

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 1159 OF 2019

1. Sangita Sudhakar Turke,
aged about 34 years, Occ. -NIL,
2. Prajwal Sudhakar Turke,
aged about 14 years, Occ. Student
3. Tanu Ganu Turke,
aged about 67 years, Occ. -NIL,
4. Smt. Gondinbai Tanu Turke
aged about 62 years, Occ. -Household.

(Applicant No.2 as he is minor therefore he is represented by his natural guardian mother – applicant No.1.)

All are R/o village Chandanwahi, Tahsil
Rajura, and Distt. Chandrapur.

.... **APPELLANT**

// **VERSUS** //

1. National Insurance Co. Ltd.,
Through its Branch Manager,
Chandrapur Branch, Chandrapur,
Dist. Chandrapur.
2. Baliram Kisanrao Dongarkar
aged Major, Occ.- Business,
R/o Chinora, Tahsil Warora,
Distt. Chandrapur.

.... **RESPONDENTS**

Shri S.O. Ahmed, Advocate for Appellants.
Shri D.N. Kukday, Advocate for Respondent no.1.
Shri P.P. Nagpure, Advocate for Respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 03/03/2021.

JUDGMENT :

1. The Appellants herein have challenged the judgment dated 20/01/2018 in M.A.C.P No. 64 of 2014. Being aggrieved by the quantum of compensation awarded by the Claims Tribunal the Appellants who are the Claimants in the M.A.C.P No.64 of 2014 have filed appeal under section 173 of the Motor Vehicle Act, 1988 (for short 'the M.V. Act').

2. The Appellants shall be hereinafter referred to as the Claimants and the Respondent shall be referred to as 'Insurance Company'.

3. Heard learned Counsel for the Appellants-Claimants and learned Counsel for the Respondent-Insurance Company. ADMIT.

4. The Claimants are the legal representatives of deceased Sudhakar Turke who expired in a motor vehicular accident on 22/04/2014 involving Tipper truck bearing registration No. MH-34-AB-

1406. It was the case of the Claimants that the accident was caused due to rash and negligent driving by the driver of the Tipper truck. The Claimants stated that the deceased was 30 years of age and he was working at Ganesh Medical Stores, Rajura and earning monthly salary of Rs.6000/-. The Claimants, therefore, filed a petition under Section 166 of the M.V. Act, claiming compensation of Rs.1,00,000/- from the Insurance Company.

5. The Respondent had denied that the accident was caused due to rash and negligent driving by the driver of the Tipper truck . The Respondent further took a defence that the raised plea is of contributory negligence and also denied that the Claimants were entitled for any compensation as claimed.

6. Upon considering the evidence adduced by the respective parties, the Tribunal held that the accident was caused solely due to rash and negligent driving by the driver of the Tipper truck. The Tribunal considered the age of the deceased has 32 years. The Tribunal did not rely upon the salary certificate produced by the Claimants and computed loss of dependency, on the basis of notional income of Rs.3000/- per month. Considering the number of dependents, the Tribunal deducted $\frac{1}{4}$ of amount, towards personal expenses of the

deceased and applying multiplier of 16 assessed loss of dependency at Rs.4,32,000/-. The Tribunal also awarded compensation of Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium. The Tribunal, therefore, awarded total compensation of Rs.4,87,000/-.

7. Shri S.O.Ahmed, learned counsel for the Claimants, submits that the salary certificate visa-a-viz the evidence of P.W.2 Gopal Sarda amply proves that the deceased was employed at the Ganesh Medical Stores and that he was drawing salary of Rs.6000/- per month. He further submits that the Tribunal has erred in not adding any amount towards future prospect and further in not awarding compensation towards loss of estate and any compensation to the Claimants Nos.2, 3 and 4 towards loss of parental consortium and filial consortium. He therefore, submits that the compensation awarded by the Claims Tribunal, needs to be enhanced.

8. Shri D.N.Kukday, learned counsel for the Respondent-Insurance company submits that apart from producing the salary certificate, the Claimants had not produced any documentary evidence to prove that the deceased was employed at the Ganesh Medical Stores and that he was drawing salary of Rs.6000/- per month. He submits

that PW.2 Gopal Sarda had not produced attendance register or any other document to prove that the deceased was employed at the medical stores. He therefore, justifies assessment of loss of dependency on the basis of notional income.

9. I have perused the record and considered the submissions advanced by learned counsel for respective parties.

10. The only question which falls for consideration is whether the compensation awarded by the Tribunal can be considered to be a 'just' compensation.

