IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 457 OF 2012

1. Sau. Sumanbai Ramdas Kasar
Age 52 years, Occu. : Household,

2. Chandrakant Ramdas Kasar
Age 24 years, Occu.: Labour,

3. Anil Ramdas Kasar
Age 23 years, Occu.: Labour,

4. Kavita Manohar Kasar
Age 21 years, Occu.: Household,

All R/o Khadki (Bk.)
Tq. Chalisgaon, Dist. Jalgaon. …. Appellants
(Orig. Claimants)

Versus

1. M/s. Amritlal & Company Through
(Parner) Shri. Kunjilal Shivkisan
Maheshwari
Age :50 years, Occu. Business,
R/o. Amgaon, Tq. & Dist. Bhandara.

2. The Branch Manager
The United India Insurance Company Ltd.,
Mansing Market, IInd Floor,
Station Road, Jalgaon,
Dist. Jalgaon. … Respondents.

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Mr. M.R. Malpani, Advocate h/f Mr. Ajit B. Kale, Advocate for the Appellants
Mr. A.B. Gatne, Advocate for Respondent No.2
Mr. D.M. Pingale, Advocate for Respondent No.1 (absent)

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CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 08.12.2021
Pronounced on : 01.04.2022

JUDGMENT :-

1. It is an appeal for enhancement of compensation amount filed by the appellants / claimants by taking aid of Section 173 of the Motor Vehicles Act, 1988.

2. The deceased Naresh (son of the original claimant nos. 1 and 2) was returning home on his bicycle on 25.07.1993 about 9.15 a.m. The Tanker bearing registration no. MTG-8961 driven in a rash and negligent manner, gave dash to the deceased and caused accident. Naresh sustained serious injuries in the accident and succumbed to death.

3. The parents of the deceased had filed claim under Section 166 of the Motor Vehicle Act, 1988 and sought compensation on account of death of their son Naresh in a motor vehicular accident. The Member, M.A.C.T., Jalgaon after considering the rival pleadings of the parties, evidence on record and considering argument advanced on behalf of both the sides was pleased to partly allowed the claim to the tune of Rs.1,68,000/- with interest @ 7.5% per annum from the date of claim petition till its

realization by fastening the liability jointly and severally on the owner and the insurer of the Tanker involved in the accident.

4. Feeling aggrieved by the impugned judgment and award passed by the Tribunal, the appellants / claimants have preferred this appeal.

5. It appears from the record that the father of the deceased died during the pendency of the claim petition and his legal heirs were brought on record who have prosecuted the present appeal.

6. Heard Mr. M.R. Malpani holding for Mr. Ajit Kale, learned counsel for the appellants / claimants and Mr. A.B. Gatne, learned counsel for respondent no.2. Mr. D.M. Pingle, learned counsel for respondent no.1, remained absent at the time of argument.

7. Mr. Malpani holding for Mr. Kale, learned counsel for the appellants / claimants invited my attention to the Constitution Bench decision of the Hon'ble Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017(16) SCC 680***. He submitted that the appellants / claimants are entitled to get compensation under the various heads including future prospects . He, therefore, urged to enhance the

amount of compensation by placing reliance in case of ***Pranay Sethi*** (supra).

8. Mr. A.B. Gatne, learned counsel for respondent no.2 invited my attention to the impugned judgment delivered by the Tribunal. He pointed out that the deceased was bachelor at the time of accident. The Tribunal has committed an error while deducting 1/3rd from the income of the deceased towards personal expenses. The Tribunal ought to have deducted one half (½) from the income of the deceased towards his personal expenses. It has resulted in awarding exorbitant compensation.

9. It is not in dispute that the deceased Naresh Ramdas Kasar met with death in a motor vehicular accident on 25.07.1993. The vehicle involved in the accident i.e. Tanker was duly insured with respondent no.2 at the time of accident. The question is about determination of compensation in view of the recent decision of the Apex Court in case of ***Pranay Sethi*** (supra).

10. The Apex Court decision in case of ***Pranay Sethi*** (supra) was not in the field when the impugned judgment and award came to be passed by the M.A.C.T., Jalgaon. The amount of compensation now, therefore, needs to be reassessed in view of

guidelines laid down by the Apex Court in case of ***Pranay Sethi*** (supra). It is rightly pointed out by Mr. Gatne that the Tribunal has committed an error while making 1/3rd deduction from the income of the deceased at the time of making calculation of compensation and one half (½) amount needs deducted from the income of the deceased towards personal expenses as per the decision of the Apex Court in case of ***Pranay Sethi*** (supra).

11. The appellants / claimants are also entitled to get compensation under the head of future prospects, loss of estate, loss of dependency, loss of consortium and funeral expenses, etc. by taking help of decision in case of ***Pranay Sethi*** (supra).

12. There was no evidence before the Tribunal to prove that the deceased was earning Rs.4,000/- per month by way of his business of bangles. The Tribunal has rightly accepted the income of the deceased at Rs.50/- per day. Meaning thereby, Rs.1,500/- per month and Rs.18,000/- per year. Out of yearly income of the deceased, one half (½) needs to be deducted towards personal expenses of the deceased. Thus, loss of dependency per year comes to Rs.9,000/-. The Tribunal has applied the multiplier of 17 by looking to the age of deceased as 22 years. As per the landmark decision in case of ***Sarla Warma***, multiplier 18 needs to be applied.

Thus, loss of dependency comes to Rs.1,62,000/-. The deceased was 22 years old and in view of decision in case of ***Pranay Sethi*** (supra), the appellants / claimants are entitled to get loss of future prospects @ 40%, which comes to Rs. 64,800/-. The appellants / claimants further entitled to get funeral expenses at Rs.15,000/-, loss of consortium at Rs.2,00,000/-, loss of estate at Rs.15,000/-. The total compensation comes to Rs. 4,56,800/-. The Tribunal has awarded the compensation of Rs.1,68,000/- and the same needs to be deducted from the enhanced compensation, which comes to Rs.2,38,800/-.

13. Having regard to the above discussion, compensation is reassessed as under:

Head		Compensation Amount
Yearly Income	Rs. 18,000=00	
(-) ½ deduction towards personal expenses	Rs. 9,000=00 -------------------	
Loss of dependency per year (Rs.9,000 x 18 (multiplier)	Rs.1,62,000=00	
Loss of dependency		Rs.1,62,000=00

Loss of future prospects	Rs. 64,800=00
Funeral expenses	Rs 15,000=00
Loss of consortium	Rs. 2,00,000=00
Loss of estate	Rs. 15,000=00
Total compensation awarded	**Rs. 4,56,800=00**
(-) Compensation awarded by M.A.C.T.	Rs. 2,18,000=00
Enhanced Compensation	**Rs. 2,38,800=00**

13. In view of the above, I proceed to pass the following order:

O R D E R

(i) The appeal stands partly allowed.

(ii) Respondent nos. 1 and 2 shall jointly and severally liable to pay enhanced compensation of Rs. 2,38,800/-(Rupees Two Lacs Thirty Eight Thousand Eight Hundred only) to the appellants / claimants along with interest @ 6% per annum from the date of claim petition till its realization.

(iii) The judgment and award passed by the Member, M.A.C.T. in M.A.C.P. No. 94 of 2004 is hereby by modified in above terms.

(iv) The appellants / original claimants shall deposit the deficit Court fees on the enhanced amount of compensation with the Registry.

(v) The award be modified accordingly.

(vi) No order as to costs.

(vii) The appeal stands disposed of accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane