



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1797 OF 2013
WITH
CIVIL APPLICATION NO.2603 OF 2013
IN
FIRST APPEAL NO.1797 OF 2013**

Maharashtra State Road Transport
Corporation Limited, Mumbai.
(Owner of S.T.Bus No. MH-14-BT-0535)
Through its Secretary
(Originally Represented by
Divisional Controller,
Satara Division, Satara (Orig. Opponent) ... Appellant

Vs.

1) Shri Arjun Dattajirao Bhosale,
Age : 49 years, Occu.:Agriculture,
2) Smt. Anjana @ Ujvala Arjun Bhosale,
Age : 44 years, Occu.: Household,
Both residing at Post Surli,
Tal. Koregaon, District Satara
(Orig. Petitioners) ... Respondents

Mr.Y.P.Deshmukh with Ms.Vaidehi Pradeep and Ms.Aditi Athavale,
Advocates for the Appellants.
Mr.V.R.Gaikwad with Mr.R.B.Atharva, Advocates for the Respondents
No.1 and 2.

**CORAM : ABHAY AHUJA, J.
RESERVED ON : 13th JULY 2023
PRONOUNCED ON : 24th AUGUST 2023**

JUDGMENT :

1. This is an appeal filed by the Maharashtra State Road Transport

Corporation Limited (“MSRTC” for short) under section 173 of the Motor Vehicles Act, 1988 (the “M.V.Act” for short) being aggrieved and dissatisfied by the judgment and award dated 20th December, 2012 passed by the Motor Accident Claims Tribunal, Satara in MACP No.11 of 2012 whereby the Tribunal allowed the petition of the Claimants therein against the Appellant herein of Rs.4,00,000/- with simple interest at the rate of 8% p.a.

2. The brief facts are that Parikshit Bhosale, a 10 years old child, student of 4th standard in Zilla Parishad Primary School at Rahimatpur was hit by S.T. Bus owned by the Appellant-Corporation at around 17.00 hours on 27th September, 2011 near the bus-stand at Rahimatpur when the student after school hours was waiting for a bus and go to his village at Surli.

3. It is the case of the Respondents-Claimants that the accident took place on 27th September, 2011 when the S.T. bus came to the bus-stand from the gate at high speed and gave a dash to the boy from the cleaner’s side and by the impact of the tyre of the said bus the boy fell down. Their son was taken to the hospital of Dr.Pawar and thereafter to government

hospital, Satara. It is submitted that due to the injuries internal as well as external caused due to the dash of the bus, the boy died.

4. According to the parents, their son was a very talented student and obtained 75% to 80% marks in the 3rd standard. At the time of his death he was 10 years old and studying in the 4th standard; that he could have had a bright future and might have earned Rs.15,000/- to Rs.20,000/- per month and therefore, they claimed a compensation of Rs.4,00,000/-.

5. The Corporation filed its written statement resisting the claim of the Respondents-Claimants. According to the Corporation, on 27th September, 2011, the driver of the S.T. bus No.MH-12-EF-6138 was on a scheduled trip from Koregaon to Karad and he was driving the bus at normal speed, when the bus reached the Rahimatpur bus-stand at 5.30 p.m., there was a crowd of school boys who rushed towards the bus in which rush the said boy while rushing towards the bus fell down in the crowd and sustained injuries due to the crowd and then died. The said accident took place because of carelessness of the people. That therefore the said boy was not injured because of the dash of the S.T. bus. The bus was not involved in the accident, and therefore, the claim be dismissed.

6. The Tribunal considered the rival contentions as well as the evidence and held that the claimants i.e. the parents of the deceased boy proved that on 27th September, 2011 the accident occurred due to the rash and the negligent driving of the subject S.T. bus and Parikshit Bhosale the son of the claimant died due to that accident. It was also held that the Corporation did not prove that the accident occurred due the sheer negligence of the deceased.

7. The Tribunal considered the evidence of one Mr.Yashwant Madhur Mane, an eye witness. He has stated that at the time of the accident he had been to the S.T. stand at Rahimatpur for going to Karad and the said S.T. bus came into the bus-stand from the gate at high speed and gave dash to the boy from the cleaner's side and due to the impact of the tyre of the bus, the boy fell down. That the said boy was then taken to the hospital of Dr.Pawar and thereafter to the government hospital at Satara. The Tribunal relied on this witness and his cross-examination where he denies that when the bus came in the S.T. stand all the boys rushed towards the bus and the deceased fell down in the crowd and sustained injuries. Further, although it was suggested to the eye witness that the

S.T. bus had not given dash to the boy, the said suggestion was denied by him. On the basis of this evidence, the Tribunal held that due to the dash of the ST Bus the deceased boy fell down and sustained injuries and later died due to the injuries.

