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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.283 OF 2006

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

....Versus....

1. Abhijit Madhav Akhave,
   Age – 20 yrs, Occupation – Education.
2. Devadutta Madhav Akhave,
   Age – 14 yrs, Occupation – Education.
3. Smt. Leela Dattatraya Akhave,
   since deceased through L.Rs. of Respondent Nos.1 and 2 having address at A-27 Reliance Housing Complex, At Post Mohapada,Tal – Khanapur, Dist. - Raigad.
4. Mahadeo D. Dabade,
   Age – Major, Occupation – Business,
   Resident of Priya Complex,
   3rd Floor, Room No.2, Opposite
   Shriram Talkies, Ulhasnagar. ...Respondents

<u>WITH</u>
<u>FIRST APPEAL NO.550 OF 2006</u>

1. Abhiit Madhav Akhave,
   Age – 22 yrs, Occupation – Service.

2. Devadatta Madhav Akhave,
   Age – 16 yrs, Occupation : Student, minor through Appellant No.3.
3. Smt. Leela Dattatraya Akhave, deceased through L.Rs. - Respondent Nos.1 and 2 having address at A/27 Reliance Housing Complex, At & Post - Mohopada, Tal – Khanapur, Dist. - Raigad. ...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,
   Opposite Ambedkar Road, Sangli ...Respondents … (Ori.O.Ps.)

Mr.Tejpal S. Ingale with Mr.Abhishek T. Ingle and Ms.Priyanka Babar for the Appellant in FA No.550 of 2006 and for the Respondent nos.1 to 3 in FA No.283 of 2006.

Ms.Poonam Mittal for the Appellant in FA No.283 of 2006 and for the Respondent No. 2 in FA No.550 of 2006.

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

ORAL JUDGMENT :-

1. First appeal No.283 of 2006 is filed under Section 173

of the Motor Vehicle Act, 1988 by the Insurance Company and First Appeal No. 550 of 2006 filed by the Original Claimants, both challenging the judgment and award dated 28 September 2005, passed in Claim Petition No.152 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 Devdutta Akhave of Madhav Akhave and Vaijayanti 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 Vaijayanti Madhav Akhave. Motor Accident Claim Petition No.152 of 2003 was filed by three claimants (being two son of the deceased and mother-in-law of the deceased Vaijayanti Madhav Akhave), in MACT Sangli claiming compensation amount of Rs.58,65,000/- 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 his 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 through Claimant No.1 Abhijit Madhav Akhave (son of the deceased at Exhibit - 45) and one more witness namely Krishana Nathu Gore (Exhibit – 51), stepping into 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 i.e. Jalinder Ananda Nangare 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 the mother of Petitioner Nos. 1 and 2 and the daughter-in-law of Petitioner No.3 by name- Vaijayanti Madhav Akhave died in a motor accident due to rash and negligent driving of the driver of truck bearing no. MH-05/1420 owned by Respondent No.1 and insurred with Respondent No. 2 at the time of accident i.e. 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.10,85,000/- 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.10,85,000/- 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.283 of 2006 on the following grounds :-

> *a) That the learned Tribunal materially erred in law in awarding the compensation to Respondent No.1 to 3 aggregating in to Rs. 10,85,000/-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 to 3 on consideration other than evidence admissible in law as well as on the basis not tenable in law;

c) The findings of the learned Judge on negligence are erroneous and the entire amount was wrongly mulcted on the Respondent No.3 and Appellants.

d) The learned Judge erred in overlooking the fact that the Respondents No.1 to 3 had claimed compensation for death of their father (MACP No.151 /2003) as well as mother and therefore grant of compensation in both cases considering all circumstances grant of compensation in this petition has resulted in unjust enrichment.

