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

FIRST APPEAL NO. 1194 OF 2019

National Insurance Company Ltd.
Through its Authorized Official,
Hazari Chamber, Station Road,
Aurangabad … **Appellant**

Versus

1. Tanaji Sitaram Sathe
Age: 50 years, Occu. Nil,
R/o Chorakhali, Tq. Kallam,
Dist. Osmanabad

2. Sow Shobha w/o Tanajirao Sathe
Age: 45 years, Occu. Household,
R/o as above … (Orig. Claimants)

3. M/s Stones,
H.No.140/7, Angod, Mapusa (P.O.),
Bardez North Goa, Goa – 403 507
Owner of Tipper No. GA-03/T-4240

4. Harikesh s/o Shivajirao Jadhav
Age Major, Occ. Agriculture,
R/o Tambri Vibhag, Osmanabad
Owner of Indica Car No.MH-25/R-2151

5. The Branch Manager
United India Insurance Co. Ltd.,
Minakshi Lodge building,
Behind SBI, near S. T. stand, Osmanabad
Insurer of Indica Car No.MH-25/R-2151 … **Respondents**
(Res.no. 1 to 2 are orig. claimants
& Res.no.3 to 5 Orig.res no. 1, 3 & 4)

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Mr. A. S. Usmanpurkar, Advocate for appellant
Mr. R. V. Naiknavare, Advocate for respondent Nos. 1 and 2
Mr. A. B. Gatne, Advocate for respondent No. 5

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CORAM : R. G. AVACHAT, J.

DATED : 15th DECEMBER, 2021

PER COURT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 23.08.2016, passed by the Member, Motor Accident Claims Tribunal, Osmanabad in Motor Accident Claim Petition No.159 of 2009, granting compensation on account of death in a vehicular accident. The challenge is mainly on the ground of quantum.

2. The claim petition was preferred by the parents of the deceased – Nitin. Learned Advocate for the appellant – Insurance Company would therefore submit that deduction towards personal and living expenses of the deceased should have been 50% and not 1/3rd of the established income.

3. The learned Advocate for the respondents – claimants would, on the other hand, submit that the deceased was married and

in view of the Apex Court's judgments in the case of ***National Insurance Company Limited Vs Pranay Sethi and others – (2017) 16 SCC 680*** and ***Sarla Verma (Smt) and others vs Delhi Transport Corporation and another – (2009) 6 SCC 121,*** the Tribunal was justified in deducting 1/3rd of the established income of the deceased towards his personal and living expenses.

4. The claimants (parents of the deceased) have not preferred any appeal or cross objection for enhancement of compensation. They would, however, be justified in defending the amount of compensation pointing to this Court that they were entitled for more compensation under various other heads and therefore, there should not be any reduction in the amount of compensation granted under the impugned award.

5. Admittedly, the deceased Nitin died in a vehicular accident. Considering his annual income to be Rs.1,00,000/-, the Tribunal worked out the amount of compensation as under:-

(i)	Annual income of the deceased	Rs.1,00,000/-
(ii)	1/3rd deduction towards personal and living expenses	Rs. 33,000/-
(iii)	Loss of annual dependency	Rs. 66,000/-

(iv)	Addition of 40% towards future prospects (66000 + 40% i.e. 26400)	Rs. 92, 400/-
(v)	Since the deceased was around 26 years of age, multiplier of 15 was applied (92,400 X 15)	Rs. 13,86,000/-
(vi)	On account of love and affection Rs.75,000/- and towards funeral expenses Rs.25,000/- (75,000 + 25,000)	+ Rs. 1,00,000/-
	Total	Rs. 14,86,000/-

Thus, the Tribunal has awarded compensation of Rs.14,86,000/- with interest @ 7% p.a. from the date of petition to the date of deposit/payment of the amount.

6. The claim petition was filed by the parents of the deceased. The father was 50 years of age when the deceased breathed his last. The mother was younger by five years. The claimants have two more sons and equal number of daughters.

7. True, the deceased was married. Unfortunately, his widow committed suicide within a month of death of her husband. It is true that in case of ***Sarla Verma (Smt) and others vs Delhi Transport Corporation and another – (2009) 6 SCC 121***, it has been observed in para 30 as below.

> "***30.*** *..... we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.*"

8. In the case of ***Devappa Ganpat Maskar and others vs Maharashtra State Road Transport Corporation – 2020 (2) Mh.L.J. 417***, the observations of the Apex Court in *Pranay Sethi's* case have been reiterated.

9. In the Constitution Bench judgment of the Apex Court the case of ***National Insurance Co. Ltd. vs Pranay Sethi and others – (2017) 16 SCC 680,*** it has been observed thus:

> **"*37.*** *Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-*
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> > *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3,*

> *one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
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> *31. Where the deceased was a bachelor and the claimants are the 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. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*
>
> *32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*

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.*
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> ***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."*

10. It has further been observed in para 59.5 that 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 the judgment in Sarla Verma's case.

11. The widow of the deceased unfortunately died within a month of her husband's death. The claim petition was therefore preferred by the parents of the deceased. For all technical and legal purposes, the observations of the Apex Court that in case the deceased was married, there should be deduction of 1/3rd of his established income have to be taken in case wherein one of the claimants before the Tribunal would be a widow of the deceased. It is reiterated that the father of the deceased was 50 years of age when the deceased breathed

his last. He has two more sons. In the fitness of things, the Tribunal ought to have deducted half of the established income of the deceased towards personal and living expenses.

12. This Court, therefore, reworks out the amount of compensation in terms of the judgment in the case of Pranay Sethi (supra) as under :

(i)	Annual income of the deceased	Rs.1,00,000/-
(ii)	Half of the deduction towards personal and living expenses	Rs. 50,000/-
(iii)	Loss of annual dependency =	Rs. 50,000/-
(iv)	Addition of 40% towards future prospects (50000 + 40% i.e. 20000)	Rs. 70,000/-
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(v)	Since the deceased was around 26 years of age, multiplier of 15 is applied (70,000 X 15)	Rs. 10,50,000/-
(vi)	On account of love and affection Rs.80,000/- and towards funeral expenses Rs.30,000/- (80,000+30,000)	+ Rs. 1,10,000/-
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		Rs. 11,60,000/-
	It is rounded off to	Rs. 12,00,000/-
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13. In view of the above, the appeal succeeds. The same is allowed in terms of following order.

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

(i) The appeal is allowed.

(ii) The amount of compensation awarded by the Tribunal is scaled down from Rs.14,86,000/- to Rs. 12,00,000/-.

(iii) There is no change in rate of interest awarded on the amount of compensation.

(iv) The amount of compensation in deposit in this Court be immediately paid to the claimants/ parents of the deceased with interest accrued thereon.

(v) The balance amount be paid back to the appellant – Insurance Company with interest accrued thereon.

(vi) Pending civil application No.1290 of 2019 is disposed of.

[R. G. AVACHAT, J.]

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