8. The Tribunal also considered the evidence of the driver and the controller/conductor of the bus. The driver has stated that when the bus came in the S.T. stand, 100 to 150 students rushed towards the bus and when he stopped the bus, he came to know that one boy had fallen down. Then he went to the cabin and informed the controller about the incident and as per his direction, the injured boy was taken to the hospital. In the cross-examination the driver was asked as to whether the accident took place due to his negligence, however he denied. The Tribunal observed that if this evidence was considered, the fact that the boy fell down due to the dash of the S.T. bus cannot be disputed and therefore, this evidence would not help the Appellant to prove that the S.T. bus was not involved in the accident. With respect to the evidence of the controller, the Tribunal has observed that the same was not much helpful to the Appellant Corporation to prove the fact that the S.T. bus was not involved as at the relevant time conductor was in the cabin and when he heard the noise in

the court-yard of the S.T. stand, he came out of the cabin and therefore, the conductor's evidence would not be sufficient to prove that the S.T. bus driver was not responsible for the accident or that the said boy sustained injuries due to the crowd of the bus-stand.

9. The Tribunal has also considered the evidence of Dr.Jagtap who performed the post-mortem of the deceased boy. It is recorded that the doctor found two external and three internal injuries on the body which are mentioned in the post-mortem report and in the cross-examination the doctor has stated that the external and internal injuries are possible if the S.T. bus has struck the body of the deceased. The Tribunal considered the evidence of the doctor and has held that the possibility of death due to dash by S.T. bus cannot be disputed. That the medical evidence also supports the story of the claimants.

10. The Tribunal has also referred to the documentary evidence in the form of FIR, spot panchanama, inquest panchanama, post mortem report, R.C. Book of the S.T. bus which reveals that the offence had been registered against the driver of the subject S.T. bus and the spot panchanama clearly shows that the accident took place in the court-yard

of the S.T. bus stand at Rahimatpur. That the inquest panchanama and the post mortem report show that the deceased Parikshit died in the accident and his cause of death was due to rupture of lungs, spleen and left kidney. The Tribunal therefore held that the submission on behalf of the Appellant that the S.T. bus was not involved in the accident could not be accepted. On the basis of the documentary evidence discussed above, the Tribunal observed that the claimants had proved that their son died in the accident that occurred on 27th September, 2011 at S.T. stand, Rahimatpur and the driver of the S.T. bus was responsible. That the Appellant-Corporation failed to prove that the deceased himself was responsible for his death.

11. Considering that the deceased was 10 years old at the time of the accident and was studying in 4th standard, the Tribunal held that a notional income of Rs.3,000/- per month will have to be considered and that multiplier in case of a minor child of 10 years old as 15 for the purposes of compensation. The actual compensation was worked out to Rs.36,000/- and after deducting 1/3rd towards personal expenses, it would be Rs.24,000/- per annum and by applying the multiplier of 15, the Tribunal computed the amount to Rs.3,60,000/-. The Tribunal also held that the claimants were entitled to Rs.10,000/- towards funeral

charges and Rs.30,000/- for the loss of love and affection. As the claim of the Petitioners was Rs.4,00,000/-, the Tribunal awarded an interest of 8% per annum on Rs.4,00,000/- directing that 50% of the amount shall be paid to each Petitioner.

12. Mr.Deshmukh, learned Counsel for the MSRTC would submit that the accident did not occur due to the negligence of the driver. He would submit that there was a group of students waiting to board the bus and when the S.T. bus stopped, all the students rushed towards the bus and in the rush the boy fell down and was run over by the crowd trying to get into the bus. Learned counsel would submit that the deceased was a 10 years old boy and naturally he could not withstand the rush and fell down. He would submit that death has occurred due to the mistake of the crowd. That the boy died due to stampede and not because the bus dashed him. He would submit that when the accident is inevitable accident, then there cannot be negligence.