e) 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)

f) 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;*

g) Strictly without prejudice to the above, even if Dependency is calculated the same ought to be made on the basis of net income (2004/AG) 448 SC). Net income in this case was Rs. 90,110/- annually and not Rs. 1,08,000/- as fixed by the learned Judge. Thus dependency ought to have been fixed at 60,000/-and not Rs. 72,000/-. In fact in this case there ought to have been 2/3 deduction since after a couple of years the Respondents No. 1 and 2 were supposed to earn on their own and not be dependent on their parents.*

h)The learned Judge ought to have fixed multiplier of only & years since 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 deceased being a man of 50 years it would be just to select a multiplier of only 8 years and not 13. 14.

i) The Judgment of the learned

Judge is not based on recognized principles of law.

j) That the Learned Tribunal erred in awarding compensation to the tune of Rs.10,85,000/- being disproportionately high.

k) 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;

l) 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;

m) That the Learned Tribunal ought not to have made the Award of compensation in favour of the original Applicants in the claims application;

n) 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;

o) That the Learned Tribunal

failed to consider that Respondent No.1 to 3 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;

p) The rate of interest awarded is high. Reliance is placed on 2005 TAC 305 wherein 7.5 % was granted and 2000 ACJ 252 wherein 6% were awarded as interest by the Apex Court.

q) That the learned Tribunal ought to have on the facts and circumstances of the case, dismissed the Claim Application with costs

r) The judgment of the learned judge is against the principles of justice, equity and good conscience.

s) The Appellants crave leave to alter, amend, add to any of the grounds aforesaid;

t) The Award and Judgment of the Learned Tribunal in MACP No.152 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.550 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 record;

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 equating proceedings under grave in Sec. 166 of The Motor Vehicles Act 1988 with that of the proceedings u/s 163A for the expenses purpose of loss of estate and funeral consequently awarding paltry Rs.2,000/- and Rs.2,500/- amounts of Rs. 58,65,000/- and oral as against claim of and documentary evidence to that effect towards loss of estate alone.

f) The Learned Judge: has committed grave error in deducting from Gross salary entire deductions and thereafter further reducing the gross income Rs. 12,775/- to Rs. 9,000/- where in fact Learned \ tribunal ought to have considered the gross salary as well as the role of a house wife and her contribution to the household as awarded by the *apex court to housewife's even without any mode of income in Lata Wadhwa Vs. State of Bihar reported in 2001 ACJ 1735 both in terms of Para 5 and Para 10.*

g) The Learned Judge has erred in ignoring the ratio laid down by a judgement of the Apex Court in K.S.R.T.C. Vs. Susamma Thomas in 1994 ACJ 1 wherein future prospects of higher income, stability of employment, qualifications, longevity of life in the family are considered. In this light dependency itself should have been at least double and multiplicand ought to have been much higher since at the time of retirement the deceased would have fetched Rs. 77,000/- p.m. Also loss of dependency should have been double.

h) The inference drawn and the reasons for disbelieving the oral evidence by the Learned Judge *itself being without any justification and reasons is highly erroneous;*

i) 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;

j) The Impugned Judgment is liable to be quashed and set aside being without any merits, unreasonable and improper;

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 MACT Court has rightly held that the salary of the deceased as Rs.9,000/- per month. Ms. Mittal further submitted that deceased Vaijayanti was working as Principal of Pria School and drawing salary of Rs.8,867/-p.m. So also she further submitted that MACT has taken into consideration the salary certificate (Exhibit – 53) which was produced on record and has arrived at the conclusion that the deceased was drawing salary of Rs.8,867/-p.m. and rounded it to Rs.9,000/-p.m.

vi). Ms.Mittal further submitted that in so far as “Future Prospect” is concerned, the deceased Vaijayanti, mother of Original Claimant no.1 and 2 and the mother-in-law of the claimant no.3, was 43 years old. Hence, the multiplier considered by the MACT was “15”, it should be “14”. So also she further submitted that Original Claimant No.3 (mother-in-law of the deceased Vaijayanti) is not the dependent on income of deceased Vaijayanti.

vii). 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 the last drawn salary certificate (Exhibit - 53)of the deceased, who was working as the Principal of the School, was produced on record and duly exhibited. The said certificate clearly showed that the deceased was earning about Rs14,183./- per month. i.e. Rs.11,683/- + Rs. Special Allowance for conveyance being the Principal Rs.2,500/- = Rs.14,183/- p.m. Hence, the total salary comes to Rs.14,183/-

p.m.

