IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.139 OF 2012
WITH
CROSS OBJECTION STAMP NO.25581 OF 2019
IN
FIRST APPEAL NO.139 OF 2012

National Insurance Company
Mumbai Regional Office No.II
4th Floor, Sterling Cinema Building
65, Murzban Street, Fort,
Mumbai 400 001. … Appellant.

V/s.

1.Suresh Narayan Khopar
Aged about 58 years …

2.Mrs. Seema Suresh Kopkar
Aged about 48 years
Both R/at Prabhat Kriyashil Society
Flat No.21, Mahakali Nag Road,
Mulund (E), Mumbai 400 081 …

3.Mr.Rashid Bakshir Shaikh
29/3, Gayatri Nagar, Naigaon
At & Post – Bhiwandi,
Tal. Bhiwandi … Respondents.

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant.
Mr.T.J.Mendon for Respondent Nos.1 and 2.

CORAM : V.G. BISHT, J.

DATE : 21ST JANUARY, 2020.

JUDGMENT:

1. Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith. By consent of the parties the Appeal is taken up for final hearing. Mr.Mendon, learned counsel waives service on behalf of Respondent Nos.1 and 2.

3. This appeal and cross objection arise from the judgment and order of the learned Member, Motor Accidents Claims Tribunal, Thane passed in M.A.C. Petition No.24 of 2008 on 12th September, 2011.

4. The brief facts of the case are that on 6th September, 2007 the deceased was plying her scooter bearing registration No.MH-03/AL-3779 and was proceeding towards Mumbai from Thane. When the said scooter came near the Electric BEST Pole No.15, one motor truck bearing registration No.MH-04/CP-7455 came from behind in a very fast speed rashly and negligently and gave forcible dash from behind to the scooter and due to said impact, the deceased was knocked down on the road and sustained serious fatal injuries. Later on, she succumbed to her injuries.

5. The claimants, who are parents, contend that at the time of death their daughter was in service and drawing

salary of Rs.30,000/- per month. The appellant-Insurance company contested the case before the Tribunal. The respondents-cross objectors before the Tribunal examined mother of the deceased, namely, Seema Suresh Kopkar - C.W.1 and C.W.2 - Chirag Shashikant Trivedi, on behalf of the deceased's employer. The Insurance company, however, examined, none.

6. On appreciation of material before it, the Tribunal allowed the claim petition awarding compensation of Rs.23,60,000/- with interest at the rate of 7% per annum from the date of application till realization. There against, the appellant-Insurance company preferred the present appeal and the respondents-cross objectors sought enhancement of the compensation.

7. Mr.Mehta, learned counsel for the Insurance Company, invited my attention to the cross examination of C.W.2 and submitted that learned Member failed to appreciate the income of the deceased in proper perspective. Learned counsel also invited my attention to the salary chart and emphasized that since salary was variable, it was

wrong on the part of learned Member to hold salary of Rs.20,000/- per month. Therefore, the impugned judgment and award being erroneous needs to be set aside. Learned counsel has also given a sheet of calculation carried out by him and according to him at the most, learned Member could have awarded a sum of Rs.9,76,000/- and not beyond that.

8. Mr.Mendon, learned counsel for the claimants-Respondent Nos.1 and 2, on the other hand, submitted that salary of the deceased was not properly taken into consideration by the learned Member. The learned Member ought to have taken into consideration salary of the deceased at the time of the accident. Similarly, according to learned counsel the learned Member wrongly applied multiplier of "13" instead of "18" and also failed to award future prospects, consortium etc. Learned counsel placed reliance in *National Insurance Co. Ltd. vs. Pranay Sethi and Others 2017 ACJ 2700;* and *Magma General Insurance Co. Ltd. vs. Nanu Ram and Others, 2018 ACJ 2782.*

9. I have considered the rival submissions.

10. The factum of accident resulting in death of the deceased, age and occupation are not in dispute. All that I am required to look into and decide is the income of deceased, appropriate application of multiplier, future prospects and consortium.

11. According to C.W.1 - Smt.Seema Suresh Kopkar (Ex.23), mother of deceased, Rohini was 24 years old at the time of accident. She was serving in WNS Global Services Pvt. Ltd. and used to earn an amount of Rs.25,000 to Rs.30,000/- per month. In support of her version, the claimants also examined C.W.2 - Chirag Shashikant Trivedi working as an Assistant Manager in Pay-Roll Department of WNS Global Services Pvt. Ltd.