13. Referring to the testimony of the Doctor who conducted the post-mortem examination on the body of the deceased, learned counsel would submit that the Doctor found two external injuries on the dead body

mentioned in column 17 of the post-mortem report and three internal injuries mentioned in columns 20(d) and 20(e) and in column 21 and observed that there was no tyre mark on the body nor any fracture injury on the dead body. Learned counsel would submit that therefore, it could not be said that death occurred due to the S.T. bus.

14. Referring to the inquest panchanama form learned counsel would submit that at column 10 with respect to description of injuries found on the dead body, with respect to the head, it is mentioned that the head is externally fine that there is dry blood on the face and from the nose and mouth some blood appears to have oozed out. Learned Counsel would submit that with respect to the neck it is observed that it is alright; even the right hand, the left hand, the legs, the right leg, the left leg and the private parts have been recorded to be in an okay condition. He would submit that there are some abrasions below the shoulders and there is some small gravel embedded therein and there is some blackened portion in the back. In support learned counsel takes the court to the post-mortem report and refers to column 17 with respect to the surface wounds and injuries and submits that the said report also suggests abrasions around a thoracic lumbar region. Learned counsel would submit that all these

injuries do not in any manner suggest that the S.T. bus ran over the boy or even in any manner struck the boy leading to his death.

15. Learned counsel submits that therefore, the death of the boy has taken place due to stampede caused due to the crowd of boys rushing to board the bus. He takes the court through the evidence of the S.T. bus driver as well as the bus controller/conductor and submits that the said evidence suggests that the boy was crushed due to the crowd. Learned counsel relies upon paragraphs 10 and 11 of the impugned judgment in support of his contentions.

16. Learned counsel has relied upon the decision of the Patna High Court in the case of **Rati Devi and ors. Vs. Mantu Sahu and anr.**¹ to submit that it is the duty of the claimants to connect the act or omission on the part of the driver of the vehicle with respect to the accident to show that he was negligent as negligence is not a question of evidence but rather is an inference to be drawn from proved facts. Learned Counsel would submit that in the facts of the case at hand, the claimants have failed to connect the act on the part of the driver of the S.T. bus with the accident leading to the death of the boy and therefore there is no question

¹ MANU/BH/0405/1997

of negligence on the part of the driver of the S.T. bus of the Appellant-Corporation.

17. Learned counsel would submit that the death of the boy occurred due to the stampede and not because of the driver of the S.T. bus as can be gathered from the facts that emerge from the evidence on record. Learned counsel refers to the decision of the Madhya Pradesh High Court in the case of **State of Madhya Pradesh Vs. Pehlajrai Dwarkadas and another²** to submit that the accident in which the boy died was an inevitable accident, as the accident has resulted without any negligence or rashness on the part of the driver of the S.T. bus. Learned counsel would submit that the claimants have not been able to prove that the death of the boy occurred due to the negligence of the driver of the S.T. bus. That therefore the Appellant-Corporation would not be liable to pay any compensation to the claimants.

18. With respect to the compensation, learned counsel submits that the deceased was a 10 years old school boy studying in 4th standard at the time of the incident and no income can be considered in respect of a school boy for the purposes of computation of the compensation. Learned

2 AIR 1976 MP 208

counsel submits that therefore the claim ought to have been rejected by the Tribunal. Learned Counsel for the Appellant therefore, submits that the impugned judgment and award be set aside and the appeal be allowed.

19. Mr.Vaibhav R. Gaikwad, learned Counsel for the Respondents-Claimants on the other hand relies upon the judgment and award of the Tribunal. He however submits that in view of the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and ors.**,³ the amount of Rs.30,000/- awarded for loss of love and affection for both the Claimants be enhanced to Rs.40,000/- per Claimant.

20. I have heard Mr.Y.P. Deshmukh, learned Counsel for the Appellant and Mr.V.R. Gaikwad, learned Counsel for the Respondents at length and with their able assistance, I have perused the papers and proceedings in the matter.

