IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1327 OF 2003

1. Parubai W/o Rama Pawar,
   Age : 39 Years, Occu. : Household,
   R/o Kawathali, At present Salgaon,
   Tq. Gangakhed, Dist. Parbhani.

2. Muktiram S/o Rama Pawar,
   Age : 16 Years, Occu. : Labour,

3. Mangal D/o Rama Pawar,
   Age : 11 years, Occu. : Labour,

4. Rajabhau S/o Rama Pawar,
   Age : 17 Years, Occu. : Labour,

   Petitioners No. 2 to 4 minors under
   guardianship of real mother petitioner
   No. 1 Parubai W/o Rama Pawar,
   R/o as above. .. Appellants

Versus

1. Baliram S/o Manik Parekar,
   Age : Major, Occu. : Business,
   R/o Dighol, Tq. Gangakhed,
   Dist. Parbhani.

2. New India Assurance Co. Limited
   Branch at for servicing summons
   at Parbhani.

3. Sivraj S/o Ankush Gite,
   Age : Major, Occu. : Business,
   R/o. Balamba, Tq. Parli,
   Dist. Beed.

4. The Oriental Insurance Co. Ltd.
   for service of summons at
   Daulat Building, Shivaji Chowk,
   Parbhani. .. Respondents

Shri J. G. Toshniwal, Advocate for the Appellants.
Shri M. M. Ambhore, Advocate for the Respondent No. 2.
Shri A. S. Deshpande, Advocate for the Respondent No. 4.

CORAM : S. G. CHAPALGAONKAR, J.

CLOSED FOR JUDGMENT ON : 07TH JUNE, 2023.
JUDGMENT PRONOUNCED ON: 28TH JUNE, 2023

JUDGMENT :

. The appellants/original claimants in M.A.C.P. No. 185 of 1999 before the Motor Accident Claims Tribunal, Parbhani impugns the judgment and award dated 17th March, 2003 in this appeal filed under Section 173 of the Motor Vehicles Act, 1988.

2. The appellants/original claimants had approached the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation towards accidental death of Rama Fakira Pawar. According to claimants, they were dependent on the income of the deceased. While deceased was traveling in a jeep bearing registration No. MH-23/B-1412, a tractor bearing registration No. MH-23/B-2593 came from opposite direction and dashed against the jeep. The deceased suffered fatal injuries in the said accident. According to the claimants, the deceased was earning Rs. 4,000/- per month and supporting the family. The respondent No. 2 and the respondent No. 4/insurers of the respective vehicles contested the claim by filing written statements. The claimants relied upon the oral as well as documentary evidence to prove the accident and consequential death of the deceased. The Tribunal

assessed the compensation to the tune of Rs. 1,30,000/- towards loss of future earning and after adding compensation towards non-pecuniary heads passed the total award for Rs. 1,52,000/- including amount paid under the no fault liability.

3. Mr. J. G. Toshniwal learned counsel appearing for the appellants would submit that though the income of the deceased was pleaded to be Rs. 4,000/- per month, the Tribunal has worked out the compensation on the basis of notional income at the rate of Rs. 15,000/- per annum. He would submit that the claimant No. 1/P.W. No. 1 in her deposition has categorically stated that the deceased was earning Rs. 4,000/- per month. However, the Tribunal has failed to consider the same. He would further submit that there were four dependents of the deceased, therefore 1/4th amount his income ought to have been deducted towards personal and living expenses. The Tribunal has erroneously applied 1/3rd deduction. He would submit that the multiplier is erroneously applied and no compensation towards future prospects has been considered. He would further submit that compensation awarded under non-pecuniary heads is inadequate and requires reconsideration.

4. Mr. A. S. Deshpande, learned advocate appearing for the respondent No. 4 and Mr. M. M. Ambhore, learned advocate appearing for the respondent No. 2 have vehemently opposed the contentions and supported the judgment passed by the Tribunal.

5. Having considered the submissions as advanced on behalf of the respective parties and on perusal of the record, it can be gathered that the dispute in the present appeal is restricted to the assessment of the compensation. The Supreme Court of India in the matter of **Sarala Verma Vs. Delhi Transport Corporation and others** reported in ***(2009) 6 SCC 121*** and in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi and others** reported in ***(2017) 16 SCC 680*** has settled the principles for assessment of compensation in the matters U/Sec. 166 of the Motor Vehicles Act. In that view of the matter, the contentions of the learned counsel for the appellants that they would be entitled for compensation in accordance with the aforesaid principles will have to be accepted.

