgir, Dist. Latur.

3. Bajaj Allianz General Insurance
Company Ltd., through its Br. Manager,
Navandar Arcade, Opposite Market Yard,
Gat No.2, Latur, Tq. & Dist. Latur.

..**RESPONDENTS**

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Mr.Ram Shinde, Advocate for appellants.
Mr.R.P. Adgaonkar, Advocate for respondent no.2
Mr.S.G. Chapalgaonkar, Advocate for respondent no.3

CORAM: V.L. ACHLIYA, J.
DATED : 26.02.2020

JUDGMENT:

. Being aggrieved and dissatisfied by the judgment and award dated 18.04.2018 passed by the learned Member, Motor Accident Claims Tribunal, Udgir in M.A.C.P. No.14/2017, 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 nos.2 and 3. Respondent no.1 though served absent. Perused the Record and Proceedings.

3. In view of challenge raised in appeal confines to quantum of compensation, it is not required to discuss the facts of case in detail. The appellants-claimants herein had filed application under section

166 of the Motor Vehicles Act, 1988 (Hereinafter referred to as “the M.V. Act”) seeking compensation of Rs.44,00,000/- on account of accidental death of deceased Gajanan Suryakant Putthewad, who died in motor vehicle accident occurred on 27.02.2017. The appellants-claimants are the legal heirs of deceased Gajanan. The appellant -claimant no.1 is the wife of deceased. The appellant – claimant no.2 is the son of deceased. The appellant – claimant no.3 is the father of deceased. The appellant – claimant no.4 claimed to be step-mother of deceased. The claimants have approached with the case that deceased Gajanan was 26 years old. In the year 2010, he has passed diploma in Agricultural Technology conducted by Marathwada Agriculture University, Parbhani. In the year 2013, he has completed Diploma in Teacher Education (D.T.Ed.). He was belonging to schedule tribe. He had bright future. The

deceased was running Chaitanya Coaching Classes at Udgir. He was also taking home tuition of primary school going students. He was earning Rs.15,000/- per month and spending entire income over his family. The claimants have claimed that they were fully dependent upon the income of deceased. On account of accidental death of the deceased, the claimants have claimed compensation of Rs.44,00,000/-, which includes Rs.33,73,000/- as loss of income and balance amount has been claimed towards loss of consortium, love and affection and funeral expenses.

4. The Respondent Nos.1 and 2 have contested the claim application and denied liability to pay the compensation. They have denied the accident and liability to pay compensation. They have also denied the age, occupation and income of the deceased as claimed in the application. Similarly,

respondent no.3 – insurance company also denied its liability to pay compensation. Respondent no.3 also denied the case as put-forth by the claimants as to age, income and occupation of the deceased.

5. In order to prove their case, the claimants have examined Smt. Sonali i.e. claimant no.1 and Suryakant i.e. claimant no.3 father of deceased. On due consideration of rival pleadings, the evidence adduced in the case, the Tribunal has partly allowed the application and awarded the compensation of Rs.7,20,800/- (inclusive of no fault liability amount of Rs.50,000/-) with future interest @ 9% p.a. from the date of application till its realization payable by respondents to claimants making them to pay the same jointly and severally. Being aggrieved, the appellants – claimants have preferred this appeal seeking enhancement of

compensation.

6. The learned counsel for the appellants assailed the judgment and award passed by the Tribunal with contention that the evidence as adduced in the case has not been considered in proper perspective. The Tribunal has failed to consider the evidence adduced by the claimants to prove that the deceased was self employed person and earning Rs.15,000/- per month. The Tribunal has failed to consider that the deceased was qualified person and holding Diploma in Teacher Education and belonging to scheduled tribe. He had good prospects to secure employment in near future. While assessing the compensation the Tribunal has ignored the future prospects of deceased. It is contended that the Tribunal has erred in assessing compensation by notionally considering the income of deceased as Rs.4,800/- per month by

overlooking the evidence brought on record proving that deceased was self employed and earning Rs.15,000/- per month.

