IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2672 OF 2009
WITH
CIVIL APPLICATION NO.10108 OF 2009
AND
CROSS-OBJECTION (ST) NO.31772 OF 2010
WITH
CIVIL APPLICATION NO. 355 OF 2022
*** * * * ***

FIRST APPEAL NO. 2672 OF 2009
WITH
CIVIL APPLICATION NO.10108 OF 2009

The National Insurance Co. Ltd. D/O IX, 3/90, Cannaught Circle, Opp. Rivoli Cinema, New Delhi – 110 001 Through its Divisional Manager, Hazari Chambers, Station Road, Aurangabad, Dist. Aurangabad.	..	Appellant [ori.resp. No.3]

Versus

1. Smt. Tejal w/o. Sachin Shah Age.26 years, Occ. Household, R/o.H.No.50, Pannalal Nagar, New Osmanpura, Aurangabad. 2. Bhupendra s/o. Murardas Shah Age.72 years, Occ. Pensioner, R/o. As above. 3. Smt.Vanalata w/o. Bhupendra Shah Age. 64 years, Occ. Household, R/o. As above.	..	Respondents [Res.1 to 3 original claimants; Res.No.4 &5 ori.resp. No.1&2]

4. Umeshkumar s/o. Dulichand
Age.39 years, Occ. Driver,
R/o. H.No.F-180, Laxmi Park,
Nagloi, Delhi-41.
[Deleted as per order dated
24.04.2018]

5. Sumeet Chatterjee
c/o. S.K. Chatterjee
R/o. H.No.43, Gulab Vihar
Apartment, Sector-9,
Rohini, Delhi – 110025.

Mr.D.V. Soman, Advocate for the appellant.
Mr.L.D. Vakil, Advocate for respondent Nos.1 to 3.
Respondent No.4 deleted.
Mr.M.M. Joshi, Advocate for respondent No.5.

AND
CROSS-OBJECTION (ST) NO.31772 OF 2010
WITH
CIVIL APPLICATION NO. 355 OF 2022

1. Smt. Tejal w/o. Sachin Shah .. Cross-Appellants [original claimants]
Age.25 years, Occ. Household Education,
R/o.H.No.50, Pannalal Nagar,
New Osmanpura, Aurangabad.

2. Bhupendra s/o. Murardas Shah
Age.68 years, Occ. Pensioner,
R/o. As above.

3. Smt.Vanlata w/o. Bhupendra Shah
Age. 60 years, Occ. Household,
R/o. As above.

Versus

1.	The National Insurance Co. Ltd. D/o.IX, 3/90, Cannaught Circle, Opp. Rivoli Cinema, New Delhi-110001.	..	Respondents [Original respondents]
2.	Umeshkumar s/o. Dulichand Age.35, Occ. Driver, R/o.H.No.F-180, Laxmi Park, Nagloi, Delhi-41, Dist. Delhi.		
3.	Sumeet Chatterjee, C/o. S.K. Chatterjee, R/o. H.No.43, Gulab Vihar, Apartment, Sector-9, Rohini Delhi- 110025.		

Mr.L.D. Vakil, Advocate for cross-appellants.
Mr.D.V. Soman, Advocate for respondent No.1.
Mr.M.M. Joshi, Advocate for respondent No.3.

CORAM : VINAY JOSHI, J.
RESERVED ON : 08.02.2022
PRONOUNCED ON : 21.02.2022

J U D G M E N T :-

01. This appeal as well as cross-objection arose out of judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad in MACP No. No.538 of 2005 dated 24.02.2009, whereby death claim was partially allowed directing owner and insurer of offending vehicle to pay total compensation of Rs.30,22,800/- along with interest at the rate of 9% per annum.

02. Being aggrieved by said judgment and award, the insurance company has filed this appeal in terms of Section 173 of the Motor Vehicles Act, primarily challenging the quantum of compensation. On the other hand, the respondents/claimants also expressed their dissatisfaction about quantum awarded by the Tribunal and seek for enhancement by way of filing cross-objection.

03. Facts of the case unrevealed a tragic incident in which claimant No.1 (widow) lost her husband (Sachin) within one week from her marriage that too while they were on their honeymoon. Claimant Nos.2 and 3 are ill-fated parents of their qualified son, who unfortunately died in vehicular accident dated 07.02.2005.

