IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1343 OF 2022

1. Rijwana w/o Samad Shaikh
age 31 yrs, Occ. Household.

2. Rehan s/o Samad Shaikh,
age 9 yrs, minor.

3. Subhan s/o Samad Shaikh,
age 7 yrs, minor.

Resp Nos.2 and 3 are minors, u/g
of their mother Rijwana w/o Samad Shaikh

All r/o Chichondi, Tq. Nilanga,
Dist. Latur. ..Appellants..
(orig claimants)

VERSUS

1. Rafiq s/o Madar Shaikh,
age 27 yrs, Occ. Driver,
R/o Peth Sangvi, Tq. Omerga,
Dist. Osmanabad.

2. Abdul Sattar s/o Allauddin Mulla,
age 51 yrs, Occ. Business,
R/o Yenegur, Tq Omerga,
Dist. Osmanabad.

3. The Manager,
Royal Sundaram Alliance Insurance Company
Ltd., Whites Road, Chennai - 600016.

4. Osman s/o Karimsab Shaikh,
age 71 yrs, Occ. Agriculture,
R/o Hosur, Tq. Nilanga,
Dist. Latur.

5. Rauf s/o Osman Shaikh,
age 26 yrs, Occ. Education in

Blind School, R/o Hosur,
Tq. Nilanga, Dist. Latur. .. Respondents..
(orig respondents)

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Mr. S.B. Gastgar , Advocate for appellants.
Respondent No.1- served
Mr. D. S. Mali , Advocate for respondent No.2
Mr. V. N. Upadhye advocate for respondent no.3.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 27th JULY, 2023.
PRONOUNCED ON : 8th AUGUST, 2023.

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JUDGMENT :-

1. The appellants/original claimants being aggrieved by the judgment and award dated 19.9.2017 passed by the Motor Accident Claims Tribunal, Nilanga, District Latur in MACP no.18 of 2011 approached this court under section 173 of the Motor Vehicles Act, seeking enhanced compensation.

2. The appellants had filed MACP no.18 of 2011 seeking compensation of Rs.40,55,000/- from the respondents i.e. owner, driver and insurer of the truck bearing registration no.MH-25/B-9644. Contention of the claimants is that, deceased Abdul Samad was dashed by the offending truck at about 5.45 am on 6.4.2011. He suffered fatal injuries in the said accident. He took last breathe on 9.4.2011 at OGH Hyderabad. The claimants contend that deceased was in the business of fruit commission agent and was earning Rs.15,000/- p.m. The claimants alongwith respondent nos.4 and 5 were depending on his income.

3. Claim petition was contested by the respondent no.2 and 3 by filing written statements. Respondent nos.4 and 5 were also dependents of deceased. Respondents filed their written statement at exhibit 35 and admitted the claim, however, sought the compensation of their share. The Tribunal, after framing the issues, passed an award of Rs.8,53,000/- in favour of the claimants.

4. Mr. Gastgar, learned advocate appearing for the appellants submit that deceased was working as a commission agent in fruit market at Hyderabad. The evidence of CW 2 Abdul Mannan a fruit seller is recorded at exhibit 62. He asserted about wholesale and retail business of the deceased and earning of Rs.15,000/- p.m. However, tribunal without recording adequate reasons, considered the notional income of the deceased @ Rs.6,000/- p.m. by ignoring the evidence that is tendered into service. He would further submit that the Tribunal did not consider future prospects. There were 5 dependents, therefore, deduction of 1/4th of the assessed income of the deceased could have been made towards his personal and living expenses, however, the Tribunal erroneously deducted 1/3rd amount of income on that count. He submits that meager compensation is awarded towards non-pecuniary heads and seeks re-assessment of compensation.

5. Mr. Upadhye, learned advocate appearing for the respondent/insurance company supports the award contending that the accident occurred in the year 2011. There is no direct

evidence regarding income of the deceased. The Tribunal has rightly fixed the notional income of the deceased to the tune of Rs.6,000/- p.m. and no indulgence is required on that count in this appeal. He fairly concedes that future prospects could have been considered in view of pronouncement of the Supreme Court in matter of **National Insurance Company Limited *Versus* Pranay Sethi & Ors. (2017)16 SCC 680.** He submits that rest of the award do not require interference.

