

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

FIRST APPEAL NO.585/2017

1. Smt. Saraswati Sandeep Gawai,
aged about 24 years,
occ. Nil.
2. Master Rahul Sandeep Gawai,
Aged about 4 years,
Minor through natural guardian
mother Smt. Saraswati Sandeep Gawai,
appellant no.1.
3. Bhaurao Shankar Gawai,
Aged about 50 years,
Occ. Labourer,
4. Sau. Suman Bhaurao Gawai,
Aged about 44 yrs,
Occ. Household work.

All r/o Near Krishi Nagar,
Panchasheel Nagar,
Near Pragati Kirana, Akola
Tq.and Distt. Akola.

..APPELLANTS

Versus

1. Ramashraya Munshi Gupta
Aged adult, Occ. Driver
R/o Hatizpur Kotwali,
Azamgarh, Uttar Pradesh.
2. Jaswant D. Sharma
Aged adult, Occ. Vehicle Owner
R/o C/o R.J. carriers.
Sector No.6, Building No.9,
R.No.90, JNPT Uran
Distt. Raigad, B.C.W.

Road Link No.7
Tq. and Distt. Raigad (MS).

3. New India Insurance Company Ltd.
Divisional Officer,
4th floor
Sir P.M. Road, Fort, Mumbai.

..RESPONDENTS

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Shri J.B.Gandhi, Advocate for the appellants.
None for other respondent nos. 1 and 2.
Shri Sandeep Marathe, Advocate for respondent no.3.

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CORAM : PUSHPA V. GANEDIWALA, J
DATED : AUGUST 25, 2021.

ORAL JUDGMENT :

1. Heard.

2. Both the learned counsel submit that this matter could be disposed of, as a short question with regard to quantum of compensation is involved in it.

3. The appellants/claimants in this appeal are seeking enhancement of compensation, in terms of the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (2017) 16 SCC 680.

4. It is stated that learned Motor Accident Claims Tribunal calculated compensation under the following heads :

Age of Deceased	:	23 years.
Multiplier applied	:	17
Income	:	Rs.3,000/- per month. therefore, Rs. 36,000/- per annum
Deductions	:	1/4 th as 4 dependents Therefore, income = 36,000 (-) Rs.9000/- = Rs.27,000/-.
Therefore, compensation: as per income		27,000/- x 17 = 4,59,000/-
Compensation for Funeral expenses	:	Rs.11,000/-
Loss of estate	:	Rs.10,000/-
Loss of consortium	:	Rs.10,000/-
Transportation of body	:	Rs.10,000/-
Total	:	Rs.5,00,000/-

5. The Constitution Bench of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) concluded that 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 between the age of 40 to 50 years. It is further held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-,

Rs.40,000/- and Rs.15,000/- respectively.

6. The learned counsel for the Insurance Company Shri Marathe, on the other hand, supported the impugned judgment and award. It is stated that the learned Tribunal has rightly concluded the lump-sum compensation of Rs. Five lakhs including the compensation towards 'no fault liability' and had directed respondent nos.1 and 3 to pay the same within 45 days from the date of the order.

7. In my considered opinion, the appellant is entitled to receive the compensation as per the judgment in case of **Pranay Sethi** (*supra*) Considering the aforesaid, the revised compensation can be calculated as under:-

Age of the deceased	:	23 years.
Multiplier applied	:	18
Income	:	Rs.3,000/-
Future Prospects	:	40% increase, therefore, total Income of Rs.4200/- per month. Therefore, Rs.50,400/- per year.
Deductions	:	1/4 th as 4 number of dependents. Therefore, Rs.50,400/- (-) Rs.12,600/- = Rs.37,800/-.
Total income	:	37,800/- x 18

= 6,80,000/-

Loss of estate : Rs.15,000/-

Loss of consortium : Rs.40,000/-

Funeral expenses : Rs.15,000/-

Total : Rs.7,50,400/-

8. For the reasons aforestated, the appeal needs to be partly allowed by modifying the order of learned Tribunal as under:

ORDER

1. Respondent nos.1 to 3 shall pay compensation of Rs.7,50,400/-.
2. The compensation of Rs.Five lakhs, which was already withdrawn by the appellant shall be deducted from the aforesaid amount.
3. Respondent nos.1 and 3 to pay interest on the enhanced compensation of Rs.2,50,400 @ 7.5 % per annum from 26.6.2019 till realisation.
4. Respondent nos.1 to 3 to deposit the aforesaid amount within a period of six weeks. Thereafter the appellants - claimants shall be entitled to withdraw the same amount with accrued interest thereon.

JUDGE