IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3495 OF 2016

1) Smt. Sarita w/o Sunil Sable
Age 23 years, Occu. Household

2) Shlok s/o Sunil Sable,
Age 5 years, Occu. Nil,
being minor, u/g of appellant No.1,
natural mother Smt. Sarita Sunil Sable

Both R/o Kanchanwadi,
Paithan Road, Aurangabad … APPELLANTS

<u>VERSUS</u>

1) Bhimashankar s/o Chanappa Lingdalli
Age major, Occu. Driver,
R/o Rajapur, Taluka Chittapur,
District Gulbarga (Karnataka State)

2) Shiva Reddi Sanga Reddi Patil,
Age major, Occu. Business
R/o Anand Nagar, S.B. Temple Road,
Court Road, Gulbarga
District Gulbarga (Karnataka State)

3) The Divisional Manager,
Reliance General Insurance Company
Ltd., Adalat Road, Aurangabad

4) Balu s/o Asaram Sable,
Age 53 years, Occu. Labour,
R/o Kanchanwadi,
Paithan Road, Aurangabad

5) Bababai @ Babita w/o Balu Sable,
Age 48 years, Occu. Household
R/o Kanchanwadi,
Paithan Road, Aurangabad … RESPONDENTS

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Shri Mohit R. Deshmukh, Advocate for appellants
Shri R.D. Biradar, Advocate for respondents No.4 & 5

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WITH

FIRST APPEAL NO.4429 OF 2016

Reliance General Insurance Company,
through its Manager,
R/o Reliance General Insurance Company,
Adalat Road, Aurangabad … **APPELLANTS**

VERSUS

1) Smt. Sarita w/o Sunil Sable
Age 23 years, Occu. Household
R/o Kanchanwadi,
Paithan Road, Aurangabad

2) Bababai alias Babita w/o Balu Sable,
Age 48 years, Occu. Household

3) Balu s/o Asaram Sable,
Age 53 years, Occu. Labour,

4) Shlok s/o Sunil Sable,
Age 6 years, Occu. Nil,
under guardianship of resp. No.1 i.e.

No.1 to 4 All R/o Kanchanwadi,
Paithan Road, Aurangabad

5) Bhimashankar s/o Chanappa Lingdalli
Age major, Occu. Driver,
R/o Rajapur, Taluka Chittapur,
District Gulbarga (Karnataka State)

6) Shiva Reddi Sanga Reddi Patil,
Age major, Occu. Business
R/o Anand Nagar, S.B. Temple Road,
Court Road, Gulbarga
District Gulbarga (Karnataka State) … **RESPONDENTS**

Nos.5 & 6 deleted as per
Court's order dated 1/12/2016)

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Shri S.S. Patil, Advocate for appellant
Shri B.V. Dhage, Advocate for respondent No.1.
Shri R.D. Biradar, Advocate for respondents No.2 & 3

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CORAM : R. G. AVACHAT, J.

DATE : 25th August, 2021

J U D G M E N T :

Since these appeals are interconnected, the same are being decided by this common judgment. Both these appeals arise from the judgment and award dated 12/1/2016, passed by Member, Motor Accident Claims Tribunal (MACT), Aurangabad in Motor Accident Claim Petition (MACP) No.359/2013. The MACT has awarded compensation of Rs.18,21,000/- with interest @ 9% p.a. on account of death in vehicular accident. The Appeal (No.3495/2016) has been filed by the widow and minor son of the deceased – Sunil, challenging the apportionment of the amount of compensation under the impugned award. While Appeal (No.4429/2016) has been preferred by the Insurance Company, taking exception to the quantum of compensation.

FACTS :-

2. It so happened that, the deceased – Sunil was

proceeding on his motorbike from Aurangabad to Georai. It was 12.30 midnight on 21/4/2013. The deceased was riding the motorbike. The offending truck dashed the motorbike. As a result thereof, Sunil suffered multiple injuries and succumbed thereto. The widow, minor son and parents of the deceased, therefore, preferred MACP for compensation. The Tribunal considered the notional income of the deceased at Rs.6000/- per month, added 50% thereof towards future prospects and calculated the amount of compensation applying the multiplier of 18. After deducting one third of the annual income of the deceased towards his personal and living expenses, the Tribunal awarded Rs.12,96,000/- towards loss of dependency. The widow and the minor son were granted Rs.1,00,000/- each towards loss of love and affection. The parents were awarded Rs.50,000/- each on the same count. A sum of Rs.1,00,000/- has further been awarded towards loss of estate besides Rs.25,000/- towards funeral expenses. The amount of compensation has been directed to be paid to the petitioners equally.