6. Having considered the submissions advanced and on perusal of the record it reveals that the dispute in the present appeal is restricted to the assessment of the compensation. **The Supreme Court in the matter of Sarla Verma & Ors. Versus Delhi Transport Corporation and Ors. (2009) 6 SCC 121** as well as **National Insurance Company Limited *Versus* Pranay Sethi & Ors. (2017) 16 SCC 680** have reiterated various heads for assessment of the compensation and also provided for fixed formula for adding compensation based on age as of the deceased.

7. In the present case, although the claimants have pleaded that deceased was in the business of commission agent in the fruit market, no evidence regarding his business is produced. The evidence of CW 2 Abdul Mannan does not inspire confidence. His oral version regarding earning of the deceased would not have been sufficient in absence of some documentary evidence showing transactions by the deceased as a commission agent. The Tribunal cannot be faulted in considering the notional income of deceased @ Rs.6,000/- p.m. based on

the minimum wages that may be available to the labour or skilled labour in the year 2010-2011. However, the Tribunal erred in not considering future prospect. The deceased was aged about 34 years. Therefore, addition of 40% amount required to be made by way of future prospects.

8. So far as deduction of amount towards personal and living expenses is concerned, it is well settled that if number of dependents on the deceased are "4 to 6", then $1/4^{th}$ amount of established income needs to be deducted towards personal and living expenses.

9. The Tribunal has awarded Rs.25,000/- by way of loss of love and affection, Rs.20,000/- by way of consortium, Rs.10,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transportation charges. The Supreme Court of India in case of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram & Ors. reported in (2008)18 SCC 130** has laid down that consortium can be granted to the widow which is commonly known as spousal consortium, however, the consortium can also be granted to other dependents of deceased like filial consortium. Pertinently, in such case the compensation towards loss of love and affection cannot be separately granted. In that view of the matter, all the five claimants are entitled for compensation towards loss of consortium to the tune of Rs.40,000/- each. The claimants would be entitled for Rs.30,000/- towards loss of estate and funeral expenses. The Tribunal granted Rs.20,000/- by way of lumpsum medical expenses in absence of specific evi-

dence to that effect. No interference is required in that assessment.

10. In view of the aforesaid observations, the claimants are entitled for the compensation as under :-

Sr. No.	Heads	Amount
1.	Monthly income of the deceased Rs.6,000 x 12 =	Rs.72,000/-
2.	Addition of 40% towards future prospects	Rs.72,000 + 28,800 = 1,00,800/-
3.	Deduction of 1/4th towards personal and living expenses.	Rs.1,00,800/- / 1/4 = 25,200/-
4.	Multiplier of ‘16’ (Rs.75,600 x 16)	Rs.12,09,600/-
5.	Towards loss of consortium Rs.40,000/- x 5	Rs.2,00,000/-
6.	Funeral expenses, loss of estate	Rs.30,000/-
7.	Medical Bills	Rs.20,000/-
	Total : -	Rs.14,59,600/-

Rs.14,59,600/-(Rs. Fourteen Lakh Fifty Nine thousand six hundred)

11. In view of the above, the claimants are entitled for total compensation of Rs.14,59,600/-(Rs. Fourteen Lakh Fifty Nine thousand six hundred), the appeal needs to be partly allowed. Hence, the following order.

O R D E R

i. The appeal is partly allowed.

ii. The judgment and award passed by the Motor Accident Claims Tribunal, Nilanga, dated 19.9.2017 in M.A.C.P. No.18 of 2011 is modified.

iii. The respondent nos.1 to 3 shall jointly and severally a sum of Rs.14,59,600/-(Rs. Fourteen Lakh Fifty Nine thousand six hundred) to the claimants towards compensation (inclusive of NFL) alongwith interest @ 6% p.a. from the date of filing of the claim petition.

iv. The amount paid/deposited in terms of the award passed by the Tribunal shall be appropriated.

v. On deposit of the compensation amount as per the modified award, the claimants shall be at liberty to withdraw the same, subject to payment of deficit court fees, if any.

vi. Modified Award be drawn up accordingly.

vii. First appeal is disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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