04. Claimant No.1-widow got married with deceased Sachin on 01.02.2005 and they went to Shimla for honeymoon. They were travelling by the offending car bearing registration No. DL-IY-8980. While the car was

passing from national highway No.88 within precinct of village Arki, Dist. Solan, Himachal Pradesh, the car was driven in high speed. The car driver lost control and fell into deep valley resulting into causing severe bodily injuries to deceased Sachin, who succumbed on the spot. The claimants were resident of Aurangabad. Therefore, they have filed claim petition under section 166 of the MV Act before the Tribunal at Aurangabad. The driver and owner of offending vehicle did not contest the claim. The insurer resisted the claim by taking usual defences. After assessing oral and documentary evidence, the Tribunal has assessed total compensation to the tune of Rs.30,22,800/-.

05. In the appeal of insurance company it is primely canvassed that the Tribunal has seriously erred in considering the annual income of deceased, which led to miscarriage of justice. Besides that, it is contended that the claimants have not established the age of deceased which was the relevant circumstance. Learned

Counsel appearing for insurance company has attracted my attention to some calculations made by the insurance company at Ground No.IV of the appeal to contend that they have no dispute as regard to the compensation to the extent of Rs.22,70,000/-. However, rest of the amount is disputed.

06. Per contra, the claimants’ learned Counsel contended that the Tribunal has erred in applying multiplier of 12 which is against the settled principle of law. Moreover, it is argued that the Tribunal has not considered loss of future prospects and therefore the amount needs to be enhanced on said counts.

07. With the assistance of both sides I have gone through the evidence on record. The factum of death of Sachin in concerned vehicular accident having involvement of offending car is not in dispute. Since the car fell into valley, without any hick-up it can be held that due to sole negligence of car driver the accident occurred.

08. The crucial aspect is about the quantum of compensation. With the assistance of both sides I have examined the evidence led by parties before the Tribunal. Widow as well as father of deceased Sachin led evidence on affidavit. It has come in the evidence that deceased Sachin was well qualified. He possessed qualification as BE (Mechanic) along with MBA. He was serving as Chief Executive (Audio Marketing) with Philips Electronics India Ltd., on annual package of Rs.4,02,000/-. So far as qualification and job of deceased with Philips company is concerned, there was no contest. The claimants have examined one Piyush Seth, the then serving with Philips company. He deposed about employment of deceased Sachin with Philips company and particularly produced salary certificate (Exh.50) issued by Assistant Manager (HR) of the company.

09. The salary certificate specifies two components firstly about monthly emoluments and the annual

allowances. For ready reference the relevant portion is reproduced here-in-below.

> "This is to certify that late Mr.Sachin B. Shah (Salary No.78048590) was working in this organization and breakup of his last drawn monthly salary is as undergone
> Basic :Rs.11000 p.m.
> Addl. Personal Pay :Rs.7800 p.m.
> House rent allowance :Rs.4000 p.m.
> Conveyance allowance :Rs.1200 p.m.
>
> In addition to above he was entitle for following payments per annum.
>
> Leave trave allowance :Rs.12000/=p.a.
> Medical reimbursement :Rs.6000/=p.a.
> *Team performance pay :Rs.46000/=p.a.
> *Individual performance pay:Rs.50000/=p.a.
>
> *These payment is based on performance of concerned officer as well as business."

10. The learned Counsel appearing for insurance company would submit that only monthly emoluments are to be considered as income. In other words, he would submit that the annual package under the head of leave travel allowance, medical reimbursement, team performance pay and individual performance pay cannot be considered. It is submitted that these allowances are depending upon performance of individual and therefore they cannot be considered as income of deceased.

11. On the other hand, learned Counsel appearing for claimants has submitted that though there are various components about annual disbursement, in real sense, they are part of salary. The employee as well as family members were benefited by such allowances and special pay. Relying on the decision of the Supreme Court in the case of **National Insurance Co. Ltd. Vs. Indira Srivastava and Ors., (2008) 2 SCC 763**, it is canvassed that besides professional tax and income tax, nothing can be reduced from annual package of the employee. In said decision the Supreme Court took note that the private sector companies always use to take recourse of various schemes while fixing package of the employee. Different offers are made by employer which are either for the benefit of the employee or his family. Certainly, due to the services rendered by the employee, the allowances and special pay are paid to the employee which can be well termed as his income.