12. C.W.2 stated in his evidence (Exhibit-44) that Ms.Rohini Suresh Kopkar was appointed on 6th January, 2006 as a Senior Customer Service Associate. Prior to her death in the motor accident occurred on 6th September, 2007, her monthly salary for the month of August 2007 was Rs.20,575/-. His evidence then shows that for the month of April 2007 deceased earned Rs.33,523/- and for the month of July 2007

deceased earned Rs.27,851/-. She used to get incentive on monthly basis based on her monthly performance and also used to be paid loyalty bonus schemes quarterly as and when applicable.

13. Then there is salary sheet which was pointed out by learned counsel for the appellant during the course of arguments which clearly shows variable salary for the month of April 2007 to August 2007. It may be noted that C.W.2 has clarified in his evidence that the deceased used to get incentive on monthly basis based on her performance and for this reason only salary was variable. The learned Member after considering evidence of C.W.2 came to conclusion that salary of Rs.20,000/- per month should be taken for all purposes. According to learned counsel for the appellant, it should not have been more than Rs.17,000/- per month whereas according to learned counsel for the respondent the last drawn salary should have been taken into consideration by the learned Member.

14. I have already pointed out that nature of salary was variable depending on the incentives earned by the deceased

on monthly basis. I agree with the learned counsel for the respondents that the last drawn salary for the month of August 2007 should have been reckoned for all purposes. More so, when the accident took place on 6th September, 2007. Thus, the last drawn salary for the month of August 2007 was Rs.20,575/-. Therefore, the total annual gross income would be Rs.20,575 x 12 = Rs.2,46,900/-.

15. Next step is the deduction on account of living and personal expenses of the deceased. In *Smt.Sarla Verma & Ors. vs. Delhi Transport Corporation and Anr. AIR 2009 SC 3104* the Hon'ble Apex Court at paragraph 15 held that "Where the deceased was a bachelor and the claimants are parents, the deduction follows a different principle. In regard to bachelors, normally 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself". Therefore, 50% of the amount earned by the deceased is to be deducted for living and personal expenses of the deceased. Thus, loss of dependency would be Rs. 2,46,000 - Rs.1,23,450 = Rs.1,23,450.

16. The claimants have also claimed future prospects.

In National Insurance Co. Ltd. (supra) the Hon'ble Apex Court has laid down that 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 present is a case where the deceased was a permanent employee and was 24 years old at the time of accident. In view of that, the addition should be 50% towards future prospects, which works out to (Rs.1,23,450 divided by 2) Rs.61,725/-. Thus, the total annual loss of dependency would be Rs.1,23,450 + Rs.61,725 = Rs.1,85,175.

17. The next important count is about use of appropriate multiplier vis-a-vis the age of deceased. There is no dispute to the fact that the deceased was 24 years old at the time of her death. In Smt.Sarla Verma (supra) the Hon'ble Apex Court has fixed the multiplier of "18" for the age group in between 21 to 25 years. Here again, the learned Member committed an error while applying the multiplier of "13". In fact, it should have been "18" in the light of pronouncement of decisions in Sarla Verma (supra) and Pranay Sethi (supra). Therefore, the total loss of dependency would Rs.1,85,175 x

18 = Rs.33,33,150.

18. In ***Magma General Insurance Company*** (supra) the Hon'ble Apex Court held that Filial consortium is the right of the parents to compensation in the case of accidental death of a child. In a case where the parents have lost their minor child or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head Filial consortium. Thus, this Court deems it appropriate to award the respondents-parents an amount of Rs.40,000/- each towards Filial consortium. In the light of above mentioned discussion the respondents are entitled to the following amount :

	Heads	Compensation Awarded
(i)	Income	Rs. 2,46,900 p.a.
(ii)	50% of (I) above to be added as future prospects (Rs.2,46,900 + Rs.1,23,450)	Rs. 3,70,350
(iii)	1/2 of (ii) deducted as personal expenses (Rs.3,70,350 – Rs.1,85,175)	Rs. 1,85,175
(iv)	Compensation after multiplier of "18" is applied (Rs.1,85,175 x 18)	Rs. 33,33,150

(v)	Loss of love and affection (Rs.50,000 each)	Rs. 1,00,000
(vi)	Loss of Filial compensation Rs.40,000 each)	Rs. 80,000
(vii)	Funeral and obsequies expenses	Rs. 15,000/-
(vii)	Loss of estate	Rs. 15,000/-
	Total compensation	Rs. 35,43,150

19. Appellant – Insurance Company is directed to pay Rs.35,43,150/- along with interest at the rate of 8% per annum from the date of filing of the Claim Petition till payment, less that already deposited, within a period of eight weeks from the date of receipt of this judgment.

20. In the result,

(i) Appeal is dismissed. No costs.

(ii) Cross objection is allowed to the extent indicated above. Orders accordingly.

(V.G. BISHT, J.)