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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.285 OF 2006

The New India Assurance Company Limited,
Mata Building, Near Civil Hospital,
Opposite Ambedkar Road, Sangli ...Appellant
...(Ori.Opponent No.2)

....Versus....

1. Dr.Shridhar Shripad Karandikar,
Age 60 years, Occupation – Service.

2. Smt.Manjiri Shridhar Karandikar,
Age 54 years, Occupation – Household work,

Both residents of 437, Behind Maruti
Mandir, Gaonbhag, Sangli.

3. Mahadeo D. Dabade,
Age – Major, Occupation – Business,
Resident of Priya Complex,
3rd Floor, Room No.2, Opposite
Shriram Talkies, Ulhasnagar. ...Respondents

WITH
FIRST APPEAL NO.207 OF 2006

1. Dr.Shridhar Shripad Karandikar,
Age 60 years, Occupation – Service.

2. Smt.Manjiri Shridhar Karandikar,
Age 54 years, Occupation – Housewife,

Both residing of 437, Behind Maruti
Mandir, Gaonbhag, Sangli – 416 416. ...Appellants
...(Original Applicants)

...Versus...

1. Mahadeo D. Dabade,
Age – Major, Occupation – Business,
Resident of Priya Complex,
3rd Floor, Room No.2, Opposite
Shriram Talkies, Ulhasnagar.

2. The New India Assurance Company Limited,
Mata Building, Near Civil Hospital, ...Respondents
Opposite Ambedkar Road, Sangli … (Ori.O.Ps.)

Mr.Tejpal S. Ingale with Mr.Abhishek T. Ingle and Ms.Priyanka Babar for the Appellant in FA No.207 of 2006 and for the Respondent in FA No.285 of 2006.

Ms.Poonam Mittal for the Appellant in FA No.285 of 2006 and for the Respondent in FA No.207 of 2006.

CORAM : RAJESH S. PATIL, J.
DATE : 6TH & 7TH NOVEMBER, 2023.

ORAL JUDGMENT :-

1. First appeal No.285 of 2006 is filed under Section 173 of the Motor Vehicle Act, 1988 by the Insurance Company and First Appeal No. 207 of 2006, both challenging the judgment and award dated 28 September 2005, passed in Claim Petition No.139 of 2003 by Member MACT, Sangli.

FACTS

2. On 28 July 2002 at about 2.00 p.m., in the afternoon, on Sangli-Kolhapur Road near Akashwani Kendra, Sangli, one captain

Shailendra Karandikar was driving Maruti Van Bearing Registration No. KA-23/M-466. His wife (Sonali), two months old son Sumedh, Vaijayanti Madhav Akhave (Maternal aunt of Sonali), Madhav Dattatraya Akhave (husband of Vaijayanti) and Devdutta Madhav Akhave minor son of Vaijayanti and Madhav Akhave, were travelling along with him. They were returning from Narsobawadi to Sangli. The Maruti Van was proceeding South to North direction. The owner of the Maruti Van was a family friend Mr. Sanjay Ganesh Patankar resident of Sangli. It is undisputed that captain Shailendra Karandikar was holding valid driving license on the date of the accident.

3. As Maruti Van driven by captain Shailendra Karandikar proceeded towards South to North Akashwani Kendra, truck bearing No. MH-05-1420 (for short "offending truck") came from the opposite direction from North to South. There was collusion between offending truck and Maruti Van driven by captain Shailendra. As such, accident took place and in the said accident, captain Shailendra, his wife Sonali, son Sumedh, Madhav Akhave died on the spot and Vaijayanti (maternal aunt Sonali) died in hospital. However, the son of Madhav Akhave and Vaijayanti Akhave, Devdutta Akhave, survived.

