

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

**REVIEW APPLICATION (CIVIL) NO.164 OF 2022
IN FA/1801/2015**

JAGRUTI MILIND NAIK AND ANOTHER
VERSUS
NATIONAL INSURANCE CO. LTD., THR BRANCH
MANAGER, JALGAON AND ORS

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Advocate for Applicants : Mr. Bhide Vinod Y
Advocate for Respondent 1 : Mr. A B Kadethankar
Respondent nos.2 and 3 served.

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CORAM : SHRIKANT D. KULKARNI, J.

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Reserved on : September 20, 2022
Pronounced on : October 19, 2022

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ORDER :-

1. It is an application filed by the appellants/original claimants no.2 and 3 to review the common judgment and award passed by this Court on 5.5.2022 to the extent of First Appeal no.1801 of 2015 by appreciating the additional evidence which is already accepted while deciding the appeal on merits.

2. Heard Mr. V Y Bhide, the learned counsel for the applicants and Mr. A B Kadethankar, learned counsel for respondent no.1/National Insurance Company Ltd.

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Respondent nos. 2 and 3 though duly served, none appeared for them. Notice issued to respondent no.4 returned unserved with remark that he is not residing on the given address. He, being not contesting party to this review application, review application is taken up for hearing.

3. Mr. Bhide, learned counsel for the applicants submitted that the group of six appeals came to be disposed off by common judgment and award dated 5.5.2022. This Court was pleased to allow the civil application no.3411 of 2015 to lead additional evidence in First Appeal No.1801 of 2015. He pointed out that, though this Court was pleased to allow the application for additional evidence, there is no discussion about additional documentary piece of evidence accepted by this Court. He submitted that, it has far reaching effect on merits. He submitted that, in view of additional evidence allowed and accepted by this Court, the applicants are entitled to get enhanced compensation in view of the citation in case of **Vimal Kanwar and ors.**

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Vs Kishore Dan and ors. reported in 2013 AIR (SCW) 3258. Mr. Bhide also invited my attention to the two calculation sheets submitted by him earlier as well as alongwith the compilation of citations submitted at the time of hearing of review application. He submitted that the applicants are entitled to get enhanced compensation by giving 100% increase in the future income of the deceased. He has also invited my attention to the additional piece of documentary evidence to that effect and submitted that similarly placed employee has received high increase in the salary and accordingly, deceased could have received such kind of rise in salary. Mr. Bhide, learned counsel for the applicants submitted that the applicants are accordingly entitled to get 100% increase in the future income of the deceased in view of citation in case of **Vimal Kanwar and ors. Vs Kishore Dan and ors.** (supra) and urged to allow this review application.

4. He also invited my attention to operative order (I) (iii) in FA No.1801 of 2015 and submitted that the First

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Appeal No.1801 of 2015 came to be dismissed, however, if the earlier part of calculation is taken into consideration, first appeal no.1801 of 2015 needs to be partly allowed and it appears to be a gross mistake or error apparent on the face of the record; which needs to be corrected by allowing this review application.

5. Mr. Kadethankar, learned counsel for respondent no.1/National Insurance Company strongly opposed to allow this review application. He invited my attention to the common judgment and award passed by this Court, more particularly, paragraph nos.22 and 23. He submitted that this Court has considered the citations in case of **Vimal Kanwar and ors. Vs Kishore Dan and ors.** and **National Insurance Company Ltd., Vs. Pranay Sethi and others** reported in AIR 2017 Supreme Court 5157 and, accordingly, arrived at conclusion to grant future prospects at 50%.

6. Mr. Kadethankar learned counsel submitted that the law laid down by the Hon'ble Supreme Court in case of **National Insurance Company Ltd., Vs. Pranay**
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Sethi and others is later in point of time and covered uncertainty in the possibility of hike in income and period required to finally adjudicate the award. This Court has followed the recent view of the Hon'ble Supreme Court in case of **National Insurance Company Ltd., Vs. Pranay Sethi and others.** He submitted that the review application is wholly misconceived. The law holds date of death relevant for computation of award and accordingly the Hon'ble Supreme Court has fixed method of adding future prospects by putting cap to 50% rise. Accordingly, this court has granted 50% future prospects. There is no need to grant any more hike. Review application may be dismissed.

7. I have perused the reply affidavit filed on behalf of respondent No.1 National Insurance Company Ltd. I have considered the submissions of both sides.

8. In case of **State of Rajasthan Vs. T.N. Sahani** reported in (2001) 10 SCC 619 the Hon'ble Supreme Court has discussed the scope of unamended provision

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of Order 41 Rule 27 (c) of CPC. It is observed that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the Court to look into the documents and for that purpose amended provision of Order 41 Rule 27 (b) of CPC can be invoked.

