IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.824 OF 2013

1. Aditya s/o Dnyaneshwar Barure
Age: Minor,
U/G of appellant No.2

2. Dnyaneshwar s/o Tulshiram Barure
Age: 43 years, Occu: Agril & Service

Both R/o. Kaloor, Tq. Udgir, Dist. Latur
At present: Keshav Nagar, Latur
Tq. and Dist. Latur … Appellants
[Orig. Claimants]

Versus

1. Somnath Shivaji Jadhav
Age: 32 years, Occu: Driver
R/o. Vairaj, Tq. Barshi, Dist. Solapur

2. Lomangal Agro Industries Ltd.
Through Managing Director
At Subhash Nagar, Bibidarphal
Tq. North Solapur, Dist. Solapur

3. National Insurance Co. Ltd.,
Through its Branch Managar,
Hanuman Chowk, Malu Building,
Main Road, Opposite S.T. Stand,
Latur, Tq. & Dist. Latur. … Respondents

…

Mr. J. R. Patil, Advocate for the Appellants
Mr. S. R. Bodade, Advocate for Respondent No.3

…

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24.02.2023
PRONOUNCED ON : 08.03.2023

JUDGMENT :

1. The present appeal impugns the judgment/award dated 07.12.2012, passed by the Motor Accident Claims Tribunal, Latur, in Motor Accident Claim Petition (MACP) No.314/2010. The appellants/original claimants are aggrieved by the quantum of compensation awarded by the Tribunal.

2. Learned advocate Mr. J. R. Patil appearing for the appellant would submit that on 29.10.2008, Rajashree (deceased) was proceeding in a car along with claimant no.2/husband. A truck bearing No.MH13-R-7336 came from the opposite side and collided on the rear portion of the car. Rajashree suffered fatal injuries in the said accident. She was employed as a Senior Clerk and earning monthly salary of Rs.6975/-. The claimant no.1/Aditya is a minor son of deceased Rajashree. Both the claimants have lost multifarious domestic services of deceased apart from her monetary contribution to the family.

3. Learned advocate Mr. J. R. Patil would also submit that the claimants had approached the Tribunal seeking compensation under Section 166 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act' for short] from the owner, driver and insurer of the truck. The Tribunal partly allowed the claim petition and passed an award of Rs.7,35,620/- in favour of the claimants. He would submit that the Tribunal has erroneously deducted 50% of the amount towards her personal expenses. Further, nothing is added towards future prospects. The Tribunal has granted inadequate compensation towards non-pecuniary heads. Therefore, he would urge to allow the appeal and pass just and proper award.

4. Learned advocate Mr. S. R. Bodade appearing for respondent no.3/insurance company would submit that the Tribunal has rightly assessed the compensation. He would submit that at the time of accident, claimant no.2/husband of the deceased was driving the car. He himself was

responsible for the said accident. However, a false offence has been registered against the truck driver. He would further submit that the School, where the deceased was employed is run by family Trust. The false record is prepared regarding the employment and salary. The claimant no.2/husband has his own earnings and he cannot be treated as dependent of deceased. The award passed by the Tribunal is excessive and exorbitant. However, insurance company has satisfied the same taking pragmatic view.

5. Having considered the submissions made by the advocates appearing for the respective parties, it can be observed that the Tribunal has recorded finding of sole negligence against the truck driver and fastened the liability to pay the compensation against the owner, driver and the insurer of the truck. The respondent no.3/insurance company has satisfied the award and released the compensation as directed by the Tribunal. The respondent no.3/insurance company has not filed appeal or cross objection to challenge the finding regarding income of the deceased or the finding regarding negligence recorded against the truck driver. The appeal filed by the claimants seeks reassessment of compensation applying the principles of assessment as has been settled by the Supreme Court of India in the matter of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680**.