7. On the other hand, the learned counsel for the respondents supported the judgment and award passed by the Tribunal. It is submitted that the judgment and award passed by the Tribunal is in consonance with the pleadings and evidence on record and there is absolutely no perversity in any of the reasons and findings recorded by the Tribunal. It is submitted that the appellants have made highly exaggerated claim. By no stretch of imagination, the appellants are entitled for compensation as claimed in application. By referring to overall facts of the case, the learned counsel submitted that the appellants – claimant nos.3 and 4 were not dependent on deceased and they are not entitle to receive any compensation. The

appellant no.3 – claimant no.3 is serving in Maharashtra State Electricity Board as Operator. He was drawing more than Rs.40,000/- per month as salary. In cross examination appellant no.3 has admitted that at the time of accident, he was driving motor cycle and equally responsible for the accidental death of his son. He has admitted in his cross-examination that his entire family depend upon his income. He has also admitted that his son was not paying professional tax, income tax nor he had any bank account. The claimant no.1, who stepped into witness box also admitted in her cross-examination that her husband was not employed. She has admitted in her cross-examination that there is no licence obtained to run the coaching classes by her husband. In this background, it is contended that the Tribunal has rightly determined the compensation by notionally considering his income as Rs.4,800/- per month as an educated unemployed person. It is submitted that the deceased was neither in permanent employment nor self employed person so as to receive compensation towards future prospects.

8. I have carefully considered the reasons and findings recorded by the Tribunal in assessing the compensation in the light of rival pleadings, oral and documentary evidence adduced in the case and submissions advanced. Although the claimants have approached with the case that the deceased was earning Rs.15,000/- per month by running coaching class and home tuition but except the oral testimony of PW-1 and PW-2, there is absolutely no evidence to prove the occupation and income of the deceased as claimed by the claimants. There is absolutely no iota of evidence to prove the fact that the deceased was self employed person and

earning Rs.15,000/- per month.

9. The claimants have examined the claimant nos.1 and 3 to prove the income of the deceased. Smt.Sonali (PW-1), the wife of deceased was examined as PW-1. She has stated that the deceased was her husband. He was 36 years of age and has passed diploma course from Marathwada Agriculture University and later on passed Diploma in Teacher Education. She has deposed that her husband had good chances to secure Government employment as her husband was belonging to scheduled tribe and secured caste validity certificate from the competent authority. She has deposed that her husband was running Chaitanya Coaching Classes and also taking home tuition. She has deposed that her husband was earning Rs.15,000/- per month.

10. In the cross-examination, PW-1 has

admitted that at the time of accident her husband was unemployed. She has further admitted that she has produced no document to show that her husband was running coaching classes. She has also admitted that she has produced no document to prove that her husband was earning Rs.15,000/- per month. She has deposed that she is unable to state as to whether her husband was paying income tax or professional tax.

11. The claimants have examined Suryakant Digamber Puthewad (PW-2), the claimant no.3-father of the deceased. In cross-examination, the witness has admitted that he is serving in Maharashtra State Electricity Board as Operator and drawing monthly salary of Rs.40,000/-. He has admitted no documentary evidence produced to prove the income of the deceased. He has admitted that he was equally responsible for

the accident. He has admitted that his family is dependent upon him and his deceased son was not paying income tax and professional tax nor he had opened bank account.

12. In the light of evidence on record, the Tribunal has reached to the conclusion that the claimants have failed to prove the income of the deceased as Rs.15,000/- per month. In absence of any cogent and convincing evidence adduced to prove the income of deceased as Rs.15,000/- per month, the Tribunal has considered the notional income of deceased as Rs.4,800/- per month in assessing the compensation. Accordingly, assessed the monitory loss to the tune of Rs.6,52,000/- and further awarded Rs.70,000/- under conventional head such as consortium, loss of estate and funeral expenses and thereby assessed the compensation to be payable as Rs.7,22,800/-.

