**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH : NAGPUR**

**First Appeal No.1568/2008**

The New India Assurance Co. Ltd, Amravati,
through its Divisional Manager, Amravati
Tq. and District Amravati. .... Appellant
(Original Respondent no.3)

-Versus-

1] Smt. Mohini Alias Priya Wd/o Sudhirrao Kale,
Aged about 30 years, Occ.-Household Work.

2] Ku. Arya D/o Sudhirrao Kale,
Aged about 7 years, Minor,
thr natural guardian mother,
(**corrected name as per Court's order dated 27-10-2020)**
Ku. Arya d/o Balu Bhuyar,
(adopted daughter)
Age Major, R/o Gadge Nagar, Amravati.

3] Ku. Janvi D/o Sudhirrao Kale,
Aged about 6 years, Minor, thr
natural guardian mother.

4] ~~Shri Pralhad Manikrao Kale~~, (**deleted**)
~~Aged about 75 years, retired~~.

5] Sau. Indira Pralhad Kale,
Aged about 70 years, Household work,
All R/o C/o Mr. Pralhadrao Kale,
Prerna Colony, Radhanagar, Amravati,
Tq. and Dist-Amravati.

6] Krushna s/o Bhagwan Devangan,
Aged about 46 years,
Occu. Driver, R/o-Opp.Power House,
I.T.I. Bhilai, Dist- Durg.

7] Rajesh s/o Gopiram Goyal,
Aged not known, Occu.-Transporter,
R/o.-MIG 1089, MPHB, Bhilai. .... Respondents.

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Ms Archita Sudame, Advocate h/f Shri M.M. Sudame, Advocate for appellant.
Shri P.S. Patil, Advocate for respondent nos. 1 to 5.

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**CORAM : S.M. MODAK, J.**
**DATE :** 11-12-2020.

**JUDGMENT**

Heard learned Advocate Ms Archita Sudame for the appellant/Insurance Company and learned Advocate Shri Patil for respondent nos.1 to 5. Though respondent nos. 6 and 7/driver and owner of the offending vehicle were served, they have not appeared.

2. The only issue involved in this appeal is about the manner of calculation of compensation by the Claims Tribunal, Amravati. According to the Insurance Company, the multiplier of 16 applied by the Claims Tribunal is not correct. Furthermore, it is contended that the manner of doubling the monthly income of the deceased adopted by the Claims Tribunal is also not correct. Whereas, learned Advocate Shri Patil for the claimants fairly admitted that the multiplier ought to have been 15 instead of 16. Though he supported the manner of calculation adopted by the Claims Tribunal instead of that he pointed out that the loss on account of future prospects ought to have been considered. It ought to have been 50%.

3. Furthermore, he submitted that the Claims Tribunal ought to have granted compensation on the head of Loss of Consortium and in the present case the deceased was survived by widow, two daughters and parents. In support of his contention he relied upon the judgment in case of ***Magma General Insurance Co. Ltd vs Nanu Ram and others***, reported in ***2018 ACJ 2782*** and the view expressed therein being adopted by the High Court of Karnataka in case of ***M/s ICICI Lombard General Insurance Company Ltd vs Thippeswamy (D) by Lrs and another***, reported in ***2020(2) All MR (Journal) 58***.

4. In order to counter the submission, it is submitted that the observations in case of ***Magma General Insurance Co. Ltd vs Nanu Ram and

***others*** (supra) are restricted to the facts of that case and if at all compensation under the head Loss of Consortium is to be granted, it should not be Rs.40,000/- per person but, it should be Rs. 40,000/- in lump-sum. The observations made by the Hon'ble Supreme Court in case of ***National Insurance Co. Ltd vs Pranay Sethi and others***, reported in ***2018 All SCR 953*** more particularly in para 59.4 pertaining to the age and percentage of future prospects and para 59.8 more particularly about amount of Rs.40,000/- on account of loss of consortium were pointed out to me.

5. The claimants are the legal representatives of deceased Sudhir. When he was driving motorcycle and reached in front of A.P.M.C. on National Highway No.1 at Murtizapur, truck insured with the appellant gave him a dash and deceased died on the spot. On the point of salary there was evidence of widow and the Chief Administrative Officer of A.D.C. Bank, Amravati-Diwakar Khodkare. There was also documentary evidence. The Claims Tribunal has doubled the income of the deceased from the salary. This manner is objected by the Insurance Company.