vi). Mr.Ingale further submitted that the age of the deceased has been duly proved, as the death certificate of the deceased was produced on record and duly exhibited. The Claimants have also produced on record Exhibit -40 of the deceased which shows that the deceased was 43 years of age at the time of the accident.

vii). Mr.Ingale further submitted that the age of the dependent and their earnings, has no bearing in law, for calculating the compensation amount.

viii). Mr.Ingale further referred to Section 166 of the M.V. Act and the Judgments of the Supreme Court passed in ***Pranay Sethi*** (supra) and ***Manasvi Jain vs. Delhi Transport Corporation,*** reported in ***(2014) 13 SCC 22,***

ix). Mr.Ingale also referred to the findings recorded by MACT Court in favour of the Claimants in its paragraph Nos.16 and 17.

x). 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.

xi). Mr.Ingale submitted that all the persons traveling in the Maruti Van have died except one boy Devdutta Madhav Akhave(Original Claimant no.2), who was sitting in the dicky of Maruti Van.

xii). 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.*

xiii). Mr.Ingale further relied upon the Judgments of ***Pranay Sethi*** (supra) and ***Sarla Varma vs. DTC*** reported in ***(2009) 6***

SCC 121 to buttress his submissions.

xiv). Mr.Ingale further submitted that the amount as calculated by MACT so far as Future Prospects are concerned, the same should have been done as per the ratio laid down in paragraph 59.3 of the Judgment of ***Pranay Sethi*** (supra).

xv). Mr.Ingale further submitted that when the income is calculated it always means of receivable minus tax components and if the deceased was permanent employee then the Future Prospects if the deceased is below 50 years would always be 30%. Hence, Mr.Ingale also submitted that multiplier has to be applied based upon for the age of the deceased and not on the basis of the age of the Claimants.

xvi). 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 / Original Claimants by granting an amount of Rs.10,85,000/-, 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-30), Panchanama (Exhibit – 31) and the Post Morteum Examination of the deceased at (Exhibit - 32). 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 (Original Claimant no.2), 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-31). 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 (Original Claimant No.2) 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 Vaijayanti Madhav Akhave lost their lives.

B). Quantum :-

23. The MACT has granted the total compensation of Rs.10,85,000/- to the Original claimants no.1 and 2 only in the following manner :-

a) Salary per month	Rs. 9,000/-
b) 1/3 personal deduction	Rs. 9,000/- (-) Rs. 3,000/-
Therefore, total	= Rs. 6,000/-
c) Future Prospects was ***not*** granted	Not Awarded
d) Multiplicands : of '15' was applied.	Rs. 6,000/- x 12 = Rs. 72,000/- p.a.
Hence Multiplier	Rs. 72,000/- x 15 = Rs. 10,80,000/-
Therefore, Total =	Rs. 10,80,000/-
f) Loss of estate	Rs.2,500/-
g) Funeral Expenses	Rs.2,000/-
	Rs. 10,84,500/- rounded
Total	**Rs.10,85,000/-**

24. In the present proceedings, the Claimants have produced on record the last drawn salary certificate of the deceased (Exhibit - 53). The said certificate shows that last drawn salary of the deceased is **Rs.14,183/-p.m**.

25. Supreme Court in the case of ***Manasvi Jain vs. Delhi***

Transport Corporation Limited, reported in ***(2014) 13 SCC 22*** held in paragraphs Nos. 8 and 9, as under:-

> "8. This Court in Shyamwati Sharma v. Karam Singh (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions, etc., for arriving at the figure of net monthly income, held that : (SCC p. 380, para 9) "9... while ascertaining the income of the deceased,any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans, etc. *should not be excluded from the income*. The deduction towards income tax/ surcharge alone should be considered to arrive at the net income of the deceased".
>
> (emphasis supplied)
>
> 9. In the present case, there Is no dispute about of the salary of the deceased. As per salary certificate, his monthly income, and deductions are as under :-

Monthly income	Rs.26,950.00
Deductions	
Provident fund	8000.00
House Rent	525.00
GIS	120.00
Income tax	2500.00

> So, from the above table, it is clear that except an amount of Rs.2500 towards income tax, rest of the amounts were voluntarily contributed by the deceased for the welfare of his family.