13. The reasons and findings recorded by the Tribunal as to the assessment of compensation as made in paras 12 and 13 read as under:-

> "12. C.W. 2 Suryakant specifically admitted in his cross-examination that deceased Gajanan was unemployed at the time of accident and he was not earning any amount. So also C.W. 1 admitted in her cross-examination that at the time of accident her husband was unemployed and she has not filed licence of coaching class, therefore it appears on record that claimants have failed to prove income of the deceased Gajanan was Rs.15,000/- per month at the time of accident. Hence in absence of any cogent and reliable evidence about the income of the deceased, I consider his notional income of Rs.4,800/- per month. It also appears on record that claimant No.3 Suryakant is serving in M.S.E.B. department and his salary is Rs.40,000/- per month and claimant no.4 Priyanka is wie of Suryakant, therefore claimant Nos.3 and 4 were not depending upon the income of the deceased. Hence considering this fact 1/3rd amount i.e. Rs.1,600/- from Rs.4,800/- = Rs.3,200/- is loss of income per month. Thus his annual loss of income would be (Rs.3,200 X 12) = 38,400/-. At the time of accident, age of deceased Gajanan was 26 years. His School Leaving Certificate shows date of birth of deceased Gajanan was 31-05-1990. Therefore at the time of accident his

> age was 27 years. For the age group of 26-30 multiplier is "17". As per **Sarla Verma (Smt.) and others V. Delhi Transport Corporation and Another (2009) 6 SCC 121,** for the age group of 26-30 years multiplier to be adopted is "17". Adopting the multiplier of "17" loss of dependency is calculated at Rs.6,52,800/- (3200 X 12 X 17).
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> 13. As per the decision of the Constitution Bench in **National Insurance Company Limited V. Pranay Sethi and Others 2017 (13) SCALE 12,** compensation of Rs.40,000/- towards consortium, Rs.15,000/- for loss of estate and Rs.15,000/- or funeral expenses. Thus claimants are entitled to get total compensation of Rs.7,22,800/- on all counts from the respondents with interest at the rate of 9% per annum from the date of petition till realisation of the entire amount from respondents jointly and severally."

14. On consideration of the above quoted reasons and findings recorded by the Tribunal, I am of the view that the Tribunal has duly considered the guidelines laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Limited V/s Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** while assessing the compensation. Except

the notional income of the deceased and future prospects of deceased no other arguable question falls for consideration. Selection of multiplier of 17 by considering the age of the deceased as 27 is in tune with the decision in the case of ***National Insurance Company Limited V/s Pranay Sethi and others(supra).*** Similarly, the deduction made to the extent of 1/3rd towards personal expenses of the deceased also in tune with the said guidelines laid down by Apex Court. The claimant nos.3 and 4 cannot be termed as dependent upon the income of the deceased as it has been brought on record that the claimant no.3 was working with M.S.E.B. as a Operator and drawing salary of Rs.40,000/- per month. Claimant no.4 is the wife of claimant no.3. In that view, the dependency of the deceased being less than 4 persons, the Tribunal fully justified in deducting the amount to the extent of 1/3rd from the notional income of the deceased towards personal expenses of deceased. Similarly, the award of compensation under the conventional heads is in tune with the guidelines laid down by the Apex Court in the case of ***National Insurance Company Limited V/s Pranay Sethi and others(supra).***

15. In brief, it is the contention of appellants that the Tribunal has erred in assessing the notional income of the deceased as Rs.4,800/- per month. It is contended that the status of the deceased as a qualified person and prospects to secure the job in future not considered by the Tribunal. It is contended that the Tribunal ought to have added amount to the extent of 50% to notional income of the deceased towards future prospects.

