IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4051 OF 2008

1. Smt. Sanjivani w/o Shivaji Mane,
Age 39 years, Occu. Household,
R/o Murambi, Taluka Ambajogai,
District Beed.

2. Ku. Sapna d/o Shivaji Mane,
Age 21 years, Occu.Education,

3. Ku. Sushma d/o Shivaji Mane,
Age 17 years, Occu. Education

4. Sambhaji s/o Shivaji Mane,
Age 16 years, Occu. Education

Petitioner Nos.3 and 4 are under guardianship
of mother i.e. appellant no.1

5. Harichandra s/o Gyanoba Mane,
Age 75 years, Occu. Nil
(deleted as per order below Exh.22)

6. Sow. Subhadrabai w/o Harichandra Mane
Age 70 years, Occu. Nil.,
R/o as above ..Appellants
(Original Claimants)

Versus

1. Shaikh Mohd. Mustaq s/o Jan Mohd.
Age major, Occu. Maruti owner and
Service, R/o Vidyanagar, Beed,
Taluka and District Beed,
now service at Panchayat Samiti
Parli - V, District Beed

2. Branch Manager,
The United Insurance Company,
Branch Office, Chatrapati Sankul,
1st floor, Subhash Road, Beed,
Taluka and Dist. Beed ..Respondents

Mr Sachin Deshmukh, Advocate for appellants
Mr V.R. Mundada, Advocate for respondent no.2/Insurance Company

CORAM : SHRIKANT D. KULKARNI, J.

JUDGMENT RESERVED ON : 21.12.2021
JUDGMENT PRONOUNCED ON : 24.2.2022

JUDGMENT :

1. This appeal is directed against the impugned judgment and award passed in M.A.C.P.No.58 of 2004 by the Member, M.A.C.T., Ambajogai, District Beed.

2. The impugned judgment is challenged by the original claimants on the ground of improper calculation of the salary of the deceased which has resulted in getting inadequate compensation.

3. Heard Mr Sachin Deshmukh, learned Counsel for appellants/original claimants and Mr V.R. Mundada, learned Counsel for respondent no.2/Insurance Company. Respondent no.1 though duly served remained absent.

4. Mr Sachin Deshmukh, learned Counsel for the appellants invited my attention to the impugned judgment, para 9. He submitted that the tribunal ought to have accepted gross salary of the deceased to the tune of Rs.10,219/-. The tribunal has committed an error in accepting the net salary of the deceased while making calculation under the head of loss of income. He submitted that the tribunal has also not considered promotional prospects of the deceased. The deceased was working as a Teacher in Zilla Parishad school at Talegaon, Taluka Parali. He was having bright future and career. That aspect was overlooked by the tribunal. Mr Sachin Deshmukh, learned Counsel for appellants submitted that the appellants are entitled to get compensation under the head of future prospects, loss of estate, loss of consortium, funeral expenses in view of landmark judgment of the Honourable Supreme Court in the matter of **National**

Insurance Co.Ltd., Vs. Pranay Sethi and ors. reported in **2017 (16) SCC 680.** Mr Sachin Deshmukh, learned Counsel for the appellants submitted that the appellants are entitled to get enhanced amount of compensation in view of cited case of **Pranay Sethi and ors.** (supra) with interest from the date of claim petition by placing reliance in case of **Smt. Chameli Wati and anr. Vs. Delhi Municipal Corporation of Delhi,** reported in **1986 (4) SCC 503.**

5. Mr V.R. Mundada, learned Counsel for respondent no.2/Insurance Company supported the findings recorded by the tribunal. He submitted that the tribunal has considered the income of the deceased which was brought on record. The tribunal has rightly accepted the net salary by considering the deductions and accordingly made calculation of compensation. He, therefore, submitted that there is no merit in the appeal. No case is made out for enhancement of compensation.

6. Having regard to the submissions of learned Counsel for both the sides, I have gone through the impugned judgment and award passed in M.A.C.P.No.54 of 2004 by the Member, M.A.C.T., Ambajogai.

7. It is undisputed position that the deceased was serving as a primary teacher in Zilla Parishad School at the time of accident. He met with motor vehicle accident on 29.12.2003 when he was proceeding on his motorcycle. He was knocked down by one Maruti van coming from opposite direction and which was driven in rash and negligent manner. Shivaji Mane (since deceased) succumbed to the injuries.

8. The question is about accepting the income of the deceased with regard to statutory deductions from the monthly salary.