4. Five claim Petitions were filed in total, arising out of said

accident. The present proceedings is pertaining to the death claim of the deceased Sumedh Shailendra Karandikar, two months old child of Captain Shailendra and Sonali Karandikar. Motor Accident Claim Petition No.139 of 2007 was filed by two claimants being the grandfather and grandmother of the deceased minor Sumedh, in MACT Sangli claiming compensation amount of Rs.2,00,000/- with interest at the rate of 18% per annum from the date of filing of the Claim Petition from Respondents jointly and severally, i.e., Respondent No.1 being the owner of the offending truck and Respondent No.2 New India Assurance Company limited, who were insurer of the offending truck.

5. Respondent No.1 owner of the offending vehicle did not lead evidence neither file their written statement therefore, the matter proceeded *ex-parte* against the Respondent No.1 owner of the offending truck.

6. Respondent No.2, the Insurance Company filed their written statement, and denied the contentions of the claim Petition.

7. Claimant lead their evidence by Claimant No.1 stepping in the witness box and leading evidence. The said witness was cross

examined by the Advocate for Insurance Company. Respondent No.2 Insurance Company examined two witnesses i.e. Respondent No.1 being the driver of the offending vehicle and witness No.2 Mr.Ajay Paul being the Photographer who clicked photo of the accident site. Both the witnesses of the Insurance Company were examined by the Claimant's Advocate.

8. Based on the Issues framed, the MACT answered the issues in the following manner : -

> " *1) Whether the petitioners prove that their grandson – Sumedh Shailendra Karandikar died in a motor vehicle accident due to rash and negligent driving of the driver of truck bearing No. MH-05/1420 owned by respondent no.1 and insured with respondent no.2 at the time of accident i.e on 27.07.2002 ?*
>
> *2) Whether the Respondent No.2 proves that the driver of the said truck was not holding valid and effective driving license at the time of the accident?*
>
> *3) Whether the respondent no. 2 proves that respondent no.1 has violated the material conditions in the Insurance Policy?*
>
> *4) Whether the petitioners are entitled for any compensation amount?*
>
> *If yes, to what extent?*
>
> *And from whom?*
>
> *5) What award and order ?*
>
> *My findings on the above issues are recorded the reasons given below :*
>
> *1) In the affirmative*

2) Redundant

3) Redundant

4) In the affirmative.

Rs.1,55,000/- including the amount of no fault liability'.

Respondent nos. 1, 2 jointly and severally.

5) As per final order below."

9. The Member MACT, Sangli by his judgment and award dated 28 September 2005, partly allowed the Claim Petition. It thereby allowed the Claim Petition to the extent of Rs.1,55,000/- including the amount of Rs.50,000/- as 'No Fault Liability" with interest at the rate of 9% per annum from the date of filing of the claim Petition till its realization, jointly and severally to be paid by Respondent Nos. 1 and 2, to the Petitioner Nos. 1 and 2 equally.

10. Being aggrieved by the award dated 28 September 2005 the Insurance Company has filed the present First Appeal No.285 of 2006 on the following grounds :-

> *"(a) That the learned Tribunal materially erred in law in awarding the compensation to Respondent No.1 and 2 aggregating in to Rs. 1,55,000/-without any basis in law as the assessment was not backed by cogent evidence and was also a violation of the Law laid down by the Hon'ble Apex Court and the Hon'ble High Courts.*
>
> *b) That the Tribunal made the Award*

against the Appellants for compensation in favour of Respondent No.1 and 2 on consideration other than evidence admissible in law as well as on the basis not tenable in law.

c) The learned Judge erred in overlooking the fact that the Respondents No.1 and 2 had claimed compensation for death of their son, daughter-in-law and in the present case even grandson and considering all circumstances grant of compensation in this petition would result in unjust enrichment.

d) The learned judge ought to have followed the mandate of the Apex Court that compensation cannot be bonanza, a source of profit or a windfall for the victim and it has to be only just. (2003 ACJ 1775 SC).

e) That the Tribunal materially erred in law in ignoring that the Respondents No. 1 and 2 were maintaining themselves on their own with huge amount of salary and they will also get substantial amount of retirement benefits like family. There was thus no dependency in the present case.