11. It may be mentioned that in the case of ***National Insurance Company Ltd. v. Pranay Sethi and ors.*** 2018(3) Mh.L.J. 70, the Apex Court has held that for appropriate deductions for personal and living expenses, the Tribunals and Courts should be guided by the conclusions of ***Reshma Kumari and ors. vs. Madan Mohan and anr.*** (2013) 9 SCC 65. It is further held that for determination of the multiplicand, the deductions for personal and living expenses, the Tribunal and the Courts shall be guided in the case of ***Sarla Verma v. Delhi Transport Corporation and anr.*** (2009) 6 SCC 121 reads as under:

“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.

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 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.”

12. The Apex Court has also issued guidelines for addition of income towards future prospects and has further quantified amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- each towards funeral expenses and loss of estate. In ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram (2018) 18 SCC 130*** the Apex Court has held that the ‘consortium’ is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’ and ‘filial consortium. Spousal consortium is granted to the surviving spouse for loss of ‘company, security, co-operation, affection and aid of the other in every conjugal relation. Parental consortium is granted to the child upon the pre-mature death as a parent for loss of ‘parental aid, protection, affection, society, discipline, guidance and training’. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. The Apex Court has held that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under loss of consortium as laid down in *Pranay Sethi (supra)*.

13. The question whether the quantum of compensation awarded by the Tribunal is just and reasonable needs to be decided on touchstone of these principle indicated above. In the light of the dictum of the Apex Court, the question for consideration is the age of the deceased has been considered as 32 years. The Claimants had produced salary certificate to prove that the deceased was employed at Ganesh Medical Stores and that he was drawing salary of Rs.6000/- per month. The Claimants have also examined as P.W.2 Gopal Sarda who is the proprietor of the Ganesh Medical Stores. He has stated that the deceased was working in the medical store, since about last six years and that he was paid Rs.6000/- per month. The Tribunal has not relied upon the evidence of these evidence for want of supporting documentary evidence.

14. In this regard, it is relevant to refer to the decision in the case of ***Royal Sundaram Alliance Insurance Co. Ltd. vs. Varsha Rajenda Pache 2017 SCC OnLine Bom 6726*** wherein this Court (Coram : G.S. Patel, J.) has observed that there is no reason to disbelieve the evidence of the employer in the absence of the any documentary evidence. It has been held that the fact that the witness is an employer is not a reason to consider him as unreliable witness, and that there is no need to always demand supporting document. In the instant case,

as noted above, the evidence of the Claimant as regards the employment and income of the deceased, has gone unchallenged. Under the circumstances, there was no reason to disbelieve this evidence which was also corroborated by the employer.

15. Hence, the Tribunal was not justified in computing the compensation on the basis of notional income. The Tribunal has also not awarded any compensation towards future prospects, towards loss of filial and parental consortium and towards loss of estate. Hence, the compensation awarded by the Tribunal cannot be considered as 'just compensation'.

16. Considering the dictum of the Apex Court in the case of *Pranay Sethi* and *Magma General Insurance Company (supra)*, the compensation payable to the Claimants is determined as follows :

i.	Annual Income of the deceased	Rs.72,000/- (6000 x 12)
ii.	Addition of 40% towards future prospect	Rs. 28,800/-.
iii.	Total income	Rs. 1,00,800/-
iv.	¼ deduction towards personal expenses	Rs. 25,200/-
v.	Total income after deducting personal expenses	75,600/-
vi.	Loss of dependency on applying multiplier of 16	Rs. 12,09,600/- (75,600 x 16)
vii.	Adding loss of spousal consortium,	Rs. 1,60,000/-

	parental consortium and filial consortium	(40,000 x 4)
viii.	Funeral expenses and loss of estate	Rs. 30,000/-
	Total compensation payable is Rs.13,99,600/- which is rounded up to Rs. 14,00,000/-	

17. It is therefore, held that the Claimants are entitled for compensation of Rs.14,00,000/- as against compensation of Rs.4,87,000/- granted by the Tribunal.

18. Under these circumstances, the following order is passed :

- (a) The appeal is allowed.
- (b) The Claimants are held to be entitled for compensation of Rs.14,00,000/- with the interest at the rate of 7.5% per annum from the date of the petition till final realization. It is stated that compensation of Rs.4,87,000/-.
- (c) The Respondent Nos.1 and 2 shall jointly and severally pay the balance compensation amount and deposit the same before this Court within a period of three months.
- (d) The Claimants No.1 shall be entitled to withdraw 30% of the compensation with proportionate interest whereas Claimants Nos.3 and 4 will be entitled to withdraw 10% each, with proportionate interest accrued thereon.
- (e) The Claimants No.2 being a minor, the balance 50% of compensation shall be invested in his name in any

nationalized bank as a fixed deposit initially for a period of six years with further renewal until such time that he attains the age of majority at instance.

- (f) The Claimants to pay deficit court fee within a period of one month, if any.

JUDGE

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