9. The law is now well settled in view of various citations of the Apex Court that only statutory deductions from the salary are permissible while taking into consideration the salary of a person while calculating his income. Reliance can be placed on **Vimal Kanwar & Ors., Vs. Kishore Dan and ors.,** reported in **(2013) 7 SCC 476.** Admittedly, deceased was drawing salary of Rs.10,219/- per month at the time of accident as per the salary certificate vide Exh.43. In the salary certificate vide Exh.43, various deductions are made and it's total comes to Rs.6,882/- per month. The net salary of the deceased was Rs.3,337/- per month which was accepted by the tribunal and accordingly made calculation. On perusing the salary certificate vide Exh.43, it is noticed that deduction under the head of professional tax is alone found to be statutory deduction. Remaining deductions cannot be considered as statutory deductions viz. postal saving, L.I.C., G.P.F. contribution, staff society, G.I.S. and festival loan. Those deductions must be kept out of consideration. The tribunal seems to have relied upon the citation in case of **Asha and others Vs. United India Insurance Co.Ltd., and anr.,** reported in **2004 A.C.J. 448 (S.C.)** while accepting the net salary for calculating income of the deceased. In view of recent decision of the Apex Court in case of **Vimal Kanwar & Ors., Vs. Kishore Dan and ors.,** (supra), only statutory deductions are permissible from the salary.

10. In case of **Vimal Kanwar & Ors., Vs. Kishore Dan and ors.,** (supra), it is held by the Apex Court that while computing the income of the deceased, deduction under the head of provident fund, pension and life insurance receivable by the claimant/deceased do not come within the perifery of Motor

Vehicles Act to be termed as pecuniary advantage liable for deduction. In view of recent position of law laid down by the Apex Court in case of **Vimal Kanwar & Ors., Vs. Kishore Dan and ors.** (supra), only statutory deductions viz. income tax, professional tax etc. are permissible. The contribution of the deceased towards his P.P.F. account, pension account, L.I.C., etc. cannot be deducted from the salary.

11. As pointed out earlier, the deceased was getting salary of Rs.10,219/- per month (inclusive of all allowances). He was not income tax payer. The amount of Rs.200/- under the head of professional tax needs to be deducted from the salary. After deducting the same, the net salary of the deceaed comes to Rs.10,019/- per month, which needs to be accepted and relied upon for computation of income of the deceased. In view of landmark decision of the Apex Court in case of **National Insurance Co.Ltd., Vs. Pranay Sethi and ors.** (supra), when the age of the deceased was between 40 to 50 years and had a permanent job, the claimants are entitled to get addition of 25% under the head of future prospects. The multiplier of 13 needs to be applied in this case in view of decision of the Apex Court in case of **Sarla Verma & Ors., Vs. Delhi Transport Corporation and anr.,** reported in **AIR 2009 SC 3104.** One third amount needs to be deducted from the income of the deceased towards personal expenses as per the decision of the Hon'ble Apex Court in case of **National Insurance Co.Ltd., Vs. Pranay Sethi and ors.** (supra). The claimants are also entitled to get compensation under the head of future prospects, loss of estate, loss of consortium, funeral expenses etc.

12. Having regard to the above discussion, compensation needs to be reassessed.

The re-assement of compensation is as under :

Head		Compensation Amount
Gross salary p.m. (-) Professional tax	Rs.10,219 =00 Rs. 200 = 00	
Net salary p.m.	Rs.10,019 = 00	
(-) 1/3rd deduction towards personal expenses	Rs. 3,339 = 00	
Loss of dependency per month	Rs. 6,680 = 00	
Loss of dependency per year (Rs.6680 x 12)	Rs.80,160 = 00	
Loss of dependency (Rs.80,160 x 13 (multiplier)		**Rs.10,42,080 = 00**
Loss of future prospects @ 25%		Rs. 2,60,520 = 00
Funeral expenses		Rs. 15,000 = 00
Loss of consortium (Rs.50,000/- per claimant)		Rs. 3,00,000 = 00
Loss of estate		Rs. 15,000 = 00
Total compensation awarded		**Rs.16,32,600 = 00**
(-) Compensation awarded by the M.A.C.T.		Rs. 6,97,680 = 00
Enhanced compensation		**Rs. 9,34,920 = 00**

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

ORDER

(i) Respondents no.1 and 2 shall jointly and severally liable to pay enhanced compensation of Rs.9,34,920/- to the appellants/original claimants along with interest @ 8% per annum from the date of claim petition till its realisation.

(ii) The judgment and award passed by the Member, M.A.C.T., Ambajogai District Beed in M.A.C.P. No.58 of 2004, is hereby modified in above terms.

(iii) Rest of the impugned judgment and award passed by the tribunal is hereby confirmed.

(iv) The award be modified accordingly.

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

(vi) No order as to costs.

(vii) The appeal stands disposed of accordingly.

(SHRIKANT D. KULKARNI, J.)

vvr