IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. : 849 OF 2011

1. Wahida Abdul Rauf Chaus,
   age 31 yrs. Occ. Household.

2. Maha Abdul Rauf Chaus,
   age 18 yrs. Occ. Education

3. Zainab Abdul Rauf Chause,
   age 15 yrs. Occ. Education.

4. Abdulla Abdul Rauf Chaus,
   age 14 yrs. Occ. Education.

5. Osama Abdul Rauf Chaus,
   age 11 yrs. Occ. Education.

6. Fatimabi Salam Chaus,
   age 58 yrs. Occ. Household.

Appellant no. 3 to 5 minor through
their natural guardian mother
appellant no.1,
All r/o Taj Cottage Bhutkarwadi
Ahmednagar. ...**Appellants**
(Ori. claimants)

VERSUS

1. Sharad Namdeo Thange,
   age 50 yrs. Occ. Transport,
   r/o Hiware Bazar,
   Tq. Nagar, Dist. Ahmednagar.

2. Branch Manager,
   The New India Assurance
   Company Ltd., Abet Building near
   Hotel Ashoka Kings Road,
   Ahmednagar.

3. Noorkhan Fatekhan Pathan,
age 40 yrs., Occ. Driver,
R/o -Sangamner Dist. Ahmednagar.
(Deleted vide Exhibit 14)

...**Respondents**
(Ori. Respondents)

...

Advocate for the Appellants :- Ms. S. T. Kazi
Respondent No.1 – served.
AGP for the Respondent No.2 : Mr. S. G. Chapalgaonkar

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 23.09.2022
PRNOUNCED ON : 18.10.2022

JUDGMENT :

The appellants, who are the claimants in Motor Accident Claims Application No. 152/2004, have challenged the judgment and award passed in the said petition on 20.11.2008 by the learned Member, Motor Accident Claims Tribunal, Ahmednagar ('the learned Tribunal' for short) only on the ground of quantum.

2. On going through the impugned judgment, it appears that appellant No.1 is the widow of deceased Abdul Rauf, whereas appellant Nos. 2 to 5 are his children and appellant No.6 is his mother. On going through the impugned

judgment, it appears that the learned Tribunal has determined the annual income of the deceased as Rs. 63,113/- after deduction of the amount of personal expenses of the deceased. Further, by applying multiplier of ‘15’ to the age group of the deceased, the learned Tribunal has assessed compensation of Rs. 9,46,695/-. The learned Tribunal has also added certain amount under the heads of loss of consortium and loss of love and affection to the tune of Rs. 53,305/-. As such, the learned Tribunal has determined total compensation of Rs. 10,00,000/- along with the interest at the rate of 7.5% per annum on the unpaid amount of compensation from the date of filing this petition till its realization. The learned Tribunal has deducted the amount of Rs. 50,000/- under the ‘No Fault Liability’ which was already paid to the applicants.

3. The learned counsel for the appellants submits that though there is no dispute about the income of deceased and the multiplier applied, but the learned Tribunal did not consider any amount towards future prospects. Moreover, the learned Tribunal ought to have granted proper amount under the heads of loss of consortium, loss of estate and

funeral expenses as observed by the Honourable Apex Court in its subsequent judgments in the cases of ***National Insurance Company Limited Vs. Pranay Sethi and others, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248*** *and* ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130***, respectively.

4. On the contrary, the learned counsel for contesting respondent No. 2 -Insurance Company strongly opposed the submissions and contended that the learned Tribunal has properly determined the amount of compensation and, therefore, the subsequent judgments of Honourable Apex Court considering the aspect of future prospects and '*spousal'* , *'parental'* as well as *'filial'* consortium cannot be applied retrospectively. In the alternative, he submits that if any amount is enhanced under these heads, then there should not be any interest on the said amount. He relied on the following judgments passed by this Court :

(1) Suman w/o Dashrath Varpe and others Vs. The Branch Manager (MANU/MH/4390/2021),

(2) Latabai w/o Avinash Chavan and others Vs. Shivaji Shriram Shewale and another (First Appeal No. 2805 of 2009,

decided on 09th December, 2021).

(3) Vijaykumar s/o Ganpatrao Tambare and others Vs. Satish Manik Gite and others, (First Appeal No. 1912 of 2009, decided on 17th December, 2021).

5. With the assistance of respective learned counsel for the contesting parties, I have gone through the impugned judgment, record and proceedings of the original claim petition.

