IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3916 OF 2016

1. Sangeeta w/o Mallikarjun Swami (Kanade)
Age : 41 years, Occu. : Service.

2. Gurudev s/o Mallikarjun Swami (Kanade)
Age : 20 years, Occu. : Education.

3. Pratima d/o Mallikarjun Swami (Kanade)
Age : 16 years, Occu. : Education.

4. Mahesh s/o Mallikarjun Swami (Kanade)
Age : 10 years, Occu. : Education.

(Present applicant No. 3 & 4 are minors
Hence Under guidance of real mother
i.e. present appellant No. 1)

5. Vidhyadhar s/o Gurubasappa Swami (Kanade)
Age : 65 years, Occu. : Nil.

6. Parvatibai w/o Vidhyadhar Swami (Kanade)
Age : 63 years, Occu. : Household.

All appellants are resident of Udgir,
Tq. Udgir, Dist. Latur. **.. Appellants**
(Orig. Claimants)

Versus

1. Lala s/o Husensaheb Patel,
Age : Major, Occu. : Business,
R/o. : Dapaka, Tq. Nilanga,
Dist. Latur.

2. The New India Assurance Company Ltd.,
Through its Branch Manager,
Chandra Nagar, Latur,
Dist. Latur.

3. Omprakash s/o Dattatray Kandakure
Age : Major, Occu. : Business,
R/o. : Ramjanpur, Tq. & Dist. Latur.

4. The National Insurance Company Ltd.,
Through its Branch Manager,
Main Road, Latur, Dist. Latur.

5. Vijaykumar s/o Annarao Jadhav,
Age : Major, Occu. : Driver,
R/o. : Zari, Tq. Nilanga,
Dist. Latur. **.. Respondents**
(Orig. Respondents)

Mr. Sanjay V. Mundhe, Advocate for the Appellants.
Mr. S. R. Bodade, Advocate for Respondent No. 2.
Mr. Atul B. Gatne, Advocate for Respondent No. 4.
Respondent Nos. 3 and 5 are served.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 10th October, 2023.

Date on which order pronounced : 01st December, 2023.

ORDER :-

. This appeal is by original claimants who had filed Motor Accident Claim Petition seeking compensation. The respondents are the original respondents in the said claim petition. By way of appeal the claimants have approached seeking enhancement in the amount of compensation. The learned Member, M.A.C.T., Udgir vide judgment and order dated 03.07.2010 in M.A.C.P. No. 31/2006 was pleased to direct respondent Nos. 1, 2 and 5 jointly and severally to pay compensation of Rs. 15,50,000/- including no fault liability with interest at the rate of 9% per annum from the date of filing of M.A.C.P. till realization of the amount. The petition was dismissed as against respondent Nos. 3 and 4.

2. The appellant No. 1 is wife of the deceased Mallikarjun who died in an accident dated 31.01.2006 due to injuries he received. The appellant Nos. 2, 3 and 4 are sons and daughter of the deceased. The respondent No. 1 is the owner of offending vehicle. The respondent No. 2 is the Insurance Company. Respondent No. 5 is owner of another vehicle in which deceased was travelling.

3. The facts in short are that the deceased was working as a primary teacher. On the date of accident he was proceeding towards his home after finishing is duty from Nilanga to Udgir by a vehicle bearing registration No. MH-24-C-1815. Near bridge at Manjara river another vehicle bearing registration No. MH-24-A-6580 owned by respondent No. 1 coming from Udgir side gave a dash to the Jeep in which the deceased was sitted. The vehicle was insured by respondent No. 2. Respondent No. 5 was driving the said vehicle. The driver of the vehicle in which the deceased was sitting and one Subhash died on the spot. The deceased Mallikarjun was taken to primary health centre, Valandi. However, he succumbed to the injuries.

4. The claimants filed claim petition at Udgir, the learned Tribunal has passed the award. The respondents have not preferred any appeal challenging the award and thus have accepted all the findings recorded by the learned Member, M.A.C.T.

5. The claimants have approached this Court aggrieved by inadequacy of the compensation. Thus, this Court is considering the appeal only for the purpose of determining as to whether the compensation awarded by the learned Member, M.A.C.T. is just and proper by taking into consideration income of the deceased at the time of his death.