f) The learned Judge erred in not concluding that the Respondents No.1 and 2 were obviously not dependent on the deceased and being only 2 months old there was no expectancy of deriving monetary benefits from him.

g) That the Learned Tribunal materially erred in law in ignoring the rules of pleadings as well as the evidence by which he was bound, more particularly with regard to the receiving of evidence by all judicial tribunals in India;

h) That the Learned Tribunal

materially erred in concluding that the deceased was rendering services to the Respondents No.1 and 2.

i) Strictly without prejudice to the above, even if Dependency is calculated the same ought to be made by taking Rs. 500/- with a 5 years multiplier and this would fetch a sum of Rs. 30,000/- lower than even the amount payable under s.140.

j) The learned judge ought to have fixed multiplier of only 5 years. In recent decisions the Apex Court adopted multiplier of 10 for parents aged 48 and 47(2004 TAC 3) and even for death of a 38 year old man the multiplier chosen was only 12 years. Thus the claimants being aged parents in this case, the multiplier ought not to have been more than 5 years.

k) The Judgment of the learned Judge is not based on recognized principles of law.

l) That the Learned Tribunal awarded compensation to the tune of Rs.1,55,000/- which was disproportionately high.

m) That the Learned Tribunal ought to have considered the vital fact that even if the burden of proof does not lie on a particular party, the court can draw adverse inference if such party withholds important documents which can throw light on the facts at issue.

n) That the Learned Tribunal has erred in granting excessive amounts under the heads loss to estate, loss of consortium and loss of love and affection.

o) That the Learned Tribunal ought not to have indulged in giving largesse's out of public exchequer without there being legal basis of payment of compensation.

> *p) That the Learned Tribunal ought not to have made the Award of compensation in favour of the original Applicants in the claims application.*
>
> *q) In any event the Award of the Learned Tribunal is highly exaggerated and not. in conformity with the payment of compensation as provided under law.*
>
> *r) That the Learned Tribunal failed to consider that Respondent No.1 and 2 had failed not only to prove dependency but also could not produce any evidence in support thereof which could make them entitled for such a big Award;*
>
> *s) The rate of interest awarded is high. Reliance is placed on 2005 TAC 305 wherein 7.5% was granted and 2000 AC/ 252 wherein 696 were awarded as interest by the Apex Court.*
>
> *t) That the learned Tribunal ought to have on the facts and circumstances of the case, dismissed the Claim Application with costs.*
>
> *u) The judgment of the learned Judge is against the principles of justice, equity and good conscience.*
>
> *v) The Appellants crave leave to alter, amend, add to any of the grounds aforesaid:*
>
> *w) The Award and Judgment of the Learned Tribunal in MACP No.139 of 2003 at Sangli deserves to be quashed and set aside in the interest of justice."*

11. Being dis-satisfied by the quantum awarded, the Original Claimants have filed First Appeal No. 207 of 2006, on following grounds:-

(a) The Impugned judgment is illegal, unlawful and not in accordance with the settled propositions of law.

(b) The Impugned judgment is unreasonable and contrary to the principles of natural justice and equity which ought to be exercised while dealing with cases pertaining to compensation under the provisions of the Motor Vehicles Act, 1988;

(c) the Impugned judgment is contrary to the pleadings and evidence on records

(d) the Impugned judgment suffers from impropriety and prejudice while considering and discarding the evidence, oral as well as documentary, adduced before the Tribunal on behalf of the Appellants;

(e) the Learned Judge has committed grave error in equating proceedings under Sec. 166 of The Motor Vehicles Act 1988 with that of the proceedings under 163A for the purpose of loss of estate and funeral expenses consequently awarding paltry amounts of Rs. 2,000/- and Rs.2,500/- as against Rs.3,60,000/- awarded by Hon'ble Supreme Court in Lata Wadhwa's judgement.

