**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. : 1431 OF 2017

United India Insurance Company Ltd.,
The Divisional Manager,
Near State Bank of India, Osmanabad,
Tal.Osmanabad, Dist. Osmanabad.

Through its Authorised Signatory /
Divisional Manager, Divisional Office,
Osmanpura, Aurangabad **… APPELLANT**
(Original Respondent No.2)

VERSUS

1) Vilas Vitthal Katre,
Age : 58 years,
Occupation : Agriculture,

2) Sitabai w/o Vilas Katre,
Age : 48 Years, Occu. : Household,

3) Savita Vilas Katre,
Age : 21 Years, Occu. : Household,

All R.No. 1 to 3 R/o Masobachiwadi,
Tq. Washi, Dist. Osmanabad.

4) Prasana Bus Links Pvt. Ltd.
R/o 396, Shaniwar Peth,
Near Ahilyadevi High School,
Pune,
(Owner of Toyota Innova No.
MH-12-EQ-4119)

… RESPONDENTS
(Resp. No.1 to 3 – Orig. Claimants
& Resp.No. 4 – Org. Resp.No.1)

…

Advocate for the Appellant :- Mr. S. G. Chapalgaonkar
AGP for the Respondent Nos. 1 to 3 : Mr.Manoj D. Shinde
Advocate for Respondent No. 4 : Mr. S. N. Rodge

…

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 23.08.2022
PRNOUNCED ON : 19.09.2022

JUDGMENT :

. The Insurance Company, who is the appellant in the instant appeal and original respondent No. 2 in the claim petition, has challenged the judgment and award dated 16.01.2017 passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad (hereinafter referred to as 'the learned Tribunal') in Motor Accident Claims Petition No. 252/2014 only on the ground of granting excessive amount of compensation.

2. The learned Tribunal has granted amount of compensation of Rs. 26,13,800/- including the NFL amount at the rate of 9 % per annum from the date of order till its realization.

3. The background facts are as under :

The original claimants, who are the respondent Nos.1 to 3, are respectively parents and sister of deceased Kiran Katre, who died in the accident dtd. 30.08.2014 while proceeding towards Karve Nagar on motor-cycle bearing registration No. MH-12/CZ-1235 along with his friend Kiran More as a pillion rider. One Toyato Innova Car bearing registration No. MH-12/EQ-4119 had given dash to the said motor-cycle from opposite direction. According to the original claimants, deceased was 25 years of age at the time of accident and working as Sales Executive in ICICI Bank, Pune, and was getting salary of Rs. 17,000/- per month. Since the learned Tribunal awarded the compensation as mentioned above, the appellant – Insurance Company has challenged the said compensation being awarded at higher side.

4. The learned counsel for the appellant – Insurance Company has strongly submitted that the learned Tribunal did not assess the compensation amount properly and failed to deduct various allowances of the deceased in the salary, such as travelling allowance, allowance for mobile handset,

conveyance allowance aggregating Rs. 3400/-. He further submits that the learned Tribunal also awarded amount of Rs. 1,00,000/- in addition to the amount of compensation under the head of loss of love and affection and consortium erroneously. If the consortium is to be allowed, then there should not be any compensation on account of loss of love and affection. He further submits that the funeral expenses of Rs. 25,000/- awarded by the learned Tribunal were also at higher side and amount of Rs. 15,000/- only was supposed to be awarded under this head.

5. On the contrary, the learned counsel for the respondent Nos. 1 to 3 - claimants strongly opposed the submissions made by the learned counsel for the appellant – Insurance Company. He relied upon various judgments as mentioned below :

(1) National Insurance Co.Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ)248,

(2) Sunil Sharma and Ors. V. Bachitar Singh and Ors.,2011 AIR SCW 2811,

(3) Manasvi Jain Vs. Delhi Transport Corporation, AIR 2014 SC (Supp)1746,

(4) Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others, (2018) 18 Supreme Court Cases 130,

(5) New India Assurance Company Limited Vs. Somwati and others, (2020) 9 Supreme Court Cases 644.

6. The learned counsel for the Respondent Nos. 1 to 3 submitted that only deduction in respect of professional tax and income tax is permissible from the salary of victim of the accident for assessing the compensation. He further submits that the loss of consortium is also available to the parents at the rate of Rs. 40,000/- each. He then pointed out that even if the assessment is done by taking into consideration the observations of Honourable Supreme Court in the cases of ***National Insurance Co.Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ)248 and Magma*** *(supra)*. There would be only less compensation of Rs. 20,000/- and the same also can be ignored because the compensation in the instant case has been awarded from the date of the order and not from the date of filing of petition.

7. I have gone through the entire record and proceedings

along with the impugned judgment on record in the light of rival submissions.