6. The pleadings in the claim petition shows that the occupation of the deceased is pleaded as iron smith. The claimants have pleaded his income to be Rs. 4,000/- per month. However, in the deposition of P.W. No. 1 the income of the deceased is claimed to be Rs. 400/- per day. In the written notes of arguments of the claimants placed at Exhibit 44, the income of the deceased is claimed to be Rs. 200/- per day. However, except these words no concrete evidence is laid to show that the deceased was engaged in the occupation of iron smith or he had earning as contended on behalf of the claimants. In such a case the Tribunal has no option than to work out the compensation based on the notional income. The Tribunal has adopted the same course and notional income of the deceased is considered to the tune of Rs. 15,000/- per annum. The accident in question occurred in the year 1999. If the

minimum wages at the relevant time are taken into consideration in my opinion, even unskilled worker would fetch the amount of Rs. 2,500/- per month that is Rs. 30,000/- per annum. Therefore, the assessment of notional income made by the Tribunal appears to be inadequate.

7. According to the claimants, deceased was aged about 37 years at the time of his death. However, said contentions are not acceptable in absence of any specific documentary evidence. The Tribunal has rightly relied upon the column No. 7 of the postmortem report at Exhibit 28 that shows age of the deceased to be 45 years. The Tribunal has rightly adopted the multiplier of 13 applicable to the age group between 45 to 50 years. Therefore, there is no reason to interfere with the application of multiplier.

8. It appears that the Tribunal has applied deduction of 1/3rd income towards personal and living expenses of the deceased. However, considering the principles laid down in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and others** (supra), if number of dependents are more than 3, the deduction of personal and living expenses of the deceased will have to be applied to the extent of 1/4th of his income. Similarly considering the age of the deceased 25% of his income needs to be added by way of future prospectus. The claimants would also be entitled for total compensation of Rs. 70,000/- towards non pecuniary heads.

9. In that view of the matter, the claimants would be entitled for compensation as shown in following chart.

Sr. No.	Head	Amount
1	Monthly income of the deceased Rs. 2,500/- (Rs. 2,500/- x 12 = 30,000/-) Annual Income Rs. 30,000/-. Multiplier of 13 (Rs. 30,000/- X 13)	Rs. 3,90,000/-
2	Addition of 25% of total income for future prospectus	Rs. 97,500/-
3.	Deduction of 25% towards personal and living expenses	Rs. 97,500/-
4.	Total loss of dependency to claimants	Rs. 3,90,000/-
5.	Addition towards non-pecuniary heads.	Rs 70,000/-
	Total	Rs. 4,60,000/-

(Rs. Four Lakhs Sixty thousands only)

10. The aforesaid amount of compensation will have to be equally born by the respondent Nos. 1 and 2 on one side and the respondent Nos. 3 and 4 on other side i.e. in equal proportion in the light of the findings recorded by the Tribunal.

11. As such this court holds that claimants are entitled for the total compensation of Rs. 4,60,000/- (Rs. Four Lakhs Sixty thousands only) along with interest at the rate of Rs. 7% per annum from the date of filing of claim petition till the realization of amount.

12. Resultantly, the appeal deserves to be partly allowed. Hence, the following order:

O R D E R

A. The appeal is partly allowed.

B. The respondent Nos. 1 and 2 shall pay jointly and severally to the appellants an amount of Rs. 2,30,00/-, while respondent Nos. 3 and 4 shall pay jointly and severally to the appellants an amount of Rs. 2,30,000/- along with interest at the rate of Rs. 7% per annum from the date of filing of the claim petition till its realization.

C. The appellants/original claimants shall take the amount in following proportion:

i) The appellant No. 1 shall get an amount of Rs. 1,84,000/-.

ii) The appellant Nos. 2 and 4 each shall get an amount of Rs. 90,000/- while the appellant No. 3 shall get an amount of Rs. 96,000/-

D. The amount already paid by respondents and withdrawn by the appellants in terms of the award passed by the Tribunal shall be adjusted/appropriated.

E. The respondents shall deposit the above said amount within a period of two (02) months from the date of this judgment.

F. On deposit of aforesaid amount by the respondents, the appellants/claimants shall be entitled to withdraw the same.

G. The appellants/claimants shall deposit the deficit court fees as per rules.

H. Award be drawn up accordingly.

I. The first appeal is disposed of.

[S. G. CHAPALGAONKAR, J.]

bsb/June 23