**<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY,</u>**
**<u>NAGPUR BENCH, NAGPUR.</u>**

**<u>FIRST APPEAL NO. 432/2018</u>**

1. Smt. Snehal w/o Nilesh Hiwase,
Aged about 33 years, Occ. Housewife,

2. Master Sarvesh s/o Nilesh Hiwase,
Aged about 7 years, Occ. Education,
through mother i.e. Appellant No. 1 being
minor.

Both 1 & 2 R/o. Opposite to Dhantoli,
Police Station, Chhoti Dhantoli, Nagpur.

...**<u>APPELLANT</u>**
**<u>ON R.A.</u>**
**<u>(Ori. Claimants)</u>**

// VERSUS //

1. Tushar S/o Janardhan Sawarkar,
Aged Major, Occ. Business,
R/o. Plot No. 19, Samata Layout,
Ambazari, Nagpur. (Ori. Respondent No.1)

2. The Regional Manager,
New India Assurance Co. Ltd.,
Ambedkar Bhawan, Seminary Hills,
Nagpur. (Ori. Respondent No.2)

3. Mohammad Aashik Khan Mohammad
Quadir, Aged Major, Occ. Business,
R/o. Mahadula, Koradi, Nagpur. (Ori. Respondent No.3)

4. Oriental Insurance Co. Ltd.,
Regional Officer (T.P. Hub),
Shukla Bhawan, West High Court

Road, Dharampeth, Nagpur.
(Second Add of Res.No.4) Oriental Insurance Co. Ltd.
Office address Vidhan Bhawan Squre, Civil Lines, Nagpur.

.... **RESPONDENTS**
**(On R.A.)**

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Ms. Meena Hiwase, Advocate for appellant.
Ms. Anita Mategaonkar, Advocate for respondent No. 2.
Shri A. V. Joshi, Advocate for respondent NO. 4.

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**CORAM : SMT. ANUJA PRABHUDESSAI, J.**
**DATED : 24.02.2021**

**JUDGMENT**

2. This appeal is directed against the judgment and award dated 16.05.2017 passed by the Member, Motor Accident Claims Tribunal-4, Nagpur in Claim Petition No. 249/2007. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs. 15,52,665/- inclusive of no fault liability with interest @ 7.5% per annum from the date of petition till final realization.

3. The appellant No. 1 is the widow and the appellant No. 2 is the son of the deceased Nilesh who died in motor vehicular accident on 22.01.2007 involving Tata Sumo MH-31-Z-2621 and Truck bearing registration No. MH-31-CB-867.

4. The appellant who shall be hereinafter referred to as the claimants had filed an application under Section 166(1) of the Motor Vehicles Act, 1988 (for short “M. V. Act”) assailing that the death of the deceased Nilesh was due to rash and negligent driving of the driver of the offending vehicle. The claimants had stated that deceased was 29 years of age and earning monthly salary of Rs. 11,000/-. The claimants claimed compensation of Rs. 30 lakhs under different heads.

5. The respondents denied that the accident was caused due to rash and negligent driving by the Driver of the respective parties. It was further stated that the claim was exorbitant and that they are not liable to pay compensation as claimed.

6. The Tribunal after considering the evidence on record held that the accident was caused due to rash and negligent driving by the drivers of the offending vehicles. The Tribunal considered the income of the deceased as Rs. 10,500/- per month and after deducting 1/3rd amount towards personal expenses and applying multiplier 17, computed loss of dependency at Rs. 13,73,039/-. The Tribunal granted compensation towards medical expenses Rs. 99,626/-. and of Rs. 10,000/- towards funeral expenses, Rs. 10,000/- towards loss of estate and Rs. 30,000/- each towards loss of consortium to the

claimant No. 1 and loss of love and affection to the claimant No. 2. The Tribunal thus awarded total compensation of Rs. 15,52,665/-. Being aggrieved by the quantum of compensation awarded by the Tribunal, the claimants have filed this appeal under Section 173 of the M. V. Act.

7. Learned counsel for the claimants submits that the deceased was in employment of Star Orchem International Pvt. Ltd., that he was earning Rs. 11,000/- per month. She submits that said salary was paid after deducting income tax. As such, the Tribunal was not justified in deducting any further amount towards income tax. Learned counsel for the claimant submits that the Tribunal has not added any amount towards future prospects and this is contrary to the dictum in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 16 SCC 680.*** She further submits that the compensation awarded under the other heads is not in consonance with the principles laid down by the Supreme Court. She therefore, contends that the compensation awarded by the Tribunal is not just compensation.