(f) the Learned Judge has committed grave error in deducting from notional income further reducing the net income by 1/3rd amounting to double deduction.

g) Learned Tribunal also ignored judgment of Delhi High court wherein in similar case notional income is taken as 22,500/- instead of 15,000/- in Structured compensation formula.

h) the Learned Judge by awarding less compensation has conferred undue benefit to the Tortfeasors viz. the respondents for being rash and negligent while driving and thereby causing death of five innocent persons;

i) the Impugned Judgment is liable to be quashed and set aside being without any merits, *unreasonable and improper;*

j) the Appellants crave leave of this Hon'ble Court to add, alter or amend the grounds of challenge or advance additional grounds at the time of submissions."

SUBMISSIONS OF PARTIES :

12. Ms.Poonam Mittal, made her submissions on behalf of the Appellant – Insurance Company :

i). Ms.Mittal submitted that as far as statutory defence of the driving license and breach of policy are concerned, even though the same are taken up in the written statement however she on instructions wants to give up that defence.

ii). Ms.Mittal submitted that she has two points of argument, one is of "negligence" and other is "quantum".

iii). Ms.Mittal on the issue of "negligence" submitted that in the written statement of the Insurance Company a specific averment is made in paragraphs 4 and 6 that negligence was on part of the driver of the Maruti Van. She further submitted that as far as negligence is concerned, the Insurance Company has examined the truck driver of the offending truck. So also the photographer, who had clicked the photographs at the site of the accident was examined.

iv). Ms.Mittal further submitted that a state transport bus was standing near the site of the accident and Maruti Van over took the standing bus and in the process the offending truck which came from the opposite direction collided with Maruti Van, therefore it was a sheer negligence on the part of the deceased, who was driving Maruti Van due to which there was unfortunate accident. Ms.Mittal further submitted that MACT Court lost site to this important piece of evidence and erred in holding that the negligence was on part of the driver of the offending truck.

v). Insofar as issue of quantum is concerned, Ms.Mittal submitted that Original claimants no. 1 and 2 being Grandparents of the deceased grandson Sumedh (only two months old) are not dependent on deceased and hence, are not entitled for any compensation claimed by them.

vi). On the contrary, the original claimants have claimed compensation of their son deceased Captain Shailendra in MACP No. 137 and daughter-in-law deceased Sonali Shailendra Karandikar in MACP No. 138. Hence, original claimants are dis-entitled.

vii). Ms. Mittal further submitted that the Learned Tribunal wrongly erred with respect to the Assessment of Quantum of deceased Sumedh. So also the MACT has considered the quantum at higher side. The Learned Tribunal wrongly considered the notional income of non- earnings persons i.e. Rs. 15,000/- per annum and so also wrongly applied the multiplier of "15".

viii). Ms. Mittal further submitted that such amount was not backed by any evidence on record. She also submitted that deceased Sumedh being only two months old there is no expectancy of deriving monetary benefit. And as a result of which there is no question of any dependency.

ix). Ms. Mittal further submits that the Learned Tribunal has awarded an excessive interest rate of 9%. Further she also stated that the Original Claimants have filed present appeal with the sole intention to extract profit from the insurance company.

x). Ms.Mittal further submitted that MACT Court without considering settled position of law and the evidence led in the present proceedings, has arrived to incorrect amount of claim, and the same should be reduced.

13. On the other hand, Mr.Tejpal Ingale made submissions on behalf of Claimants:-

i). Mr. Ingale submitted that as far as negligence is concerned, the Claimants have very specifically stated in their claim petition and have also led evidence in the form of father of the deceased entering into the witness box and giving his evidence. So also the claimants have relied upon the exhibited documents in the form of FIR, Panchanama, driving license of the deceased and the driving license of the offending truck.

ii). Mr.Ingale submitted that evidence of the driver of offending vehicle, itself shows that it was straight road and from the distance of 600 mtr. Driver of the offending vehicle could see the Maruti Van coming from the opposite direction. It is further stated by the driver of offending truck that his speed was around 30 to 35 Km per hour and it is also stated by the driver that road was bigger than the national highway.