9. Having regard to the legal position made clear by the Hon'ble Supreme Court this Court was pleased to allow civil application no.3411 of 2015 in First Appeal no.1801 of 2015 by granting permission to the present

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applicants to lead additional evidence in the form of documentary evidence. It is also observed by this Court vide order dated 25.2.2022 that the additional piece of documentary evidence shall be considered while deciding this group of appeals.

10. On going through the common judgment and award passed by this Court in group of six appeals dated 5.5.2022, it is revealed that this Court has not considered the additional piece of evidence placed on record by the applicants in First Appeal No.1801 of 2015. It seems to be an apparent error from the face of record.

11. Following is nature of additional piece of documentary evidence relied upon by the applicants to seek 100% future prospects in view of the salary of the colleague of the deceased Santosh Sudhakar Mandlik.

No	Particulars	Exhibit	Page
01.	Copy of the letters dated 14.2.2000 addressed to the deceased and witness Santosh Sudhakar Mandlik indicating their position at Serial no.38 and 35 respectively in the waiting list for prospective appointment.	"A"	10-11
02	Copy of the identity cards of the deceased and witness Santosh Sudhakar Mandlik giving their dates of appointment in the service to be 04/04/2002 and 01/03/2002 respectively.	"A"	12-13

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03	Copy of the salary certificate dated 11.02.2015 of Santosh Sudhakar Mandlik for the month of June, 2014.	"C"	14-14
04.	Affidavit dated 21.02.2015 sworn and executed by the witness Santosh Sudhakar Mandlik	"D"	15-16

In sum and substance it is stand of the applicants that had the Milind Naik remained alive, he could have drawn the same hike in the salary like Santosh Mandlik placed on same platform and sought 100% increase under the head of future prospects.

12. Mr. Bhide, learned counsel for the applicants has also placed his heavy reliance in **Vimal Kanwar and ors. Vs. Kishore Dan and ors.** (supra). I have studied the decisions of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **AIR 2017 Supreme Court 5157** as well as the decision in case of **Vimal Kanwar and ors. Vs. Kishore Dan and ors** reported in **2013 AIR (SCW 3258)** in the light of the submissions of learned counsel for both sides.

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13. The decision in **Vimal Kanwar and ors. Vs. Kishore Dan and ors** was rendered by the Hon'ble two Judges of the Supreme Court on 3.5.2013; whereas, the decision in case of **National Insurance Company Ltd., Vs. Pranay Sethi and ors** is rendered by the Hon'ble three judges Bench of the Supreme Court on 31.10.2017, which is in later point of time. It is well settled position of law that, the decision of the larger Bench need to be followed which is in recent point of time. In case of **National Insurance Company Ltd., Vs. Pranay Sethi and ors**, the Hon'ble Supreme Court has considered all the aspects including the compensation under the head of future prospects. It is held by the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and ors.** (supra) that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition of 30% should be made, if the age of the deceased was

between 40 to 50 years. In case where the age of the deceased was between 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

14. Having regard to the recent decision of the Hon'ble Supreme Court of the larger Bench, this Court by considering that deceased Milind Naik had permanent job and he was below 40 years, added 50% in his income while considering the future prospects. This Court has also considered the case of **Vimal Kanwar and ors.** and in view of the decision of the larger Bench of the Hon'ble Supreme Court granted compensation under the head of future prospects by making addition of 50% in the income of the deceased. Even though additional documentary piece of evidence is not discussed by this Court, there is no change in the ultimate result of the appeal. It remains unaltered even after considering the additional piece of evidence.

15. Another point raised by Mr. Bhide, learned counsel for the applicants regarding error apparent on the face
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of the record in the operative order paragraph no.I (iii) pertaining to First Appeal No.1801 of 2015. It is rightly pointed out that First appeal no.1801 of 2015 ought to have been partly allowed in view of grant of compensation under various heads. However, First appeal No.1822 of 2014 preferred by the National Insurance Company Ltd., challenging the same award stands allowed and award is modified by giving in detail calculation on page no.20 of the common judgment. It has no consequence by way of fruits.

16. Having regard to the above reasons and discussion, following order is passed.

ORDER

1. The Review application No.164 of 2022 preferred by the applicants/appellants in First Appeal No.1801 of 2015 stands partly allowed.
 - i. The operative order paragraph no.(I)(iii) passed in First Appeal No.1801 of 2015 stands corrected as under :-

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“First Appeal No.1801 of 2015 preferred by the appellants/claimants stands partly allowed.”

2. Since the award passed by the Member, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.523 of 2007 is already modified in First Appeal No.1822 of 2014 preferred by the National Insurance Company Ltd., no changes are necessary in the award.
3. The Review Application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

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