21. I have had the occasion to peruse the evidence of the by-stander

3 (2017) 16 Supreme Court Cases 680

present at the bus-stand to catch a bus at the time of the incident viz. Mr. Yashwant Madhukar Mane, who is the only eye-witness to the subject accident. From the evidence it is observed that Mr. Mane has stated that at the time of the accident he was at the S.T. Stand, Rahimatpur for going to Karad. He states that the S.T. bus came in the bus-stand from the gate and it was in a high speed and gave a dash to the boy from the cleaner's side. Mr. Mane has also stated in his evidence that the tyre of the said bus touched the boy and the boy fell down. That the said boy was taken to the hospital of Dr.Pawar and thereafter, to the Government Hospital, Satara. In the cross-examination, Mr.Mane has completely denied the suggestion of a stampede due to which the boy could have been killed. From the cross-examination it is also confirmed that the bus gave a dash to the boy. Therefore, the finding of the Tribunal that the evidence of Mr.Mane, clearly shows that the due to the dash of the S.T. bus, the deceased boy fell down and sustained injuries cannot be faulted with. Referring to the inquest-panchnama as well as the testimony of the Doctor who conducted the post-mortem examination on the body of the deceased as well as post-mortem report, learned Counsel for the Appellant/Corporation has submitted that the two external and the three internal injuries on the dead body of deceased boy do not in any manner suggest that the S.T. bus ran

over the boy or even in any manner struck the boy leading to his death. I do not agree with the submission made on behalf of the Appellant Corporation. The Inquest Panchnama clearly records that there was a dry blood on the face and from the nose and mouth some blood appeared to have oozed down, the chest and the stomach have been compressed or are flattened, that below both the shoulders there are abrasions and gravel embedded therein in addition to the blackening of those portions. The back is also blackened. The post-mortem report also confirms that there are abrasions over the Thoracic Lumbar region, the lungs show concussion and are lacerated, and that in the opinion of the doctor conducting the post-mortem, the cause of death is death due to rupture of lungs spleen and left kidney. Learned counsel for the Corporation had referred to the evidence of doctor who conducted the post-mortem examination on the boy and had submitted that the said evidence clearly indicated that there was no mark of tyre on the body of the deceased and therefore there is no question of the S.T. Bus hitting the boy. A perusal of the evidence of Dr. Kiran Jagtap, the doctor who conducted post-mortem, reveals that the doctor has clearly observed that he found two external injuries on the dead body as mentioned in column 17 of the post-mortem report and three internal injuries as mentioned in column 20(d), (e) and in column 21 and

has clearly observed that external and internal injuries are possible if the S.T. bus struck the body. Both the inquest panchnama as well as the post-mortem report observe that the head, the neck, the hands and legs, are all intact; both eyes are semi-closed, mouth is semi-open, tongue is present inside the mouth, the pupils are dilated, there are no injuries under the scalp, skull, brain. It stands to reason that if the boy had been crushed under a stampede of other passengers rushing towards the bus, these organs such as the head, the neck, the limbs would not have been intact. They would also have been completely crushed under the pressure of people or the crowd stamping over the body. The nature of injuries as described above based on the reports as well as the evidence of the doctor conducting post-mortem examination overwhelmingly suggests that the eyewitness account of the by-stander Mr.Yashwant Madhukar Mane that the 10 years old boy Parikshit died due to the dash of the subject S.T. bus. Just because the doctor conducting the post-mortem examination has not found any tyre marks on the body does not mean that the tyre of the bus did not hit the body of the boy. The eye-witness has clearly stated that when the S.T. bus came into the bus-stand from the gate it was in high speed and gave dashed to the boy from the cleaner's side and tyre/wheel of the bus touched the boy and the boy fell down. It is not necessary that

there be tyre marks be on the body of the boy. It is not unknown that one knock by a speeding vehicle can kill a person even if the said vehicle does not run over the said person. In the face of the eye-witness account, the evidence of the driver and the conductor/controller of the subject S.T. bus does not inspire much confidence. All that the driver has said that his evidence that when bus came in the S.T. stand about 100 to 150 students rushed towards the bus and when he stopped his bus, he came to know that one boy had fallen down and informed the conductor/controller about the incident and as per the direction, the injured boy was taken to the hospital. In the cross-examination it was suggested to the driver that the accident took place due to his negligence which he simply denied. The conductor/controller was in his cabin and therefore obviously he would also not be an eyewitness to the incident. The conductor has stated in his evidence that there was a lot of rush at the bus-stand and while the bus was coming in, all the passengers ran towards the bus and at that time the driver stopped the bus and around that time there was a lot of commotion and therefore he came out and that time he saw some boys lifting another boy and taking him. When he inquired, that that time the boys were telling him that, "Mullani yala gardit tudawale". Thereafter, he told the bus driver to immediately take the boy to the hospital and then he