iii). Mr.Ingale further stated that FIR recorded by the police supports the case of the Claimant. The said FIR also mentions about the statements of one Mr. Ashok Mane, who has narrated to the police that the accident occurred when he was driving his vehicle and according to him, the accident occurred due to the mistake of the offending truck driver. The said Mr.Ashok Mane also stated that there was a bus standing at the relevant time near the spot of accident, at the bus stop.

iv). Mr.Ingale further submitted that as far as the quantum is concerned, MACT Court has not followed the principles laid down by the Supreme Court on the issue of calculations to be made for deciding the quantum.

v). Mr.Ingale further submitted that as far as the loss of income is concerned, the deceased Sumedh was only two months old and therefore, as per the ratio laid down by the Supreme Court in ***Kurvan Ansari Vs. Shyam Kishore Murmu reported in (2022) 1 SCC 317***, where the notional income of minor child by taking into account inflation, devaluation of rupee and cost of living taken appropriate notional income of deceased child will be Rs. 25,000/- p.a. should be considered.

vi). Mr.Ingale referred to the doctrine of last opportunity to avoid the accident. Mr. Ingale further submitted that as per evidence of the driver of the offending truck that from the distance of 600 Mtr, he has seen Maruti Van coming from the opposite direction, therefore Mr.Ingale submitted that he could have avoided the accident. Mr. Ingale submitted that the driver of the offending truck could have reduced his speed by applying the breaks, of his truck, however, the same was not done.

vii). Mr.Ingale submitted that all the persons traveling in the Maruti Van have died except one boy, who was sitting in the dicky of Maruti Van.

viii). Mr.Ingale also submitted that the principles of *res-ipsa-*

loquitur is applicable in the present proceedings. He submitted that the Claimants can prove the accident but cannot prove how it happened to establish the negligence on the part of the Respondents. This hardship is sought to be avoided by applying the principles of *res-ipsa-loquitur.*

ix). Mr.Ingale further relied upon the Judgments of ***Kirti & Anr. Vs. Oriental Insurance Co. reported in (2021)2 SCC 166.*** (supra) to buttress his submissions.

x). Mr.Ingale further submitted that the amount as calculated by MACT so far as Future Prospects are concerned, one has to take cultural and educational background of the deceased minor child and so also the same should have been done as per the ratio laid down in the ***Kirti (supra)***

xi). Further Mr. Ingale submitted that once the notional income is determined the grant of future prospect with respect to the non earning person for the purpose of grant of compensation needs to be granted being component of just compensation.

xii). And as far as the multiplier is concerned considering the age of deceased Sumedh, is just two months old (below 15 years), so the multiplier should be considered "15**".**

xiii). Mr.Ingale submitted that the First Appeal filed by the

Insurance Company should be dismissed and the First Appeal filed by the Claimants should be allowed with interest.

ANALYSIS AND CONCLUSIONS :-

14. The impugned award passed by MACT has been challenged by both the parties i.e. the Insurance Company and also by the Claimants.

15. MACT has partly allowed the claim of the Appellants by granting an amount of Rs.1,55,000/-, including the amount of Rs.50,000/- as “no fault liability”, along with with interest @ 9%.p.a.

As the issue of statutory defence of breach of policy and not having driving license is given up by the Insurance Company. The issues were answered in favour of the Claimants.

A). *Rash and Negligent Driving :-*

16. As far as rash and negligent driving is concerned, to prove the said fact the Claimants have examined Claimant No.1, who narrated the entire evidence as known to him. The said witness was cross-examined by the Insurance Company. In evidence Claimant No.1, brought on record FIR (Exhibit-29). The said FIR recorded the statement of one Mr. Ashok Mane, who’s vehicle was passing by, had submitted that there was a bus standing on the bus stop near the site