6. The Tribunal concluded that age of the deceased was 35 years at the time of accident. She was getting monthly salary of Rs.6975/- out of her job of Senior Clerk in Mauli Animal-Husbandry and Dairy School at Village Umbadga, Tq. Ausa, Dist. Latur. Since she was salaried person, 50% addition towards future prospects will have to be made in view of the principles of assessment of compensation as per dictum in the case of Pranay Sethi and Ors. (*Supra*). After adding amount towards future prospects, the total monthly earning of deceased will have to be considered as Rs.10462/-. Learned advocate Mr. Bodade appearing for respondent no.3 would submit

that the Tribunal refused to add the amount towards future prospects for the reason that the appointment letter at Exhibit-44 shows that it was a temporary appointment. Therefore, there is no reason to consider the future prospects.

It is a matter of record that the appointment order at Exhibit-44 depicts that the deceased was appointed on temporary basis. However, it cannot be presumed that she would not have been made permanent. Most of the appointment orders would show that appointment is made on temporary basis till completion of the probationary period. Further, the ability of the earning capacity cannot be denied only because the appointment order denotes temporary appointment. Pertinently, the valuation regarding the contribution towards domestic services rendered by the deceased is not given separate consideration while fixing her income. Therefore, the addition of future prospects cannot be denied in the facts and circumstances of the present case. It is trite that even a person on daily wages is held to be entitled for consideration of future prospects. Merely because the appointment order of the deceased contains the word temporary, the future prospects cannot be denied.

7. The Tribunal has considered the dependency of the claimants to the extent of 50% for the reason that claimant no.2/husband has his own earnings and he cannot be considered to be dependent. The minor/claimant no.2 is only considered as dependent. The finding of the Tribunal cannot be approved for the reasons that when husband and wife are earning members of the family, their contribution as a whole would be the earning of the family. So far as the wife is concerned, she has dual responsibility when she is in service. She continues to support the family with her domestic contribution and additionally makes available financial support to the family. In the present case, only salary of the deceased is taken as a base for working out compensation. The domestic services are not given separate consideration. The husband who has lost his wife at his mid-age leaving

behind minor son looses his dependency which cannot be compensated by any means. The monitory dependency in such cases is merely symbolic. Therefore, the argument advanced on behalf of the respondent/insurance company that the husband cannot be considered as dependent on his wife, is liable to be discarded. The Tribunal ought to have considered dependency of both the claimants for the income of the deceased. The amount to the extent 1/3rd ought to have been deducted towards her personal and living expenses as laid down in the matter of Pranay Sethi and Ors. (*Supra*). On this count also, the award of the Tribunal requires modification.

8. The claimants are also entitled for the compensation towards non-pecuniary heads. Both the claimants are entitled for loss of consortium as approved in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhri Ram & Others** reported in **(2018) 18 SCC 130** to the tune of Rs. 40000/- each. The compensation towards funeral expenses and loss of estate will have to be separately granted. In view of the aforesaid observations, the claimants are entitled for compensation as under:

Monthly earning	Rs. 6975/-
After addition of 50% salary towards future prospects	Rs.10462/-
1/3rd deduction towards personal and living expenses	Rs.3138/-
Monthly loss of dependency	Rs.7324/-
Annual loss of dependency	Rs.87888/-
After applying multiplier of 16 total loss of dependency	Rs.1406208/-
After adding the compensation towards non-pecuniary heads	Rs.1516208/-

9. In view of the above discussions, the appeal deserves to be partly allowed with costs. Hence, this Court pass the following order:

ORDER

(i) Appeal is partly allowed with proportionate costs.

(ii) The claimants are entitle to the compensation of Rs.1516208/- (Rupees Fifteen Lakhs Sixteen Thousand Two Hundred Eight Only) under Section 166 of the Act inclusive of NFL together with interest @ 6% per annum from the date of petition i.e. 28.10.2010 till the realization of the amount.

(iii) The respondent nos.1 to 3 shall jointly and severally pay the aforesaid compensation to the claimants within a period of two months.

(iv) The claimant no.1 shall have 70% share in the amount of compensation. Rest of the amount shall be paid to claimant no.2.

(v) After deposit of the amount, the claimants shall be at liberty to withdraw the same.

(S. G. CHAPALGAONKAR, J.)

Sameer