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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 17 OF 2022**

1. **ANJALI VILAS DESHPANDE**
Age : 48 years, Occu: Housewife
2. **SHUBHANKAR VILAS
DESHPANDE**
Age : 22 years, Occu : Student
3. **AMRUTA VILAS DESHPANDE @
AMRUTA MUKUND FADKE**
Age : 20 years, Occu : Student
4. **ABHISHEK VILAS DESHPANDE**
Age : 20 years, Occu : Student
5. **RAMKUMAR MAHARUDRA
DESHPANDE**
Age : 74 years, Occu : Nil
6. **RAJANI RAMKUMAR
DESHPANDE**
Age : 74 years, Occu : Household
All are R/at Flat No. 3, B-79, Shrirang
Unit 16, Shrirang Soc., Thane 400601

... APPELLANTS
(ORIG. CLAIMANTS)

~ VERSUS ~

1. **PRABHA RAJENDRA GUPTA**
R/At 12, Mukund Apt., Manpada Rd,
Dombivli (E), Dist.Thane
2. **TATA AIG GENERAL INS CO LTD,**
At, Penninsula Corporate Park,
Nicholas Piramal Tower, 9th Floor,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai

... RESPONDENTS
(ORIG. RESPONDENTS)

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by
RAJESHWARI
RAMESH
PILLAI
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RAJESHWARI
RAMESH
PILLAI

APPEARANCES	
FOR THE APPELLANTS	Mr Shrishank Chavanke
FOR RESPONDENTS NO. 2	Mr DS Joshi

CORAM : **G.S. Patel & Gauri Godse, JJ.**

RESERVED ON : **13th October 2022**

PRONOUNCED ON : **18th November 2022**

JUDGMENT (Per Gauri Godse J):—

This First Appeal is filed by the Original Claimants for enhancement of the compensation amount awarded by Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 209 of 2013 by Judgment and Order dated 17th February 2018. The Appellants are heirs and legal representatives of the deceased—Vilas Ramkumar Deshpande (“**the deceased**”), who died in a road accident that took place on 15th December 2012.

I *RELEVANT FACTS IN BRIEF:*

1. On the date of the accident, the deceased was traveling from Nasik towards Mumbai by Mumbai-Agra Highway and a car proceeding in the opposite direction headed towards the divider, crossed the divider and dashed the car in which deceased was traveling. The deceased sustained severe injuries and died on the very same day in the hospital. Respondent No.1 is owner of the offending vehicle and Respondent No. 2 is the insurer of the offending vehicle.

2. The Appellants filed M.A.C.P. No. 209 of 2013 on 25th March 2013 and claimed an amount of Rs.2.32 crores by way of compensation. It was the case of the Appellants that the deceased was 46 years of age on the date of his death. He was working as Senior Manager with Ultratech Cement Limited at Mumbai and was entitled to monthly salary of Rs.1,33,455/- plus other allowances to the extent of Rs.20,000/- per month. It was also contended that the deceased was expecting to get promotion in a span of two to three years and his salary would have increased to Rs.1,75,000/- to Rs.2,50,000/- within a span of two to three years from the date of his death. The Appellant also claimed Rs.2,50,000/- for medical expenses of the deceased, Rs.20,000/- for consortium, Rs.5000/- for funeral expenses, Rs.5000/- for transportation, Rs.40,000/- for loss of love and affection, Rs.50,000/- towards loss of estate. Thus, the claim of Appellants was more than Rs.2.30 crores. Thus, the Appellants claimed an amount of Rs.2.32 crores by way of compensation.

3. In the claim petition, Respondent No. 1 was served. However, he did not appear and the claim petition proceeded ex-parte against Respondent no. 1. Respondent No. 2—Tata AIG General Insurance Company Ltd (“**the insurance company**”) appeared and filed written statement. Respondent No. 2 admitted that the offending vehicle was insured with it at the time of the accident, however, contended that the liability was subject to the terms and conditions

of the insurance policy. The insurance company denied that the driver of the offending vehicle was negligent at the time of the accident and also denied that the car was driven at a high speed. The insurance company contended that there was negligence on the part of the driver of the car in which the deceased was traveling. The contention raised by the Appellants regarding the nature of the job of the deceased as well as the income as stated by the Appellants was denied. Thus, the insurance company disputed the computation of income as claimed by the Appellants.