of the accident and as the Maruti Van crossed over the standing bus, the offending truck coming from the opposite direction, dashed the Maruti Van. It is further recorded that after the accident, Maruti Van which was going towards north, due to impact turn to south 15 ft. It is further recorded that the size of the road was 34 ft and there were white plates of 5 ft on both the sides. The offending truck which was coming from north to south after the accident had moved towards east by 2 ft. Further Mr.Ashok Mane stated that the accident had occurred due to the negligence of truck driver. The only survivor of the accident Devdatta, also in his statement to the Police, stated that the accident occurred due to the negligence of the offending truck. Further the Claimant No.1 also produced on record Panchanama (Exhibit-30). The said Panchanama recorded that it was the negligence of the offending truck driver, due to which the accident had occurred. The Panchanama also recorded that the head-light the Maruti Van were switch on at the time of accident. The accident had occurred at 2 p.m. in the afternoon, as the head-light of the Maruti Van was on, this shows that the deceased had given signal to the offending truck.

17. The evidence led by the Insurance Company, of the driver of offending truck records that from the distance of 600 Mtr. he could

see that Maruti Van was coming from south to north and in a zigzag manner. Further the said evidence recorded that the road was bigger than the national highway. He further stated that the speed of the offending truck was around 30 to 35 km per hour. However, it is seen that there was no statement made in the examination in chief that the driver of the offending vehicle applied breaks so as to make an attempt to slow down or stop the offending vehicle after he saw that Maruti Van is coming towards him in a zigzag manner or gave any kind of signal to the Maruti Van. In the cross-examination the driver of the offending vehicle denied that the bus was standing on the site. So also he denied that Maruti Van over took another Car and dashed the offending truck.

18. The theory that Maruti Van was coming in zigzag manner is not averred in the written statement. So also the evidence that the bus was standing on the bus stop which was taken up in the written statement was denied in the cross-examination. Therefore there is variance between the pleadings and evidence, of the driver of offending truck.

19. Witness No.2 of the Insurance Company who had been on the spot to take photographs has clearly stated that when he visited the site, the vehicles were moved away from the spot of the accident

to the side of the road as due to accident these was a traffic issue. Hence, I hold that the Insurance Company was not able to prove by leading evidence their case of negligence on part of driver of Maruti Van.

20. Taking into consideration the documents on record in the form of FIR, including the statement of Mr.Ashok Mane, who had witnessed the accident, and the statement of Devdatta recorded by the police, who was sitting in the unfortunate Maruti Van, and this coupled with the fact that the driver of the offending truck in his evidence admitted the fact that it was straight road, and from 600 Mtr. he could see the Maruti Van coming in a zigzag manner, and the road was bigger than the national high, his speed being 30 to 35 Km per hour and driver of offending truck not applying the breaks, is enough to prove that the driver of the offending vehicle was negligent and rash while driving the offending truck .

21. Insofar as the doctrine of last opportunity, Mr.Ingale, relied upon the judgment of the Supreme Court in case of ***Municipal Corporation of Greater Bombay vs. Laxman Iyer & Ors.*** reported in ***(2003) 8 SCC 731***. Paragraph 7 of the said Judgment reads as under :-

> "7. At this juncture, it is necessary to refer

to the "doctrine of last opportunity". The said doctrine is said to have emanated from the principle enunciated in *Davies vs. Mann* (1842) 10 M & W 546, which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but a test of causation. (See *Davies v. Swan Motor Co. (Swansea) Ltd.,) (1949*) 2 *KB 291.* Though in some decisions, the doctrine has been applied by courts, after the decisions of the *House of Lords in Volute (1922) 1 AC 129*, and *Swadling v. Cooper (1931) AC 1,* it is no longer to be applied. The sample test is, what was the cause or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident, renders it one to be the result of contributory negligence."

(emphasis supplied)

22. In the present proceedings the driver of the truck has admitted that he had seen Maruti Van from the distance of 600 mtr. and he was driving at a speed of 30 to 35 Km per hour, admittedly he could have applied the breaks to slow down his vehicle and or to stop his vehicle. The width of the road was 34 ft. and there was additional 5 ft. side white plate, therefore there was opportunity for him to slow down and go towards his left and avoid the accident. The offending truck was a big vehicle compared to Maruti Van. Therefore, the

degree of precautions and responsibilities was more on the offending truck. This coupled with the fact that the lights of Maruti Van were on, at the time of accident, therefore, the findings recorded in the judgment of the Supreme Court in the case of ***Laxman Iyer & Ors.*** (supra) are squarely applicable to the present proceedings and I hold that the driver of the offending vehicle was negligent and rash while driving of the offending vehicle and due to which accident occurred and 5 persons , including the captain Karandikar lost their lives.