## DOUBLING OF INCOME

6. The Claims Tribunal has considered monthly salary income of the deceased as ₹ 4140/-(gross salary ₹ 4260/- minus ₹ 120/- towards profession tax though not specifically mentioned but it might be the way of calculation). The tribunal has doubled this amount and considered Rs.8280/- pm which the deceased might have received at the time of his retirement, while discussing, the tribunal has considered few of the judgments in para no 13, 12 and 15.

7. The insurance company has challenged the method of doubling the income so this Court has to decide whether this method is correct or whether the method of future prospects as finally approved in **Pranay Sethi** need to be

considered. Prior to that the evidence on the point of salary need to be considered.

## EVIDENCE ABOUT SALARY

8. There is oral evidence of widow of the deceased and chief Administrative Officer Shri Khodkare of the A.D.C. Bank, Amravati (in which deceased was working). They have deposed as follows :-

| | | |
|---|---|---|
| a | Widow | Rs.4250/- pm |
| b | Witness | Rs.4339/-pm (at the time of accident) |

9. During chief examination the witness relied upon following documentary evidence :-

| | | |
|---|---|---|
| a | Exh.39 | Letter dated 03-12-2007 giving information about salary from July, 2002 till June, 2022. |
| b | Exh 40 | Chart/table giving those details |

(Exh 40 is signed by witness and it is in typed format)

10. During cross examination by insurance company the witness was shown following documents :-

| | | |
|---|---|---|
| a | Exh 41 | Letter dated 21-10-2002 giving information about salary from July, 2002 till June 2022. |
| b | Exh 42 | Chart/table giving those details. |

11. Exh.42 is computerized print out. Exh.42 is signed by other officer and he was not available and that is why he prepared Exh.40.

12. From both the tables claimants want to show what might have been the income of the deceased and benefits to be received at the time of retirement. These documents were challenged on the ground of forged documents. So also he has not shown the deductions in Exh-42. This witness was recalled. During further chief, witness proved certificate of salary for the month of June, 2002 showing deduction (Exh 50). The details are as follows :-

| | | |
|---|---|---|
| A | Gross Salary | Rs.4260/- |
| B | Deduction including Rs. 120/- towards profession tax. | Rs. 657/-. |

13. Above evidence suggest the salary income of the deceased at the time of retirement in June, 2022. At the time of accident in the year 2002 deceased was of 40 years old. The tribunal has neither accepted this evidence nor expressly rejected it. Instead, the salary income was doubled and Rs. 8280/- (double of Rs. 4140/-) was considered. Roughly it means 50% hike was given by the tribunal. This Court feels neither the evidence described above can be accepted nor the theory of doubling can be accepted. Reason is in the table, encashment of leave salary is described. It will be available only when employee works. Considering all these difficulties Hon'ble Supreme Court has laid down guidelines. This Court feels to go by these guidelines. In case of **Pranay Sethi**'s case, they find place in para No.59.3.

14. There seems the dispute about the age group in which the deceased falls. Learned Advocate Shri Patil has suggested that 50% of the established income should be considered as the deceased falls below the age of 40 years. Whereas according to the appellant, addition of only 25% can be made as the

deceased falls within the age group of 40 to 50 years. For that purpose, the evidence available relating to the age of deceased needs to be considered.

**AGE GROUP**

15. The wife of the deceased has stated the age of her husband as 40 years. The Claims Tribunal in para 15 of the judgment has said that the deceased was 40 years old. No specific documents like birth certificate or school certificate evidencing the age is pointed out to me.

16. Considering the age of deceased as 40 he is entitled to get 30% of the actual salary towards loss of future prospect. An amount of Rs. 4140/- considered by the tribunal is correct. Yearly salary comes to Rs.49680/- (Rs.4140 x 12). So 30% rise comes to Rs. 14904 /-(Rs. 49680 X 30%).

**MULTIPLIER**

17. I do agree that the Claims Tribunal has wrongly applied the multiplier of 16. As per the observations of the Hon'ble Supreme Court in case of ***Sarla Verma and others vs Delhi Transport Corporation and another***, reported in ***2009(4) All MR 429(S.C.)***, the proper multiplier is 15 if, the deceased falls within the group of 36 to 40, so the amount has to be recalculated as per this new multiplier.