12. Perusal of salary certificate discloses that the deceased was getting conveyance allowance of Rs.1200/- per month, which cannot be added since it was meant for conveyance of the employee. Likewise medical reimbursement cannot be considered since from its nature, it is a reimbursement after expenditure. Thus, excluding these two components the annual income as per salary certificate would be Rs.3,81,600/-. (Monthly head Rs.2,73,600/-+ annual head Rs.1,80,000/-=Rs.3,81,600/-).

13. As noted above, professional tax and income tax has to be deducted from said annual income. The accident took place in the year 2005 and income tax slab of the relevant year is not brought on record. The claimants have not produced income tax return to show exact annual deduction on account of income tax. Having regard to the annual income, amount of Rs.3000/- per month i.e. Rs.36,000/- per annum has to be reasonably deducted towards income tax. Likewise, the professional tax of Rs.2400/- per annum has to be deducted. Thus, on above

deduction the total annual income comes to the tune of Rs.3,43,200/-.

14. The Tribunal has not taken into account addition towards loss of future prospects. Pertinent to note that deceased was well qualified employee of a multi-national company, certainly having better prospects. In his age of 29, he was holding senior position in the company. Having regard to the Constitutional Bench decision of the Supreme Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and Ors., (2017) 16 SCC 680**, the component of future prospects must be taken into account. There is no evidence that the deceased was having permanent job or provision of regular hike in the salary. In absence of evidence, it can be held that the deceased was having fixed salary and therefore 40% is to be added towards loss of future prospects in view of above decision. Thus, on addition of 40% i.e. Rs.1,37,280/-, it comes to the tune of Rs.4,80,480/-. The deceased was survived by his widow and parents. In view of well

settled position as laid down by the Supreme Court in the case of **<u>Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Anr, (2009)6 SCC 121</u>**, considering the number of dependents 1/3rd amount i.e. Rs.1,60,160/- needs to be deducted. After deduction of 1/3rd amount on account of living and personal expenses, it comes to the tune of Rs.3,20,320/-.

15. The Tribunal has totally erred in using multiplier of 12. The Tribunal expressed that multiplier of 17 or 18 is provided for the age group of deceased. However, by taking note of the age of parents, the Tribunal has applied multiplier of 12. In view of settled legal position in above referred decisions, multiplier has to be used as per age of deceased. Though no specific evidence is brought on record, however, it is evident from medical papers that deceased was 29 years of age. In above referred case of <u>Sarla Verma (Supra)</u> the Supreme Court has fixed multiplier of 17 for the age group in between 25 to 30 years. In view of that by use

of multiplier of 17, it comes to the tune of Rs.3,20,320/- x 17 = Rs.54,45,440/-. Besides that in view of law laid down by the Supreme Court in the case of Pranay Sethi (Supra), the claimants are entitled for Rs.77,000/- (Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.70,000/- + 10% = Rs.77,000/-) on account of loss of estate, loss of consortium and funeral expenses by adding 10% hike. Thus, on mathematical calculations, the total entitlement would be Rs.55,22,440/-.

16. The Tribunal is always duty bound to grant "just compensation" under the beneficial scheme of Legislation. As noted above, the Tribunal has seriously erred in using multiplier and denying addition on account of future prospects. The Tribunal has directed to pay interest at the rate of 9% per annum on awarded amount. Having regard to the current rate of interest in banking sector, it is appropriate to grant interest at the rate of 7.5% per annum. Having regard to the relations of the claimants with the deceased, it is just and appropriate

that each claimant shall get equal amount of compensation. In the circumstances, the appeal of the insurance company deserves to be dismissed whilst the cross-objection is to be allowed. Hence, following order :-

O R D E R

1) The appeal of insurance company stands dismissed.

2) The cross-objection of claimants is hereby allowed.

3) The impugned judgment and award passed in MACP No.538 of 2005 is hereby set aside and modified as under :-

a) The claim petition is partly allowed with proportionate costs.

b) Respondent Nos.2 and 3 (owner and insurer) shall pay total compensation of Rs.55,22,440/- (Rupees Fifty Five Lakhs Twenty Two Thousand Four Hundred Forty) inclusive of 'no fault liability' along with future interest at the rate of 7.5% from the date of petition till its realization of full amount.

c) On deposit of amount, it shall be distributed equally to all claimants along with proportionate costs. If any amount is withdrawn, then it should be adjusted in above proportion.

d) The claimants shall pay deficit court fee stamp, if any.

4) In view of disposal of first appeal and cross-objection, pending civil applications stand disposed of.

[VINAY JOSHI,J.]

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