3. Shri M.R. Deshmukh, learned counsel for the appellants in First Appeal No.3495/2016 would submit that, the widow of the deceased was just 20 years of age while her

husband passed away. Their son was 2 years of age. The parents of the deceased were not depending on the deceased. They have their own source of earning. They have two more sons. One of them is in Government service. The widow of the deceased has been staying at her parental house. Her culture does not permit her to remarry. In this backdrop, the appellants (widow and the minor child) deserve to be given more share in the amount of compensation.

4. Shri R.D. Biradar, learned counsel for respondents– parents of the deceased, would, on the other hand, submit that, the parents of the deceased are old one. They were dependent on the deceased. The Tribunal was, therefore, justified in directing the apportionment of compensation equally.

<u>QUANTUM</u> :-

5. Shri S.S. Patil, learned counsel for the appellant Insurance Company in First appeal No.4429/2016 would submit that, the Tribunal has granted compensation more than the one claimed in the p992017523156etition. The same indicates the petitioners have even not anticipated grant of such huge compensation. Under the other conventional heads, an exorbitant amount has been awarded. According to

him, it was the year 2013 when the accident took place. In those days, the notional income was in the range of Rs.3000 – 3500 per month. He, therefore, urged for reduction in the amount of compensation.

6. Learned counsel for the claimants would, on the other hand, submit that, the deceased was a Mason, a skilled worker. It was the case of the claimants that the deceased would earn Rs.8000/- per month. The Tribunal erred in taking notional income at Rs.6000/- per month. According to learned counsel, although the claimants have not filed any appeal or cross-objections for enhancement of compensation granted by the Tribunal, they can very well challenge the findings in justification of quantum of compensation awarded under the impugned award.

7. The Tribunal held the deceased was a Mason. There is no challenge to these observations. Masionary is a skilled job. Minimum wages of skilled labour in the year 2013 were close to Rs.8000/- per month. The Tribunal ought to have awarded compensation taking into consideration the monthly income of the deceased at Rs.8000/-. Based on the monthly income of Rs.8000/-, with 40% thereof as addition thereto towards future prospects, the monthly income of the

deceased would come to Rs.11,200/-. As such, the annual income of the deceased comes to Rs.1,34,400/- (Rs.11,200 x 12). Considering the age of the deceased, the multiplier of 18 has rightly been applied. Rs.1,34,400 x 18 comes to Rs.24,19,200/-. After deducting one third thereof i.e. Rs.8,06,400/- towards personal and living expenses of the deceased, the loss of dependency comes to Rs.16,12,800/-. The Tribunal has awarded Rs.1,00,000/- each to the widow and minor son and Rs.50,000/- each to the parents of the deceased on account of love and affection. This quantum needs to be reduced to Rs.40,000/- each in view of the Apex Court judgment in case of **National Insurance Company Limited Vs. Pranay Sethi & ors. [(2017) 16 SCC 680]** and **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & ors., [(2018) 18 SCC 130]**. A sum of Rs.1,00,000/- has been awarded towards loss of estate. The same is scaled down to Rs.15,000/-. While Rs.25,000/- granted towards funeral expenses is reduced to Rs.15,000/-. As such, the total of Rs.16,12,800/- + Rs.1,60,000/- + Rs.15,000/- + Rs.15,000/- comes to Rs.18,02,800/-.

8. In case of **Ranjana Prakash & ors. Vs. Divisional Manager [2012 AIR SCW 848]**, the Apex Court has observed

as under :

> "Where in an appeal filed by the owner/ insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation."

9. The difference between the amount of compensation granted by the Tribunal and worked out by this Court as above, is not more than Rs.19,000/-. This Court is, therefore, not inclined to interfere with the impugned award so far as regards quantum of compensation is concerned.

10. On the question of apportionment, this Court accepts the submission made by the learned counsel Mr. M.R. Deshmukh for the appellants in First Appeal No.3495/2016 and, therefore, directs to apportion the amount of compensation in the proportion of 60 : 40 between the appellants and the respondents No.1 and 2 in First Appeal No.3495/2016.

11. With this, both the appeals stand disposed of in terms of the following order : -

O R D E R

(i) First Appeal No.4429/2016 filed by the Insurance Company is dismissed.

(ii) The direction in the impugned award regarding apportionment of the amount of compensation equally amongst the petitioners is hereby set aside. The amount of compensation be apportioned in the ratio of 60 : 40 between the widow and the child on the one hand and the parents on the other.

(iii) The amount of compensation in deposit with this Court or the Tribunal be paid as above with interest accrued thereon, immediately.

(R. G. AVACHAT)
JUDGE

fmp/-