8. Learned counsel for the respondent Nos. 2 and 4 submit that the claimants have failed to prove that the deceased was in permanent employment and as such, the Tribunal was justified in not

adding amount towards future prospects. They state that the appointment letter of the deceased clearly indicates that he was drawing salary of rs. 5250/- per months. Learned counsel for the respondents claims that the claimants are not entitled for additional compensation.

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The factum of the accident, that the accident was caused due to rash and negligent driving by the driver of the offending vehicles and that Nilesh had expired as a result of injuries sustained in the accident is not disputed. The only question for determination is whether the compensation awarded by the Tribunal is 'just compensation'.

10. The evidence of claimant reveals that deceased was 29 years of age. She has deposed that the deceased was working in Orchem International Pvt. Ltd., and he was getting salary of Rs. 11,000/- per month. The claimants had examined PW-2 Nilesh Gandhi, Director of the Orchem International Pvt. Ltd. He has produced authority letter at Exh. 87 whereby the other Directors had authorized him to depose in this case. He has produced appointment letter of the deceased at Exh. 89, biodata at Exh. 88, the salary sheet at Exh. 90 and

the salary slip at Exh. 91. Perusal of these documents clearly indicate that the deceased was holding diploma in Engineering Chemical from Maharashtra Board of Technical Education, Mumbai. He was appointed by the Orchem International Pvt. Ltd., vide appointment letter dated 26.12.2005 as Shift Supervisor with consolidated salary of Rs. 5,250/- per month. He was on probation for a period of six months. The evidence of PW-2, Nilesh Gandhi vis-a-vis salary sheet and salary slip at Exh. 90 and 91 indicate that since September 2006 till the date of the accident, the deceased was earning monthly salary of Rs. 11,000/- per month after deducting profession tax of Rs. 175 per months. Under such circumstances, the Tribunal was not justified in deducting Rs. 500/- which was paid towards medical allowance and considering the net salary of the deceased as Rs. 10,500/- for the purpose of computation of loss of dependency. It is also pertinent to note that the Tribunal has not made any addition towards future prospects. It may be mentioned that that in the case of Pranay Sethi and other (supra), the Apex Court has held as under:-

> *"58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any*

*future prospects in respect of the said category.*

*59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in-apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have*

> *the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."*

11. In the light of the above, the Tribunal was not justified in not adding any amount towards future prospects. Hence, the compensation awarded by the Tribunal cannot be considered to be 'just

compensation'.

12. The evidence on record reveals that the deceased was getting salary of Rs. 11,000/- per month which works out of Rs. 1,32,000/- per annum. The deceased was 29 years of age. There is no evidence to indicate that he was in permanent employment. Hence, in view of the judgment of the Apex Court in Pranay Sethi (supra) 40% of the actual salary has to be added to the income of the deceased towards future prospects. Thus, on adding 40% towards future prospects, the actual salary works out to Rs. 1,84,800/-. Considering the number of dependents and upon deduction 1/3rd amount towards personal expenses of the deceased and applying multiplier 17, loss of dependency works out to Rs. 20,94,400/-. Claimant No. 1 being the widow, is entitled for compensation of Rs. 40,000/- towards loss of spousal consortium and the claimant No. 2 being the minor son of the deceased is entitled for compensation of Rs. 40,000/- towards loss of parental consortium. In addition claimants are entitled for compensation of Rs. 30,000/- towards loss of estate and funeral expenses. Evidence on record further indicates that the claimant had spent of Rs. 99,626/- towards medical expenses of the deceased. Thus, the claimants are entitled for total compensation of Rs. 23,04,026/- as against the compensation of Rs. 15,52,665/- awarded by the Claims

Tribunal.

13. Hence, appeal is allowed.

14. It is held that that claimants are entitled for total compensation of Rs. 23,04,026/- (Inclusive of total compensation under Section 140 of the M. V. Act.) with interest @ 7.5% per annum from the date of the petition till final realization.

15. The respondents shall deposit the balance amount before the Claims Tribunal within a period of six weeks. 50% of the amount so deposited, shall be paid to the Claimant No. 1 and balance 50% shall be invested in the name of the claimant No. 2 in any Nationalized Bank under the fixed deposit for a period of six years with further renewal till the date of attaining the age of majority.

16. Award stands modified accordingly.

**(SMT. ANUJA PRABHUDESSAI, J.)**

*Gohane.*