6. It has come in the evidence that, the salary of the deceased was Rs. 12,124/- per month. He was also having land to the extent of 01 H and 63 R. He was getting income of Rs. 40,000/- per year from the said land. The fact of the salary is not denied by any of the parties. The case of the claimants is that the accident took place on 31.01.2006. The Government subsequently made 6^{th} pay commission applicable to the teachers from 01.01.2006. If the said pay revision is considered the income of the deceased ought to have been taken as Rs. 20,273/- per month. The learned Tribunal has taken the income as Rs. 12,124/- per month holding that on the date of accident the income of the deceased was only that much. To prove the pay revision the claimants have

placed on record the Government Resolution at Exh. 84. The claimants have also produced on record the pay fixation report. From the discussion by the learned Member, M.A.C.T. in issue No. 5 in respect of the amount of compensation it is seen that, the learned Member, M.A.C.T. has mainly considered the salary certificate at Exh. 85 and 86 showing that the monthly basic salary of the deceased was Rs. 6,375/-, D. A. was Rs. 2008/-, house rent allowance was Rs. 478/- and conveyance allowance was Rs. 75/-. From the salary certificate it is further seen that there were deductions of Rs. 1,000/- per month towards provident fund, Rs. 240/- for G.I.S. and Rs. 200/- towards professional tax. The learned Tribunal has thus taken total deductions of Rs. 1440/- per month. The learned Member, M.A.C.T. has further considered only Rs. 2,00/- towards professional tax needs to be taken as deduction. This Court does not find any perversity with the said finding. For the purpose of compensation the learned Member considered the income to be Rs. 12,000/- per month, taking 1/3rd amount towards his personal expenses it is calculated to be Rs. 8,000/- per month. The multiplier of 16 was applied considering the age of the deceased who was 39 years of age. Thus, the total amount was taken to be Rs. 15,36,000/-.

7. On this, now submission made is that the learned Member,

M.A.C.T. ought to have considered the salary as per 6th pay commission as Rs. 20,273/-. The learned Member, M.A.C.T. ought to have considered the amount towards future prospects at the rate of 50% in view of the judgment in the case of **National Insurance Company Limited Vs. Pranay Sethi** reported in **2017 (4) R.C.R (Civil) 1009**. Learned advocate thus submits that the compensation ought to have been awarded as above. The learned Member, M.A.C.T. has failed to consider these two vital aspects and has committed mistake by awarding lesser amount.

8. Learned advocate for the appellants relied upon the following judgments.

> (i) **National Insurance Company Limited Vs. Pranay Sethi** reported in **2017 (4) R.C.R (Civil) 1009**.
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> (ii) **Ramrao Lala Borse and Anr. Vs. New India Assurance Company Ltd. and Anr.** reported in **2018 AIR (SC) 657**.
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> (iii) **Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr.** reported in **AIR 2009 (SC) 3104**.
>
> (iv) **Nagappa Vs. Gurudaya Singh and others** reported in **(2003) 2 SCC 274**.

9. Learned advocate Mr. Bodade for respondent No. 2 vehemently opposed the appeal by inviting attention of this Court to paragraph

No. 24 in the case of **Smt. Sarla Verma** (supra). He submitted that the Hon'ble Apex Court has considered that, to consider the future prospects is not a sound exercise. As per the salary certificate the learned Member, M.A.C.T. has rightly taken the income of the deceased as Rs. 12,000/- per month. The Headmaster had not brought the register showing that the salary certificate was issued. The age of deceased was 39 years at the time of accident. The multiplier of 15 was applicable. The learned Member, M.A.C.T. has applied multiplier of 16. Form No. 16 was not produced on record. He further submitted that in view of judgment in the case of **Smt. Sarla Verma** (supra), rate of interest ought to have been granted at the rate of 6% whereas, the learned Tribunal has awarded the same at the rate of 9%. He submits that the appeal deserves to be dismissed. He mainly relied upon the following judgments.

(i) **United India Insurance Co. Ltd. Vs. Satinder Kaur alias Satwinder Kaur and Ors**. reported in **AIR 2020 Supreme Court 3076**.

(ii) **Asha Vs. United India Insurance Company Limited in Civil Appeal No. 7897/2001** by the Hon'ble Apex Court decided on 03.09.2003.

(iii) **Batasho Devi Vs. Rekha and others** reported in **2017 ACJ 2136** by the Delhi High Court.