> Considering the decision of this Court in *Shyamwati Sharma (2010) 12 SCC 378,* in our opinion, except contribution towards income fax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take-home salary. Hence, the take-home salary of the deceased comes to Rs 24,450 which can be rounded to Rs 25,000".
>
> [*Emphasis Supplied*]

Therefore, Supreme Court in clear terms in the above Judgment held that deductions towards GPF, LIC, repayment of loan etc. should not be excluded from the income of the deceased while calculating the income.

26. Considering the law as laid down by Supreme Court ***Manasvi Jain (supra)*** hence, in the present proceedings I hold that the salary of the deceased was Rs.14,183/- per month.[i.e. Basic Pay Rs.3,425/- (+) D.A. Rs.6850/- (+) P.F. Rs.1233/- (+) Professional Tax Rs.175/- = Rs.11,683/- (+) Special allowance for conveyance granted to deceased being a Principal Rs.2,500 p.m. = Rs.14,183/-]

Personal Deductions :-

27. As deceased lost her husband in the said accident, her

only legal heirs of her would be original claimants i.e. two sons (Original Claimant No.1 and 2). 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 1/3rd.

Since the salary of deceased is considered as Rs.14,183/- there could be deduction of Rs.175/- as of Professional Tax which comes to Rs.14,008/- and then further deduction of Rs.4,669/- (1/3). Hence, after deduction the Net salary of the deceased is considered as Rs.9,339/- per month.

Future Prospects :

28. The Claimants were able to prove that the deceased was 43 years of age at the time of her death in the accident by producing on record the Exhibit – 40. The Supreme Court in the Judgment of ***Pranay Sethi*** (supra), IN Paragraph 59.3 held as under:-

> "*While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The*

> *addition should be 30%, if the age of the deceased was between 40 to 50 years. In case of the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax".*
>
> *[Emphasis Supplied]*

Therefore, considering the age of the deceased as 43 years and her salary after deduction as Rs.9,339/- per month, additional 30% increase in the salary on account of Future Prospects comes to Rs.2,802/-. Therefore, the total income of the deceased would be Rs.9,339/- + Rs.2,802= Rs.12,141/- per month.

Multiplier :

29. As the salary of the deceased is considered as Rs.12,141/- per month. Yearly income would be Rs.12,141 x 12 months = Rs.1,45,692/- per year. The tribunal has considered multiplier of "15", based on the age of dependent. Supreme Court in case of ***Sarla Verma (Smt.) & Ors.*** (supra) has held in paragraph 42 as under :

> *"We, therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas),*

> *Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is* M-17 for 26 to 30 years, *M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years".*
>
> (Emphasis supplied)

Considering the Multiplier formula laid down by the Supreme Court and considering the age of the deceased as 43 years at the time of her death, she falls under the category of 41 to 45 years, therefore the multiplier of **"14"** will be applicable. The amount of Rs.1,45,692/- per year calculated above has to be multiplied by "14". Hence, the said amount would be Rs.20,39,688/-.(Rupees Twenty Lakhs,Thirty-Nine Thousand,Six Hundred and Eighty Eight only)

Conventional Head :-

30.1 Consortium for the two sons i.e. Original Claimant no.1 and 2 of the deceased were 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 (father and mother 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 meagre 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.20,39,688/- + Rs.1,36,800/- = Rs.21,76,488/-.

32. The amount already granted in the award is

Rs.10,85,000/- which has to be deducted from the above amount of Rs.21,76,488/-. 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.10,91,488/-** *(Rs.21,76,488/- minus Rs.10,85,000/-*) 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.550 of 2006 stands partly allowed and appeal filed by the Insurance Company i.e. First Appeal No.283 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.)