4. By Judgment and Order dated 17th February 2018 the claim petition was partly allowed and the Respondents were directed to jointly and severally pay an amount of Rs.1,76,08,400/- (inclusive of no fault liability amount) along with future interest at the rate of Rs 8% per annum from the date of the claim petition till realisation of the amount. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle and that the deceased died due to the injuries caused in the said accident. The Tribunal held that though there was a breach of the terms and conditions of the insurance policy, the insurance company failed to establish the fundamental breach of the terms and conditions of the policy so as to claim an exoneration by the insurance company. It was further held that the deceased was a third party victim whose statutory rights are protected and thus the insurance company was liable to satisfy the award and was at liberty to recover the same from the insured.

5. Being dissatisfied by the amount of compensation awarded by the tribunal, the heirs and legal representatives of the deceased have filed the present First Appeal for enhancement of the compensation amount.

II *SUBMISSIONS ON BEHALF OF APPELLANTS:*

6. It is submitted on behalf of the Appellants that the tribunal had erred in relying only on the last drawn salary slip of the deceased and refused to consider the income of the deceased as per Form 16 which is submitted under the Income Tax Act. Besides the basic salary of the deceased, the entire income of the deceased under various heads was reflected in Form 16 and thus the annual income of the deceased was Rs. 25,39,130/-. The letter dated 27th July 2012 issued by the employer of the deceased is also relied upon. The said letter reveals that the employer had revised the salary of the deceased from 1st July 2012. In support of the calculations made by the Appellants, they have produced a copy of Form 16 as well as the letter issued by the employer of the deceased. The Appellants have examined Appellant No. 1 and administrative officer of the employer of the deceased to support the claim. The learned counsel on behalf of the Appellants has submitted computation of the compensation as per Form No. 16 which is as follows :

Computation of Compensation as per Form-16 for Tenure of 8 months and 15 days.	
Particulars	Amount (in Rs.)
Gross Salary [1(d)]	25,76,630
Gratuity [2(f)]	7,21,800
Plus Tax on Employment	1,800
Plus Interest [7(a)]	63,490
Plus Income Tax [15]	2,48,245
Less Statutory Deductions	10,35,335
Net Income for 8 months 15 days	15,41,295
Rs.15,41,295/- divided by 8.5 months = salary pm	1,81,328
Add : 30% Future Prospects Income = Rs.54,398/- pm	2,35,726
Less 1/4 th Personal Exp = Rs.58,931/ pm	1,76,793
Rs.1,76,793/- x 12 x 13	2,75,79,708
Add. Parental & Filial Consortium	
Rs.44,000/- x 4	1,76,000
Total Just Compensation	2,77,55,708

III SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY:

7. Learned counsel on behalf of the insurance company has also submitted a computation of just compensation that can be awarded to the Appellants in two situations. The first calculation is on the basis of total gross salary and the second calculation is on the basis of gross salary plus personal perks. It is submitted on behalf of the

insurance company that the letter at Exhibit 48 issued by the employer of the deceased does not reveal that every year the deceased was entitled to additional amount over and above the salary as reflected in salary slip. Thus, it was submitted that the Tribunal has correctly relied upon the salary slip for the purpose of computing the income of the deceased. The computation of compensation as submitted by the learned counsel for the insurance company is as follows:

Description of Heads	<u>Situation-1</u> Total Gross Salary	<u>Situation-2</u> Gross Salary- Personal Perks
Gross Monthly Salary as per Salary Slip of November 2012	1,33,455	1,33,455
(-) Personal Allowances (Conveyance, Diff HRA & Uniform Maint. Allowance)	Nil	8,258
Net Monthly Salary before Taxes	1,33,455	1,25,197
(-) Income Tax & Profession Tax	18,147	18,147
Net Monthly Salary after Taxes	1,15,308	1,07,050
Annual Income (Net Salary X 12 months)	13,83,696	12,84,600
(+) Future Prospects (30% - Age 46 yrs)	4,15,108	3,85,380
Annual Income after Future Prospects	17,98,804	16,69,980
(-) Personal Expenses (1/4 th Amount)	4,49,701	4,17,495
Net Annual Loss of Income	13,49,103	12,52,485
Multiplier	13	13
Total Loss of Income	1,75,38,339	1,62,82,305
<u>Conventional Heads with 10% increase</u>		
Consortium	1,76,000	1,76,000
Loss of Estate	16,500	16,500
Funeral Expenses	16,500	16,500
Total Just Compensation Payable	1,77,47,339	1,64,91,305