informed the police station about the incident over the phone and thereafter also gave it in writing. I am therefore in agreement with the Tribunal when it observes that if the evidence of the driver was considered, the fact that the boy fell down due to dash of the S.T. bus cannot be disputed and therefore the said evidence would not aid the Appellant-Corporation to prove that the S.T. bus was not involved in the accident. I am also in agreement with the observation of the Tribunal with respect to the evidence of the controller when it says that the same is not much helpful to the Appellant-Corporation to prove that the S.T. bus was not involved as at the relevant time the conductor was in the cabin and when he heard the noise in the court-yard of the S.T. stand, he came out of the cabin and therefore the conductor's evidence would not be sufficient to prove that the S.T. bus driver was not responsible for the accident or that the said boy sustained injuries in the crowd of the bus-stand.

22. I am therefore of the view that the death of the boy Parikshit was due to rash and negligent driving of S.T. bus No.MH-12-PF-6138 and Parikshit died to that accident.

23. Having held thus it is clear that Parikshit did not die because of the stampede or due to the mistake of the crowd or that the incident was an inevitable accident. This court has already observed that there was negligence on the part of the driver of the subject S.T. bus and therefore the question of inevitable accident would not arise. In this view of the matter, the reliance placed by the learned counsel for the Appellant-Corporation on the decision in the case of **Rati Devi and ors. Vs. Mantu Sahu and anr.**⁴(supra) or the decision of the **State of Madhya Pradesh Vs. Pehlajrai Dwarkadas and another**⁵ (supra) would no be of any assistance to the case of the Appellants although the principles laid down in these decisions cannot be disputed.

24. With respect to the award of compensation granted to the claimants, Mr.Deshmukh, learned counsel for the Appellant-Corporation has argued that since the deceased was only a 10 year old school boy studying in 4th standard at the time of the accident, no income can be considered for the purposes for computation of compensation. Learned counsel would submit that the Tribunal has erred in considering notional income of Rs.3,000/- per month. I am afraid the submission of the learned

4 MANU/BH/0405/1997

5 AIR 1976 MP 208

counsel for the Appellant cannot be considered, in view of the principles settled by the Hon'ble Supreme Court in decisions under the Fatal Accidents Act, 1855 which is a precursor to the Motor Vehicles Act. In **C.K. Subramania Iyer and ors. Vs. T. Kunhikuttan Nair and ors.**⁶, the Hon'ble Supreme Court while dealing with the Fatal Accidents Act, 1855 observed that the damages should be calculated with reference to a reasonable expectation of pecuniary benefit from the continuance of life of the deceased. Summing up the law on the point, the Hon'ble Supreme Court observed in paragraph 13 of the said judgment that as a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. Paragraphs 8, 9, 13 and 14 of the said decision are relevant and are usefully quoted as under:-

“8. In an action under the Act, it is not sufficient for the plaintiff to prove that he lost by the death of the deceased a mere speculative possibility of pecuniary benefit. In order to succeed, it is necessary for him to show that he has lost a reasonable probability of pecuniary advantage. In *Barnett v. Cohen and ors.* reported in (1921) 2 KB 461, McCardie J. speaking for the Court quoted with approval the following observations of Lord Haldane in his judgment in *Taff Vale Ry. Co. v. Jenkins*:

"The basis is not what has been called

6 (1969)3 Supreme Court Cases 64

solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. But then loss may be prospective, and it is quite clear that prospective loss may be taken into account. It has been said that this is qualified by the proposition that the child must be shown to have been earning something before any damages can be assessed. I know of no foundation in principle for that proposition either in the statute or in any doctrine of law which is applicable; nor do I think it is really established by the authorities when you examine them..... I have already indicated that in my view the real question is that which Willes, J. defines in one of the cases quoted to us, *Dalton v. South Eastern Ry. Co.* reported in (1858) 4CB (NS) 296 'Aye or No, was there a reasonable expectation of pecuniary advantage ?'

Proceeding further the learned judge referred to the observations of Pollock, C. B. in *Taff Vale Ry. Co. v. Jenkins*:

"It appears to me that it was intended by the Act to give compensation for damage sustained, and not to enable persons to sue in respect of some imaginary damage, and so punish those who are guilty of negligence by making them pay costs."

