IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1561 OF 2019

1. Meena wd/o Vijay Kakad,
   Age: 37 yrs. Occu: Housewife

2. Disha d/o Vijay Kakad
   Age: 13 yrs. Occupation: Student

   Claimant No 2 being minor
   represented by NG Mother i.e.
   claimant No.1

3. Pramila wd/o Madhukar Kakad
   Age: 60 yrs. Occupation: Nil

   All R/o at Post: Aalegaon, Tq. Patur
   Dist. Akola.

...APPELLANT

VERSUS

1. Chaitanya s/o Prabhakar Rokade
   Age: Adult Occupation:Driver &
   Owner of Offending Maroti Swift
   Car Bearing Registration No. MH-27-
   BE-4030 R/o New Madavi Vihar,
   Near Sureksha Colony, Tapowan,
   Amravati-444 602 (Maharashtra)

2. New India Assurance Company
   Limited; Akola
   Through its Divisional Manager R/o
   Rayat Haveli, Old Cotton Market
   Akola.

...**RESPONDENT**

Shri S.D. Chopde, Advocate for the appellants.
Shri B.P. Bhatt, Advocate for respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19/01/2022

ORAL JUDGMENT :

. Heard Shri Chopde, learned Counsel for the Appellants and Shri Bhatt, learned Counsel for the Respondent No.2.

2. The Appellant herein has challenged the Judgment and Award dated 05/08/2017 in Claim Petition No.14/2016 passed by MSEB Akola. By the impugned judgment, the Claims Tribunal has awarded compensation at Rs.35,16,800/- with interest at the rate of 7% per annum from the date of the petition till final realization.

3. The brief facts necessary to decide the Appeal are as under:

4. The Appellant No.1 is the widow, the Appellant No.2 is the daughter and Appellant No.3 is the mother of the Deceased-Vijay Kakad, who expired in a motor vehicle accident on 28/11/2015 involving Maruti Swift Car bearing No. MH 27/B-4030 owned and driven by the Respondent No.1 and insured with Respondent No.2. The Appellants who shall be hereinafter referred to as the Claimants

claimed that the Deceased was 41 years of age. He was serving as a Head Constable in the Police Department and was drawing salary of Rs.35,043/- per month. The Claimants claimed that the accident was caused solely due to rash and negligent driving by the Respondent No.1. The Claimants therefore filed the Petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as "M.V. Act") claiming total compensation of Rs.80,00,000/-.

5. The Respondent No.1 admitted that the deceased was one of the occupants of the offending vehicle. The Respondent No.1 however denied that the accident was caused due to rash and negligent driving. Respondent No.2-Insurance Company claimed that the claim was exorbitant and denied its liability to pay the said amount.

6. Upon considering the evidence adduced by the respective parties, the learned Judge held that the accident was caused due to rash and negligent driving by the Respondent No.1 and that the death of the deceased-Vijay was due to the injuries sustained in the vehicular accident. The Tribunal held that the annual income of the deceased was Rs.3,54,146/- and upon adding 30% towards future prospects considered the income of the deceased at Rs.4,36,590/-. The Tribunal deducted Rs.10,100/- towards professional tax and travelling

allowance, Rs.78,674/- towards standard deduction, Rs.10,392/- towards income tax and Rs.324/- towards educational cess and considered the net income as Rs.3,46,800/-. The Tribunal deducted 1/3rd towards personal expenses and upon applying multiplier of "14" computed loss of dependency at Rs.32,36,800/-. In addition, the Tribunal awarded Rs.1,00,000/- towards loss of consortium to the claimant no.1, Rs.1,00,000/- towards loss of love and affection to claimant no.2, and Rs.50,000/- towards loss of estate to claimant no.3, funeral expenses Rs.10,000/-, and transportation charges Rs.20,000/-. The Tribunal thus awarded total compensation at Rs.35,16,800/-. Being aggrieved by the quantum of compensation awarded by the Claims Tribunal, the claimants have filed this appeal under Section 173 of the M.V. Act.

7. Shri Chopde, learned Counsel for the Appellant states that learned Judge has erred in excluding the amount deducted towards G.P.F. and L.I.C. He submits that the only amount liable to be deducted was towards washing allowance, fitness allowance, refreshment allowance, professional tax, transport allowance and income tax. He submits that the compensation awarded by the Tribunal is not just and reasonable.

8. *Per contra*, Shri Bhatt, learned Counsel for the Respondent-Insurance Company submits that total 10% of the annual income needs to be deducted towards the income tax. I have perused the records and considered the submission advanced by the learned Counsel for the respective parties.

9. The dispute in the present case is only in respect of the quantum of compensation payable to the claimants. It is not in dispute that the deceased was 41 years of age. He was employed as a Head Constable and was drawing monthly salary of Rs.34,201/-. Form 16 which is at exhibit 35 reveals that the annual income of the deceased for the year 2014-2015 was Rs.4,10,412/-. In ***National Insurance Company Vs. Indira Srivastava and Ors. (2008) 2 SCC 763***, the Hoh'ble Apex Court has held that the amounts paid to the employer by way of perks should be included for computation of his monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit. The Hon'ble Apex Court has further held that from the said amount of income, the statutory amount of tax payable thereupon must be deducted. It is thus well settled that the amount paid to the deceased by way of perks which were for the benefit of the family and the amount deducted towards G.P.F., L.I.C.

etc cannot be excluded from the income of the deceased while computing loss of dependency. The only amount which can be excluded is the amount deducted towards statutory deduction viz income tax, professional tax, etc. and the perks which were not for the benefit of the family.

10. In the instance case, the deceased was paid Rs.100/- per month towards washing allowance, Rs.700/- per month towards recreation allowance and Rs.400/- per month towards transport allowance. Since this amount was meant only for the benefit of the deceased, the same has to be excluded from the gross income. In addition an amount of Rs.200/- deducted per month towards professional tax and Rs.5578/- payable as income tax, also needs to be excluded from the total annual income. Upon deducting the said amount, the net income of the deceased works out to Rs.3,92,834/-. The deceased was 41 years of age and was in permanent service. Hence upon adding 30% towards future prospect, the total income works out to Rs.5,05,013/-. Considering the number of dependents and upon deducting 1/3rd amount towards personal expenses, which is equivalent to Rs.1,68,338/-, the total income works out to Rs.3,36,675/-. On applying multiplier of 14, loss of dependency is assessed at Rs.47,13,450/-. The Claimants would also be entitled for total

compensation of Rs.1,20,000/-towards spousal consortium, parental consortium and filial consortium, in addition Rs.30,000/- towards loss of estate and funeral expenses. The Claimants are therefore entitled for total compensation of Rs.48,63,450/- with interest at the rate of 7% per annum from the date of the award till final realization.

11. Under the circumstances, the appeal is partly allowed. The claimants are held to be entitled for total compensation of Rs.48,63,450/- with interest at the rate of 7% per annum from the date of the petition till final realization. The Respondent-Insurance Company shall deposit the balance amount of Rs.13,46,650/- before the Claims Tribunal within a period of four weeks. 40% of the said amount shall be paid to the Claimant No.1, 50% to the Claimant No.2 and 10% to the Claimant No.3.

12. Appeal stands disposed of in above terms.

JUDGE

R.S. Sahare