8. It is important to note that appellant – Insurance Company has challenged the impugned judgment and award only on the ground of grant of higher compensation. The first contention of the appellant – Insurance Company is that the learned Tribunal failed to deduct certain allowances to the deceased towards travelling allowance, conveyance allowance, allowance for mobile handset to the tune of Rs. 3400/- per month. However, the Hon'ble Supreme Court in the case of ***Manasvi Jain Vs. Delhi Transport Corporation*** *(supra),* has clearly opined that voluntary compensation made towards GPF, House Rent, insurance contribution cannot be deducted from the monthly salary of deceased except contribution towards income tax. As such, I find no force in submissions of the learned counsel for the appellant – Insurance Company that the learned Tribunal erred in failing to deduct the allowances which was given to the deceased towards conveyance allowance, mobile handset allowance and travelling allowance. As such, the submissions to that effect stand discarded.

9. The second objection raised by the appellant – Insurance Company is that when any amount under the head of loss of consortium is granted then there cannot be grant of any amount under the head of loss of love and affection. Admittedly, the Honourable Supreme Court in the case of ***New India Assurance Company Limited Vs. Somwati and others*** *(supra)*, has held as follows :

> *"The expression "consortium" includes spousal consortium, parental consortium as well as filial consortium. It is certainly not the law that consortium is only payable as a spousal consortium and consortium is not payable to children and parents. However, "loss of love and affection" is comprehended in "loss of consortium", hence, there is no justification to award compensation towards "loss of love and affection" as a separate head."*

10. As such, it can be gathered that the learned Tribunal has definitely erred in granting the amount commonly under both the heads as mentioned above. However, as per the Judgment of Honourable Supreme Court in the case of ***Pranay Sethi*** *(supra),* the consortium amount which is to be awarded Rs. 40,000/- only to the spouse, but thereafter the Honourable Supreme Court in ***Magma case*** *(supra),* has

widen the meaning of word ‘consortium’ and included “Spousal consortium”, “parental consortium” and “filial consortium” in it. Thus, if the parents are the claimants, then they are entitled for Rs. 40,000/- each. Further, as per the observations of the Hon'ble Apex Court, in the same judgment the amount of Rs. 25,000/- can be awarded on account of funeral expenses. Not only this, but the said judgment also indicates grant of Rs. 50,000/- each to the dependents of deceased i.e. old father, unmarried sister on the ground of love and affection. As such, considering the various modes of assessing the compensation as per the observations of Hon'ble Apex Court in the aforesaid judgments after the judgment in the case of ***‘Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another in Civil Appeal No. 3483 of 2008 (Arising out of SLP [C] No. 8648 of 2007)’*** the compensation assessed by the learned Tribunal in this matter does not appear excessive at all.

11. The learned Tribunal has assessed the compensation in the instant matter as follows :-

> *“46. The monthly salary of deceased Kiran Vilas Katre, was Rs. 16,466/- per month.*

47. Out of it, the professional tax Rs. 200/- per month, needs to be deducted.

48. Rs. 16,466 – Rs. 200 + Rs. 16266/-

49. As such, the monthly salary of the deceased, was Rs. 16,266/-.

50. 50 % of this amount i.e. 16,266/- will be Rs. 8,133/-.

51. As such, this amount of Rs. 8,133/-, needs to be added to the amount, as future prospects.

52. Rs. 16,266 + Rs. 8,133 = Rs. 24,399/-

53. The figure can be rounded to Rs. 24,400/-.

54. Out of it, the 50 % amount, needs to be deducted, towards the personal expenditure, as the deceased was unmarried.

55. 50 % of this amount Rs. 24,400/- will be Rs. 12,200/- i.e. it will be the effective monthly income.

56. As such, Rs. 12,200/- X 12 = Rs. 1,46,400/- will be effective yearly income.

57. Considering the age of deceased Kiran Vilas Katre, was 26 years, at the time of his death, on 30.08.2014, the multiplier, as per the decision of Hon'ble Supreme Court, in Sarla Verma case, will be 17.

58. Rs. 1,46,400/- X 17 = Rs. 24,88,800/-.

63. As such, I hold that Rs. 24,88,800/- will be the compensation amount.

Compensation amount	*24,88,800/- Rs.*
+ loss of love and affection and consortium to claimant nos. 1 & 2 the parents of unmarried deceased Kiran Vilas Katre (i.e. Rs. 50,000/-, each)	*1,00,000/- Rs.*
+ Funeral expenses	*25,000/- Rs.*
Total compensation	*26,13,800/- Rs."*

12. It is extremely important to note that it is settled law that the amount of compensation normally is to be granted from the date of filing of accident claim petition. However, in the instant case, it appears that the learned Tribunal has granted the compensation to the claimants from the date of the order i.e. from 16.01.2017. Had it been ordered as per the settled position, then the claimants would have get more amount. Be that as it may, the claimants have not filed any appeal for the said purpose, and therefore, considering all these aspects, I come to the conclusion that the compensation amount awarded by the learned Tribunal is not at all excessive as claimed by the appellant – Insurance Company and hence the appeal fails and accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

shp/-