B). Quantum :-

23. The MACT has granted the total compensation of Rs.1,55,000/- to the claimants in the following manner :-

1) Notional Income for compensation of non- earning members	Rs.15,000/-
2) Personal Deduction	Rs.15,000/- Minus Rs.5,000/- = Rs.10,000/-
3) Future Prospects was ***not*** granted	Not Awarded
4) Multiplier applied	"15"
5) Multiplied by applied Multiplier	Rs.1,50,000/-
6) Funeral Expenses	Rs.2,000/-

7) Loss of Estate	Rs.2,500/-
8) Hence, the total	Rs.1,54,500/ rounded **Rs.1,55,000/-with interest rate of 9% p.a.**

24. In the present proceedings original claimants have produced on record the certified copies of F.I.R., panchanama of scene of accident and memorandum of post mortem examination and death extract of their deceased grandson Sumedh.

25. It can be seen that MACT has not taken into consideration the future prospects payable to the original claimant upon the death of the two month old grandson.

Loss of Income -

26. In the Judgment of ***Kurvan Ansari (Supra)***, the notional income of minor child was taken into consideration on the basis of inflation, devaluation of rupee and cost of living as Rs. 25,000/-. Taking into consideration the ratio laid down by the Supreme court in ***Kurvan Ansari (Supra)***, I hold that in the present proceedings, the notional income of minor child, the deceased Sumedh should be Rs.25,000/-.

***Future Prospects* :**

27. The claimants were able to prove that deceased Sumedh was 2 month old at the time of the death in the accident by producing death extract and post mortem report. The Supreme Court in the Judgment of ***Kirti (Supra)***,where it was held that once notional income is determined the grant of future prospect with respect to the non earning person for the purpose of grant of compensation needs to granted being component of just compensation.

Therefore, considering the age of the deceased as 2 month old, an additional 50% increase on account of future prospects comes to Rs.12,500/- (i.e. 50% of Rs.25,000/-). Thus Rs.25,000/- (+) Rs.12,500 = Rs.37,500/-.

Personal Deductions :-

28. As deceased lost his mother and father in the said accident, his only legal heir would be original claimants i.e. grandfather and grandmother. Hence, as per the ratio laid down in ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.,*** reported in ***(2009) SCC 121***, I hold that personal deduction should be at the rate of 1/3.

Since the notional income of deceased is considered as Rs.25,000/- and 50% increase on the basis of ***Kirti (Supra)*** there could be deduction of Rs.12,500/- (1/3rd of Rs. 37,500). Hence, after deduction the income of the deceased is considered as Rs.25,000/-

per month.

Multiplier :

29. As far as the age of deceased Sumedh was of 2 months old at the time of his death in the accident, MACT has rightly considered the age of the deceased being below 15 years and has rightly considered "15" as the multiplier. Thus, Rs.25,000/- x "15" = Rs.3,75,000/-

Conventional Head :-

30.1 Consortium for the grandfather and grandmother of the deceased was not granted by the MACT. The Supreme Court in the judgment of ***Pranay Sethi*** (supra) has held that the amount of Rs.40,000/- should be granted under the head of consortium. Further in the Judgment of ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram & Ors. reported (2018) 18 SCC 130*** it is held that the amount of Rs.40,000/- on account of consortium should be granted to each of the Claimants.