16. On the contrary, the learned counsel for the respondent no.3 – insurance company

supported the judgment and award passed by the Tribunal. It is pointed out that both the witnesses examined by the claimants have admitted in their cross-examination that the deceased was unemployed at the time of accident. By referring the decision in the case of ***National Insurance Company Limited V/s Pranay Sethi and others(supra),*** the learned counsel pointed out that as per the guidelines laid down the addition to income of deceased on the count of future prospects can be considered if the deceased had a permanent job or self employed or fixed salaried person. It is submitted that the deceased was neither in permanent employment/job or self employed/fixed salaried person. He was unemployed person. In that view no income to be added to notional income of deceased towards future prospects.

17. In my view, the Tribunal was fully justified in holding that the claimants have

failed to prove the occupation as well as income of the deceased. No cogent and convincing evidence has been adduced to accept the case of claimants that the deceased was self employed person and earning Rs.15,000/- per month by running the coaching classes and taking private tuitions. Both the witnesses have admitted in cross-examination that the deceased was unemployed. He was neither paying income tax nor paying professional tax. They have admitted that the deceased had no licence to run coaching classes. Not a single independent person examined to prove the income and occupation of the deceased. In that view the Tribunal was fully justified in assessing the compensation on the basis of notional income of deceased.

18. There is no merit in the submission of the learned counsel for the appellants that the Tribunal has erred in overlooking

the future prospects of deceased. The guidelines laid down by the Apex Court in the case of ***National Insurance Company Limited V/s Pranay Sethi and others(supra)*** clearly spell out that the aspect of future prospects and addition of income to existing income of deceased to be considered if the victim had permanent job or self employed or fixed salaried person. In the case in hand, the deceased was neither in permanent employment nor self employed or fixed salaried person. In that view, the claimants are not entitled to claim addition to income to the extent of 50% in the monthly income of the deceased towards future prospects. The deceased was unemployed person. In that view, no income to be added to notional income of deceased towards future prospects.

19. I am of the view, the compensation assessed by the Tribunal requires to be partially reassessed and quantum awarded by

Tribunal to be enhanced. The deceased was young and educated person. The copy of mark-sheet produced on record as Exhibit-47 establishes that the deceased had passed the second year of diploma course in agricultural technology in the year 2010 and further passed D.T.Ed. Certificate examination in the year 2013. The certificate of Caste Validity produced on record as Exhibit-46 prima facie establishes that the deceased was schedule tribe. In that view, the deceased deserves to be treated as educated unemployed person. The deceased died in the year 2017. In that view, the case of the appellants deserves to be considered on better footing than that of on daily wagers, or persons drawing minimum wages. Thus considering the age, educational qualification of deceased the notional income of deceased assessed by the Tribunal as Rs.4,800/- appears to be on lower side. Considering the overall facts of the case, the age and qualification of deceased and employment opportunity in future, the notional income of the deceased deserves to be considered as Rs.7,500/- per month.

20. Thus considering the notional income of the deceased as Rs.7500/- per month and allowing the deduction to the extent of 1/3rd towards personal expenses from the notional income of the deceased and applying the multiplier of 17, the compensation payable to claimants reassessed and worked out as under :-

Sr. No.	**Heads**	**Compensation awarded**
1.	Monthly Income of deceased	Rs.7500/-
2.	Deduction towards personal expenses of deceased (i.e. 1/3rd)	Rs.2,500/-
3.	Net yearly income of deceased (Rs.5000 X 12)	Rs.60,000/-
4.	Multiplier to be applied (60,000 X 17)	Rs.10,20,000/-
5.	Compensation under conventional heads such as loss of love and affection, consortium, funeral expenses and loss of estate etc.	Rs.70,000/-
6.	Total compensation to be awarded	Rs.10,90,000/-

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

ORDER

(i) The appeal is partly allowed.

(ii) The award passed by Tribunal is modified. The compensation awarded by the Tribunal is enhanced from Rs.7,22,800/- to Rs.10,90,000/- (inclusive of no fault liability) with interest @9% p.a. from the date of application till its realization with proportionate 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 appeal is partly allowed and disposed of in above terms.

(v) The modified award be drawn accordingly.

[V.L. ACHLIYA]
JUDGE

SGA