**LOSS OF CONSORTIUM**

18. Though, there is a consensus about the grant of compensation under the head Loss of Consortium, there is a dispute as to whether it should be in lump-sum of Rs. 40,000/- or Rs. 40,000/- per person. In case of ***National Insurance Co. Ltd vs Pranay Sethi and others***, (supra), in para 59.8, the Hon'ble Supreme Court has considered Rs. 40,000/- under the head Loss of Consortium. It is important to note that this judgment was delivered on the

basis of reference made. After the issues were decided, individual matters were placed before the appropriate Bench. Whereas, in case of ***Magma General Insurance Co. Ltd vs Nanu Ram and others*** (supra), the Hon'ble Apex Court has granted Rs. 40,000/- each on account of loss of filial consortium. The father and sister of the deceased were the dependents in that case. My attention is invited to the observations made in ***Magma General Insurance Co. Ltd vs Nanu Ram and others*** (supra) that-

> *'The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'loss of consortium' as laid down in Pranay Sethi, 2017 ACJ 2700 (SC)".*

19. My attention is also invited to the judgment delivered by the High Court of Karnataka in case of ***M/s ICICI Lombard General Insurance Company Ltd vs Thippeswamy (D) by Lrs and another***, (supra). It is true that in that case the spouse and children were granted Rs.40,000/- each towards loss of consortium and parents were granted Rs.30,000/- each towards loss of parental affection. The observations in case of ***Magma General Insurance Co. Ltd vs Nanu Ram and others*** (supra) were considered therein. I think that Rs. 40,000/- is to be granted not in lump-sum but individually. Because, while deciding the case of ***National Insurance Co. Ltd vs Pranay Sethi and others***, (supra), the Hon'ble Supreme Court was not deciding the individual matter but, the judgment delivered on a reference made on a question of law pertaining to quantum of compensation. Because, in para 52 of that judgment it has been reiterated that Rs. 40,000/- should be towards the loss of consortium.

20. So we have to understand that it should be per person and not in lump-sum. Because, everyone in the family losses the company and the needs

may be different. These are the general guidelines. So, I think that the wife and two children can be granted Rs. 40,000/- each and the mother can be granted Rs. 30,000/- because, the father is no more. Accordingly, the amount of compensation can be recalculated so the claimants are entitled to the following amount of compensation :-

| Sr.No | Particulars | Amount |
|---|---|---|
| 1 | Yearly Income Rs.4140 x 12 | Rs. 49,680/- |
| 2 | Loss of future prospects 30% | Rs. 14,904/- |
| 3 | Multiplier 15 (Rs.64,384 x 15) | Rs. 9,65,760/- |
| 4 | Loss of consortium to the wife and two daughters Rs.40,000 x 3. | Rs. 1,20,000/- |
| 5 | Loss of consortium to Rs. 30,000/- (mother) | Rs. 30,000/- |
| 6 | Loss of estate. | Rs. 2, 500/- |
| 7 | Loss of funeral expenses. | Rs. 2,000/- |
| | **Total** | Rs. 11,20,260/- |

21. Hence, I pass the following order :-

**<u>O R D E R</u>**

(1) Appeal is partly allowed.

(2) The judgment dated 09-07-2008 passed by the Claims Tribunal, Amravati in M.A.C.P. No.287/2003 is <u>modified as follows</u> :-

(a) The respondent nos. 1, 2 , 3 and 5 are entitled to get an amount of Rs. 11,20,260/- at the rate of 7.5% interest per annum from the date of petition till realization.

(b) The appellant and respondent nos. 6 and 7 are directed to pay that amount to respondent nos. 1, 2, 3 and 5.

(c) The respondent nos. 1, 2 and 3 are entitled to get 80% of the amount in equal share and respondent no.5 shall get 20% of that amount.

(d) The amount coming to the share of respondent nos. 2 and 3 be deposited in any nationalized bank till the time they attain majority and the interest may be credited to the account of Balu Bhuyar for respondent no.2 and to the account of respondent no.1 for respondent no.3.

(3) The parties to bear their own costs.

(S.M. Modak, J.)

*Deshmukh*