IV POINTS FOR CONSIDERATION:

- 1) Whether income of the deceased can be determined as per the figures reflected in Form 16 ?
- 2) Whether the compensation amount awarded by the Tribunal is in accordance with settled law ?
- 3) Whether the Appellants are entitled for enhancement of amount of compensation?

V CONSIDERATION OF POINT Nos. 1 and 2:

8. We have carefully perused the oral evidence on record as well as the documents produced on record of the Tribunal. The same forms part of the private paper book filed on behalf of the Appellants. The Tribunal has considered as to whether the income of the deceased is to be calculated as per the last drawn salary slip or as per Form 16. The Tribunal has further recorded that the last month salary of the deceased for the month of November 2012 was Rs.1,33,455/- and that Form 16 showed much more income than the salary of the deceased. The Tribunal has examined the letter issued by the employer of the deceased at Exhibit No. 48 which indicated that the performance of the deceased for the year 2011-12 had exceeded the expectations of the employer company and thus the amount of salary per month was revised. Thus, it was held that the letter at Exhibit 48 indicated that the contract was extended for the next year and thus it clearly indicated that the salary amount was

closely connected with the performance rating of the deceased. Thus, the Tribunal held that there were always ups and downs in the progress of business and therefore, it would not be proper to consider the income of the deceased which was in addition to the salary. Thus, the Tribunal held that the additional amount (allowance / perks) which was in the Form 16 cannot be considered as permanent source of income of the deceased.

9. Thus, the only earning of the deceased taken into consideration by the Tribunal was as per the last drawn salary which was for the month of November 2012. The Tribunal took into consideration the monthly salary of the deceased to be Rs. 1,33,455/- as per the salary slip and further deducted an amount of Rs.17,947/- towards income tax and Rs.200/-towards professional tax and took into consideration an amount of Rs. 1,15,308/- as last drawn salary. Thus, the annual income of the deceased was taken into consideration as Rs.13,83,696/- per annum. The Tribunal further added 30% amount i.e. Rs.4,15,108/- towards the loss of future income and thus total amount was taken as Rs.17,98,804/-.

10. The Tribunal, by applying the formula laid down by the Supreme Court in the case of *Sarla Varma and others v DTC and another*,¹ deducted 1/4th towards personal expenses [Rs.17,98,804/ minus Rs.4,49,701/- = Rs.13,49,103/-]. Tribunal deducted 1/4th towards personal expenses by recording that when the number of dependent family members is between 4 to 6, then 1/4th is to be

¹ (2009) 6 SCC 121

deducted towards personal and living expenses of the deceased. In the present case the deceased was survived by his three minor children, widow and his parents.

11. The deceased was 46 years of age at the time of death. Considering the age of the deceased at the time of death, multiplier of “13” was applied. Thus, the Tribunal concluded the entitlement of the Appellants for the purpose of compensation to be Rs.1,75,38,339/- (Rs.13,49,103/- x 13). Thus, the total entitlement was calculated on following heads by the Tribunal :

Description of Heads	Rs.
Loss of dependency	1,75,38,339
Loss of consortium	40,000
Loss of Estate	15,000
Funeral expenses	15,000
Total Amount of compensation	1,76,08,339
Rounded up	1,76,08,400

12. It is settled proposition of law, that compensation has to be fair, just and equitable. The Supreme Court in case of *National Insurance Company Limited v Pranay Sethi*,² considered catena of its earlier decisions and has laid down guidelines for computation of the quantum of compensation.