9. Dealing with the facts of the case before him McCardie, J. observed :

"In the present action the plaintiff has not satisfied me that he had a reasonable expectation of pecuniary benefit. Ms child was under four years old. The boy was

subject to all risks of illness, disease, accident and death. His education and upkeep would have been a substantial burden to the plaintiff for many years if he had lived. He might or might not have turned out a useful young man. He would have earned nothing till about sixteen years of age. He might never have aided his father at all. He might have proved a mere expense. I cannot adequately speculate one way or the other. In any event he would scarcely have been expected to contribute to the father's income, for the plaintiff even now possesses 1,000, a year by his business and may increase it further, nor could the son have been expected to aid in domestic service. The whole matter is beset with doubts, contingencies and uncertainties. Equally uncertain, too, is the life of the plaintiff himself in view of his poor health. He might or might not have survived his son. That is a point for consideration, for, as was pointed out by Bray J., when sitting in the Court of Appeal in *Price v. Glynea and Castle Coal Co.* reported in 9BWCC 188, 198: "Where a claim is made under Lord Campbell's Acts, as it is here, it is not only a question of the expectation of the life of the claimant". Upon the facts of this case the plaintiff has not proved damage either actual or prospective. His claim is pressed to extinction by the weight or multiplied contingencies. The action therefore fails."

13. The law on the point arising for decision may be summed up thus : Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform

rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

14. Now applying the above rules to the facts of the present case, it is seen that the deceased child was only 8 years old at the time of his death. How he would have turned out in life later is at best a guess. But there was a reasonable probability of his becoming a successful man in life as he was a bright boy in the school and his parents could have afforded him a good education. It is not likely that he would have given any financial assistance to his parents till he was at least 20 years old. As seen from the evidence on record, his father was a substantial person. He was in business and his business was a prosperous one. As things stood he needed no assistance from his son. There is no material on record to find out as to how old were the parents of the deceased at the time of his death. Nor is there any evidence about their state of

health. On the basis of the evidence on record, we are unable to come to the conclusion that the damages ordered by the High Court are inadequate.”

25. More recently, the Hon’ble Supreme Court in the case of **Meena Devi Vs. Nunu Chand Mahto Alias Nemchand Mahto and ors.**⁷ has not only reiterated the principle of considering notional income including future prospects in the case of a deceased child but also approved application of multiplier for calculating loss of dependency while granting compensation to the legal representatives of the deceased child. Paragraph 16 of the said decision is usefully quoted as under :-

“16. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in *Kishan Gopal*⁸ are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that the deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs.30,000 including future prospect and applying the multiplier of 15 in view of the decision of this Court in *Sarla Verma*⁹, the loss of dependency comes to Rs.4,50,000 and if we add Rs.50,000 in conventional heads, then the total sum of compensation comes to Rs.5,00,000. As per the judgment of MACT, lump sum compensation of Rs.1,50,000 has been awarded, while the High Court enhanced it to Rs.2,00,000 up to the value of the claim petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made

7 (2023) 1 Supreme Court Cases 204

8 (2014) 1 SCC 244

9 (2009) 6 SCC 121

hereinabove. Hence, we determine the total compensation as Rs.5,00,000 and on reducing the amount as awarded by the High Court i.e. Rs.2,00,000, the enhance amount comes to Rs.3,00,000.”

26. Considering the principles settled by the Hon’ble Supreme Court, no fault can be found with the approach of the Tribunal in considering notional income as well as applying the multiplier for computing compensation to be awarded to the claimants. However, with respect to the deduction of 1/3rd, to my mind such a deduction for a minor of 10 years may not be necessary as a minor would not really have any personal expenses being fully dependent on his parents.

27. Learned counsel for the Respondents has submitted that the amount awarded for loss of love and affection for both the claimants be enhanced to Rs.40,000/- per claimant in view of the decision of the Constitutional bench in the case of **National Insurance Company Limited Vs. Pranay Sethi and ors. (supra)**. In view of the principles elucidated above, I am agreeable with the said submissions and direct the Tribunal to consider an amount of Rs.40,000/- per claimant for loss of love and affection.

28. The Tribunal is directed to modify the award in view of the above

discussion within a period of four weeks from the date of uploading this order. Thereafter, Appellant to pay compensation to the Respondents in equal shares with interest at the rate of 8% p.a. within a period of four weeks.

29. The Appeal stands disposed in the above terms. Interim stay to stand vacated. Pending Civil Application to accordingly stand disposed. Parties to bear their own costs.

(ABHAY AHUJA, J.)