10. This Court as stated earlier is considering the appeal only to the extent of deciding as to whether the compensation awarded by the learned Tribunal was just compensation considering the income of the deceased and as to whether the learned Tribunal was in error in considering the income of the deceased as Rs. 12,000/- per month instead of Rs. 20,273/- per month as fixed as per the 6^{th} pay commission. Further as to whether the learned Tribunal has erred in not granting future prospects. Though Mr. Bodade, learned advocate has also argued on the point of multiplier etc. the same need not be considered as there is no appeal by the company.

11. There is no dispute about the facts involved in the case. The learned Tribunal has considered the income based on the salary certificate. As per the appellants-claimants the learned Tribunal ought to have considered the salary as per the 6^{th} pay commission. This Court finds that, looking to the date of the accident it is clear that, though the Government Resolution was issued subsequently i.e. after the date of accident, if the deceased was alive, certainly he would have got the difference in the salary from 01.01.2006. The date material for getting the benefits is certainly a date from which such revised pay scale is made applicable. Taking this into account this Court finds that, the salary ought to have been considered as Rs. 20,273/- per month.

12. So far as future prospects are concerned, considering the age of the deceased to be 39 years the future prospects ought to have been allowed at the rate of 50% as held in the case of **Pranay Sethi** (supra). Though learned advocate Mr. Bodade for respondent No. 2 relied upon paragraph No. 24 in the case of **Smt. Sarla Verma** (supra), the said cannot be considered by this Court. The case of **Smt. Sarla Verma** (supra) is already considered in subsequent judgments and even in the case of **Pranay Sethi** (supra). The judgment in the case of **Pranay Sethi** (supra) was delivered in a reference by a Coram of five Hon'ble Judges of the Hon'ble Supreme Court. This Court holds that the claimants are entitled to future prospects at the rate of 50%.

13. Learned advocate Mr. Bodade for respondent No. 2 who relied upon the judgment in the case of **United India Insurance Co. Ltd. Vs. Satinder Kaur alias Satwinder Kaur and Ors.** (supra), in that case the Hon'ble Apex Court has laid down the relevant principles for assessment of compensation in case of death which are as below :

(i) age of the deceased at the time of death, (ii) the number of dependents left behind by the deceased and (iii) the income of the deceased at the time of his death. Mr. Bodade, learned advocate thus relied upon clause (iii) stating that the income is rightly considered to be Rs. 12,000/- as on the date of accident. The actual salary that was payable was Rs. 12,000/- as by that time 6^{th} pay commission was not made applicable and the same was made applicable thereafter with retrospective effect. In the case of **Batasho Devi** (supra), the Delhi High Court held that as the future prospects is there, however, it is equally possible that the deceased had not died in the accident, he may have died on account of ill health or other accident, or lost the employment or met with some other calamity or disadvantages etc. This Court finds that, this Court need not consider the same in view of the judgments of the Hon'ble Apex Court. The judgment in the case of **Pranay Sethi** (supra) is a judgment delivered specifically on a reference and that too subsequent to the judgment in the case of **Batasho Devi** (supra).

14. Considering all the above factors, this Court considered the income to be Rs. 20,000/- per month as Rs. 273/- is fraction and out of that Rs. 200/- would have been deducted towards professional tax. Thus, considering the income of Rs. 20,000/- per month, his income per annum would be Rs. 2,40,000/- per year. By deducting $1/3^{rd}$ from the said income it could have been Rs. 1,60,000/-. Applying multiplier of 16 the loss of income would be Rs. 25,60,000/-. This Court finds that the just and proper calculation should have been Rs. 25,60,000/- instead of Rs. 15,36,000/-. Thus, the claimants are entitled to the amount of Rs. 25,60,000/- towards loss of income. Additional 50%

amount ought to have been granted towards future prospects as Rs. 12,80,000/-. Thus, the total amount should have been Rs. 38,40,000/-.

15. The respondent Nos. 1, 2 and 5 are thus liable to pay compensation of Rs. 23,04,000/- (Rs. Twenty Three Lakh Four Thousand only) to the appellants with interest at the rate of 9% per annum from the presentation of the claim petition within a period of ninety (90) days from today. This amount is in addition to the amount already granted.

16. Thus, the appeal is allowed in above terms and is disposed off.

(KISHORE C. SANT, J.)

P.S.B.