30.2 Supreme Court in the case of ***Pranay Sethi*** (supra) has further clarified that there has to be 10 % increase after every 3 years on the amount of Rs.40,000/-. Since the Judgment in case of ***Pranay Sethi*** (supra) was delivered on 31 October, 2017, the amount of Rs.40,000/- is considered as on that date. The present proceedings are decided today in the month of November, 2023, which is 6 years after the judgment in case of ***Pranay Sethi*** (supra) delivered by the Supreme Court, hence there will be rise of 10% after every 3 years. Therefore, on the amount of Rs.40,000/- ; an amount of Rs.8,400/- more would be payable to each of the Claimants (grandfather and grandmother of the deceased). Therefore, on account of consortium total amount of Rs.48,400/- would be payable to each of the Claimants.

30.3 On account of Loss of Estate, the MACT had granted Rs.2,500/-. In the Judgment of ***Pranay Sethi*** (supra) Supreme Court has granted Rs.15,000/- plus 10% increase on every 3 years. Since the present proceedings are decided today after a gap of 6 years after the delivery of judgment in case of ***Pranay Sethi*** (supra) by the Supreme Court, the loss of estate in present proceedings is calculated at Rs.15,000/- plus 10% rise on Rs.15,000/- for every 3 years. Therefore, the total amount of Rs.18,000/- on the account of loss of estate, will be payable to each of the Claimant.

30.4 As far as funeral charges are concerned, the MACT Court has granted a meager sum of Rs.2,000/-. The Supreme Court in the case of ***Rajwati and Ors vs. United India Insurance Company Limited & Ors***. reported in ***2022, ACJ 2754*** has granted funeral expenses of

Rs.20,000/-. Paragraph 22 of the said judgment reads as under :-

> *"22. The deceased left behind five dependents, i.e., the present Appellants. In view of this, the grant of Rs. 40,000/- by the Learned Tribunal towards loss of consortium is insufficient in our view, and deserves interference. A three-Judge Bench of this Court in United India Insurance Co. Ltd. v. Satinder Kaur 2020 ACJ 2131 (SC), has awarded loss of spousal consortium at the rate of Rs.40,000/- and for s loss of parental consortium to each child at the rate of Rs.40,000/-. The compensation under these heads also needs to be increased by 10 per cent after every three years. Accordingly, the grant of Rs. 40,000/- towards loss of consortium is increased to Rs. 44,000/- to each Appellant, amounting to a total of Rs. 2,20,000/-. Along with this, Rs. 15,000/- each under the heads of 'funeral expenses' and 'loss of estate' is also very meagre. <u>In our considered opinion, an amount of Rs. 20,000/- is liable to be paid towards funeral expenses.</u> Similarly, award of Rs. 15,000/- towards 'loss of estate' is liable to be increased to Rs. 20,000/-."*

(Emphasis supplied)

Therefore, I grant a sum of Rs.20,000/- on account of funeral expenses.

30.5 Consequently, the total amount payable on account of Conventional Head would be Rs.1,36,800/-.

<u>Total Amount Of Compensation :-</u>

31. **Rs.3,75,000 /- + Rs.1,36,800/- = Rs.5,11,800/-**

32. The amount already granted in the award is Rs.1,55,000/-

which has to be deducted from the above amount of Rs5,11,800/-. The Tribunal has granted higher rate of interest @ 9% per annum.

33. Thus, I hold that the Claimants are entitled to additional compensation of **Rs.3,56,800/-** (Rs.5,11,800/- minus Rs.1,55,000) along with interest thereon at the rate of **7.5%** per annum from the date of filing of the claim petition (i.e. 28 May, 2003) till realization, as per the ratio laid down in the Award dated 28 September 2005.

34. In view of above, appeal of the Claimants i.e. First Appeal No.207 of 2006 stands partly allowed and appeal filed by the Insurance Company i.e. First Appeal No.285 of 2006 is hereby dismissed. There shall be no order as to costs.

35. It is submitted that the Insurance Company has already deposited Award amount in the concerned MACT. If the Claimants have already withdrawn certain amount from the amount deposited, the said amount already withdrawn should be adjusted while allowing the Claimants to withdraw the claim amount as decided by me today. The said amount should be granted as per the ratio laid down in the impugned judgment dated 28 September 2005.

(RAJESH S. PATIL, J.)