² (2017) 16 SCC 680

13. We find that Form 16 is a reliable piece of evidence to determine the real income of the deceased. The reason is that Form 16 has been signed and generated by the employer of the deceased. There is no evidence produced by the Respondents to show that the income of the deceased was contrary to what is shown in Form 16. The income shown in the Form 16 is attributable to the amounts earned by the deceased from his employer.

14. The finding recorded by the Tribunal, that there were always ups and downs in the progress of business and therefore it would not be proper to consider the income of the deceased which was in addition to the salary, is not acceptable. In fact, the letter issued by the employer of the deceased at Exhibit 48, clearly indicated that the performance of the deceased for the year 2011-2012 had exceeded the expectations of the employer company. Thus, the letter further recorded that compensation payable to the deceased was revised with effect from 1st July 2012. Though revised CTC shown as annexure to the letter was not produced, it is clear that the amount of salary per month exceeded beyond the basic salary as reflected in the salary slip. As per the said letter, compensation (salary) payable to the deceased was revised with effect from 1st July 2012, which means that from that date the payment of the deceased was revised on a higher side. As no figures are set out in the letter of the employer, it is necessary to take into consideration the figures of income as reflected in Form 16. For the reasons stated above the income of the deceased is to be taken, as shown in Form 16, subject

to Statutory deductions. We, therefore, find that the Tribunal has erred in not accepting the income of the deceased as shown in Form 16.

15. Thus, the calculation submitted by the Learned Advocate for Appellants, is correctly based on the income of the deceased as reflected in Form 16. These calculations are as per the guidelines laid down in the case of *National Insurance Company Limited v Pranay Sethi*. He has correctly taken the Gross salary as per the total income shown in Form 16. He has further rightly made the statutory deductions and arrived at a figure of net income to be Rs. 1,81,328/- per month. Future prospects is added at 30% and 1/4th is deducted towards personal expenses by applying the formula as laid down by Supreme Court.

16. In the case of *National Insurance Company Limited Vs Pranay Sethi* the Supreme Court has laid down guidelines in relation to loss of consortium and love and affection. In paragraph 58.8 the Supreme Court has held as follows:

“59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

17. In the case of *Magma General Insurance Company Ltd v Nanuram*,³ Supreme Court has interpreted the word “consortium”

³ (2018) 18 SCC 130

and then decided the entitlement of every dependent, to receive compensation under the head of consortium. Supreme Court has held in paragraphs 21 to 24 as follows:

“21. A Constitution Bench of this Court in *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, “consortium” is a compendious term which encompasses “spousal consortium”, “parental consortium”, and “filial consortium”. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse : [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation”. [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training”.

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a

child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in *Jagmala Ram v. Sohi Ram*, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in *Rita Rana v. Pradeep Kumar*, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in *Lakshman v. Susheela Chand Choudhary*, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570] . However, there was no clarity with respect to the principles on which

compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under “loss of consortium” as laid down in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.”

emphasis added.

18. Thus, as per the law laid down by Supreme Court all the surviving dependents of the deceased will be entitled to Rs. 40000/- each, under the head of consortium. In the present case, the deceased was survived by his three minor children, widow and his parents. Thus, all the Appellants/Claimants will be entitled to Rs. 40000/- each towards consortium. Appellants shall also be entitled to an amount of Rs. 15000/- towards loss of estate and Rs. 15000/- towards funeral expenses. The Supreme Court in case of *National Insurance Company Limited Vs Pranay Sethi* has also held that the amount that were quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. Hence, the Appellants will be entitled to an increase by 10% on the amounts under the conventional heads of loss of estate, consortium and funeral expenses.