6. On going through the impugned judgment, it appears that the learned Tribunal has properly assessed the annual income of the deceased to the tune of Rs. 63,113/- after deducting 1/3rd amount on the personal expenses of the deceased. Moreover, the age of the deceased is also stated as 36 years in his Income Tax Returns and therefore, the multiplier of '15' is properly applied. However, the learned Tribunal did not consider any amount of future prospects and also not consider the amounts falling under the heads such as loss of consortium, funeral expenses and loss of estate.

7. It is extremely important to note that at the time of passing award, the subsequent judgments of Apex Court in

the cases of ***National Insurance Company Limited Vs. Pranay Sethi and others, and Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** *(supra),* were not in existence. However, this Court at Principal Seat at Bombay has already relied upon the observations of the Hon'ble Supreme Court in its judgment ***dated 28-01-2021*** in the case of ***Reliance General Insurance Company Vs. Manju Vikram Choudhary, in First Appeal No. 833 of 2016,*** and has come to the conclusion that though these judgments were not in existence when this claim petition was decided, but there is nothing in these judgments, whether they are prospective or retrospective in nature. In view of the same, the subsequent judgments are also applicable to the pending cases and also pending appeals. In view of the settled position, I am now under obligation to determine the compensation afresh by considering the observations of Honourable Apex Court in the cases of ***National Insurance Company Limited Vs. Pranay Sethi and others, and Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** *(supra).*

8. As per the guidelines in the case of ***Pranay Sethi*** *(supra),* certain amount under the head of future prospects

needs to be added in the income of deceased. The deceased, in this case, was ultimately self-employed person, who was running bakery business and was aged 36 years at the time of accident i.e. below 40 years and therefore, amount of future prospects would be 40% of his income.

9. Further, the Honourable Apex Court in the case of ***Pranay Sethi*** *(supra),* has determined fixed amounts to the tune of Rs.15,000/- for funeral expenses, Rs. 15,000/- on account of loss of estate and Rs. 40,000/- for spousal consortium. However, the Honourable Apex Court clarified the term '*consortium*' in its subsequent judgment in the case of ***Magma General Insurance Company Limited*** *(supra)*, and held that there are three types of consortium namely '*spousal consortium*', *'parental consortium'* as well as *'filial consortium'* (in respect of children) and the spouse, parents and children are entitled for consortium of Rs. 40,000/- each. Therefore, considering all these aspects, I now determine the annual income of the deceased including future prospects at the rate of 40% as Rs. 88,358/- (Rs. 63,113 + 25,245 = 88358). If multiplier of '15' is applied to the aforesaid income, then the compensation amount comes to Rs. 13,25,370/-. In this amount, the amount of Rs. 15,000/- each under the head of

funeral expenses and loss of estate needs to be added. Further, as per the observations of Honourable Apex Court in ***Magma General Insurance Company Limited*** *(supra)*, the amount of Rs. 2,40,000/- needs to be added under the head of loss of consortium since the number of applicants is 6 in this matter, who are spouse, children and mother of the deceased. Thus, by adding the aforesaid amount the total compensation in the instant matter comes to Rs. 15,95,370/-.

10. The learned counsel for respondent No. 2 -Insurance Company heavily relied on the judgments passed by this Court as mentioned above and contended that this Court has taken a view that the amount of compensation granted under the heads of loss of consortium, loss of estate and funeral expenses shall not carry any interest pendente lite i.e. from the date of claim petition till its realization. Since I am deciding the quantum of compensation in the year 2022, such submission can be accepted. Further, since I am deciding this appeal after the period of 11 years, after the impugned judgment is passed, the interest at the prevailing rate needs to be applied to the compensation arrived at. Considering all these aspects, I pass the following order :

ORDER

(i) The appeal is partly allowed.

(ii) The applicants are entitled to compensation of Rs. 13,25,370/- along with the interest at the rate of 6% per annum from the date of petition till its realization.

(iii) The applicants are also entitled for the additional compensation of Rs. 2,70,000/-, under the heads of funeral expenses, loss of estate and loss of consortium. However, it shall not carry any interest pendente lite i.e. from the date of petition till its realization.

(iv) Respondent No.2 – Insurance Company shall deposit the balance amount of compensation within two months from the date of this order.

(v) The applicants shall pay deficit Court Fees, if any, within the period of two weeks' from the date of its computation by office.

(vi) Award be drawn accordingly.

(v) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

shp/-