IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.124 OF 2018

TATA AIG General Insurance
Company Ltd., through its Manager -
Kirti M. Ballal,
r/o. Pune, c/o. TATA AIG General
Insurance Company Ltd.
3rd Floor, The Orion,
5, Koregaon Park Road,
Pune ..Appellant

Vs.

Rambhau Jagannath Bhagwat,
Age : 51 years, Occ. Agri.
r/o. Shirasgaon, Tq.Kopargaon,
Dist.Ahmednagar
and others ..Respondents

Mr.S.S.Patil, Advocate i/b. Mr.R.H.Dahat, Advocate for appellant

Mr.A.V.Patil, Advocate i/b. Mr.S.S.Chapalgaonkar, Advocate for respondent nos.1 to 5

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 05, 2021

ORDER :-

Heard.

2. The challenge in this appeal is to the award dated 23.05.2016 passed by learned Member, Motor Accident Claims

Tribunal, Kopargaon, Dist. Ahmednagar in M.A.C.P. No.44 of 2013. By the impugned award, the appellant-insurance company and owner of the vehicle involved in the accident, have been directed to pay jointly and severally, a sum of Rs.12,90,000/- with 9% interest thereon from the date of the claim petition to the date of payment of the entire amount to respondent nos.1 to 5, legal representatives of the deceased Yogesh. The appeal has, basically, been filed on the question of quantum.

3. Mr.S.S.Patil, learned counsel appearing for the appellant-insurance company, would submit that the deceased died bachelor. The claimants are parents and siblings of the deceased. While awarding compensation, the Tribunal, instead of deducting half of the annual income of the deceased, deducted 1/4th thereof on account of personal expenses, which the deceased would have incurred for self, had he been alive. According to learned counsel, the Tribunal also erred in making addition of 50% of income of the deceased towards future prospects, while it should not have been more than 40%.

Learned counsel also urged for reducing the rate of interest to 7% per annum from 9% per annum, granted by the Tribunal. Learned counsel, therefore, urged for interference with the impugned award in the light of his submissions.

4. Learned counsel for the respondents-claimants supports the impugned award. He has reiterated the reasons given by the Tribunal.

5. In paragraphs 31 and 32 of the judgment in the case of **Sarla Verma (Smt.) and ors. Vs. Delhi Transport Corporation and anr., (2009) 6 SCC 121**, it has been observed as under:-

> **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 dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, 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 dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where 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."

6. The deceased died bachelor. The claimants are his parents and siblings. There is no evidence in justification for departing from the aforesaid observations in **Sarla Varma**'s (supra) case.

ADDITION ON ACCOUNT OF FUTURE PROSPECTS :-

7. The deceased was working as a Welder in the workshop of one Kisan Burhade. Kisan Burhade, lateron, closed down his workshop. As such, the deceased did not have a permanent job. In paragraph 59.4 of the Constitution Bench judgment of the Apex Court in the case of **National Insurance**

Company Limited Vs. Pranay Sethi and ors., (2017)16 SCC 680, it has been observed as under :-

> "**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."

The deceased was below 40 years of age. He did not have a permanent job. Forty per cent of his established income should warrant towards addition on account of future prospects.

8. In view of the above, the amount of compensation granted by the Tribunal needs to be reworked out as under:-

Particulars		Figures in Rupees
Income of deceased per annum (Rs.5,000/- per month x 12 months)		60,000
Addition of 40% towards future prospects (deceased being below 40 years of age)	+ (plus)	24,000
		84,000

Deduction of 50% amount, as deceased died bachelor, towards personal expenses which deceased would have incurred for self had he been alive	- (minus)	42,000
		42,000
Applying multiplier of 18, amount of compensation on account of loss of dependency (Rs.42,000 x 18)	+ (plus)	7,56,000
Addition on account of funeral expenses and mental shock and sufferings, already granted by the Tribunal	+ (plus)	1,25,000
Amount of compensation		**8,81,000**

9. Interference with the impugned award needs to be made to the extent stated above. The rate of interest awarded by the Tribunal is not interfered with.

10. In the result, the appeal partly succeeds. The amount of compensation payable to the claimants shall be Rs.8,81,000/- with 9% interest thereon from the date of the claim petition, until the amount is deposited. The appeal stands disposed of accordingly.

[R.G. AVACHAT, J.]

KBP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7447 of 2021
IN FIRST APPEAL NO.124 OF 2018

Rambhau Jagannath Bhagwat
and ors. ..Applicants

Vs.

TATA AIG General Insurance
Company Ltd. and anr. ..Respondents

Mr.A.V.Patil, Advocate i/b. Mr.S.S.Chapalgaonkar, Advocate for applicants

Mr.S.S.Patil, Advocate i/b.Mr.R.H.Dahat, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 05, 2021

ORDER :-

The amount deposited in this Court be paid to the applicants/claimants in terms of the modified award and balance be returned to the appellant - insurance company, if any. The application is disposed of accordingly.

[**R.G. AVACHAT, J.**]

KBP