19. Thus, the calculations submitted by the Learned Advocate for the Appellants, is accepted being in conformity with the guidelines laid down in the case of *National Insurance Company Limited Vs Pranay Sethi*. We therefore, accept the calculations submitted by the Learned Advocate for the Appellants. Hence the income of the deceased is accepted to be Rs. 1,81,328/- per month. 30% additions done towards future prospects and deduction by 1/4th towards personal expenses is also accepted. The calculations further rightly applies multiplier of 13. Hence, the loss of income is accepted to be Rs. 2,75,79,708/-. However, it is necessary to revise the figures towards conventional heads as follows;

- (i) Parental Consortium: Rs. 40,000 X 3 = Rs. 1,20,000/-
(For three surviving children)
- (ii) Spousal Consortium: Rs. 40,000/-
(For widow)
- (iii) Filial Consortium: Rs. 40,000/- X 2 = Rs. 80,000/-
(For parents)
- (iv) Loss of Estate: Rs. 15000/-
- (v) Funeral expenses: Rs. 15000/-
Total: Rs. 2,70,000/-
Add: 10% increase: Rs. 27000/-
Total: Rs. 2,97,000/-

Thus, the Appellants are entitled to a total compensation of Rs. 2,78,76,708/- (Rs. 2,75,79,708/- + Rs. 2,97,000/-).

20. The calculation made by the Learned Advocate for the Respondent No. 2 Insurance company is not justified as the same completely ignores the income of the deceased as shown in Form 16. This calculation takes into consideration only the basic salary of the deceased. Thus, the amount of compensation calculated by the Insurance company and awarded by the Tribunal is unreasonable and unjust. There is nothing produced on record to controvert the figures of income reflected in Form 16. Form 16 is an authentic piece of evidence. We find no reason to ignore the income of the deceased as shown in the Form 16.

VI CONSIDERATION OF POINT No. 3:

“Whether the Appellants are entitled for enhancement of amount of compensation?”

21. The Tribunal has erred in taking into consideration only the income as shown in the salary slip. As stated hereinabove, evidence and documents produced on record shows that over and above the basic salary, the deceased was also entitled to an additional remuneration on account of his performance. Evidence on record also shows that the performance of the deceased was exceedingly well and thus there is no reason to disbelieve that the deceased would have been always entitled to additional remuneration. Thus, the total income of the deceased shown in Form 16 can be attributed to his earnings. Whenever a Tribunal or a Court fixes an amount of compensation in cases of accident, it involves some guess work,

some hypothetical consideration and certain amount of sympathy. Thus, the Tribunal ought to have considered the entries in Form 16, which showed the total income of the deceased.

22. Thus, in the light of above discussion and by considering the facts and evidence on record as well as the higher income of the deceased as seen in Form 16, the Appellants are entitled to enhancement of compensation, as recorded in aforesaid paragraphs. As recorded hereinabove, the Appellants are also entitled to higher amounts towards conventional heads, as recorded in aforesaid paragraphs. For the reasons recorded above, we hold that the Appellants are entitled to enhancement of the compensation amount awarded by the Tribunal.

23. Finally, we agree with the Tribunal that there is no ground made out exonerating the Respondent No. 2, the Insurance Company, from its liability under its contract of insurance with the Respondent No. 1. Respondent No. 2 is at liberty to take appropriate steps in accordance with law to recover the entire amount from Respondent No.1.

24. Hence following order is passed;

- a) First Appeal is partly allowed.
- b) Judgment and Order dated 17th February 2018 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 209 of 2013 is modified.

- (i) Respondents are directed to jointly and severally pay compensation of Rs. 2,78,76,708/-(inclusive of no fault liability) together with interest thereon at the rate of Rs 8% per annum from the date of the claim petition till realisation of the amount.
- (ii) The Appellants will be entitled to the proportionate cost of the claim Application.
- c) Respondents are directed to comply with this Judgment within a period of four months from today, by depositing the amount in the Tribunal.
- d) The Appellants are permitted to withdraw the amount from the Tribunal within a period of eight weeks from the date of deposit.
- e) The amount deposited in the Tribunal shall not be invested for a period of eight weeks from the date of deposit. In the event the amount is not withdrawn within a period of eight weeks from the date of deposit the same shall be invested by passing appropriate directions by the Tribunal.
- f) Respondent No. 2/insurance company will be entitled to adjustment of the amount already paid under the impugned Award.
- g) Appellants will also be entitled to the proportionate cost of this Appeal to be paid in the first instance by Respondent No.2.

- h) Respondent No. 2 is at liberty to take appropriate steps in accordance with law to recover the entire amount from Respondent No. 1, only after first depositing the entire amount in the Tribunal.

(Gauri Godse, J)

(G. S. Patel, J)