IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.723 OF 2011

1. Ramdaspant Pralhadrao Thakre,
Aged about 59 years,
Occupation – Nil (Retired)

2. Sau. Kanchanmala Ramdaspanth Thakre,
Aged about 53 years,
Occupation – Household

3. Nilesh Ramdaspant Thakre,
Aged about 25 years,
Occupation – Unemployed

All appellants No.1 to 3 are
R/o. Padma Sourabh Colony,
Shegaon Road, Amravati
Tq. and Distt. Amravati

...APPELLANTS

VERSUS

1. ~~Member, Motor Accident Claims Tribunal, Amravati, Tq. and Distt. Amravati~~

C.A. and F.A. is dismissed against R.No.1 vide Court's order dated 03/08/2010

1. Alok Rajendraprasad Singh,
Driver and Owner,
R/o. EC-44-B-001,
Shivpooja Evershine City,
Vasai (E), Distt. Thane

2. The New India Assurance Company
Limited, through its
Divisional Manager,
Walcut Compound, Amravati
Tq. and Distt. Amravati

...RESPONDENTS

Shri P.S. Patil, Advocate for the appellants.
Mrs. Anita Mategaonkar, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : APRIL 21, 2023.
PRONOUNCED ON : JUNE 05, 2023

JUDGMENT :

Heard learned Counsel for the parties.

2. By this appeal, the appellant has challenged the judgment and award in Claim Petition No.256/2003 dated 16/10/2006 passed by the Motor Accident Claims Tribunal, Amravati awarding compensation of Rs.4,44,600/-. The appeal is for enhancement of compensation.

3. Brief facts which are necessary for the disposal of the appeal are as under :

A] The deceased – Rajesh Ramdaspant Thakare on 29/09/2002 was travelling to Gokiware from Wasai in auto rickshaw No.MH-04-BB-2830. The said auto rickshaw reached near the bridge of Wasai railway station, at the relevant time, a Santro car bearing No.MH-04-BK-3557 came from opposite direction in a high speed and dashed against the auto rickshaw. Due to the sudden dash, deceased Rajesh Thakare who was traveling in an auto rickshaw sustained grievous injuries and succumbed to the death during the treatment at Ravi Hospital, Wasai. The alleged offending vehicle was owned by respondent No.1 and insured with respondent No.2. Regarding the said accident, crime was registered against respondent No.1 vide Crime No.305/2002 at Wasai police station. As the said accident took place due to the rash and negligent driving of Car driver, the claimants are claiming compensation.

4. As per the further contention of the claimants, the deceased Rajesh was Electronic Engineer and was serving in a Electronica – a public limited company Mumbai as a Section Manager. The claimants who are the parents of the deceased and claimant No.3 – brother of the deceased, were dependent upon him. Deceased was drawing salary of Rs.11,300/- per month. The claimants claimed compensation under the pecuniary and non-pecuniary heads.

5. The claim was resisted by the respondent Nos.1 and 2 on the ground that said accident took place due to the negligence of auto rickshaw driver hence, they are not liable to pay compensation.

6. To substantiate the contention, petitioner No.1 – Ramdaspant Pralhadrao Thakare examined himself as well as examined one Baswaraj

Surje and also relied upon FIR (Exhibit 27), Inquest panchnama (Exhibit 28), Spot panchnama (Exhibit 29), Post-mortem report (Exhibit 30), Accident Report of RTO (Exhibits 31 and 32), Insurance Policy - Article A, Pay Slip of September 2002 (Exhibit 39), increment details (Exhibit 40), Degree Certificate (Exhibit 41). No evidence is adduced by respondent Nos.1 and 2.

7. On the basis of evidence on record, the tribunal had considered the net salary of deceased and awarded the compensation of Rs.4,44,600/- which according to the claimants is inadequate compensation. As per the contention of the claimants, the Tribunal ought to have considered his gross salary and ought to have awarded the compensation. The claimants are also entitled to receive the compensation under the head of loss of consortium, loss of estate, etc. hence, the claim is for enhancement of the compensation.

8. Heard Shri P.S. Patil, learned Counsel for the appellants. He submitted that the deceased was Electronic Engineer and was drawing gross salary of Rs.9710/-. The claimants are entitled to receive compensation by calculating his net salary Rs.8949/- and yearly income comes to Rs.1,07,388/-. The deceased was unmarried, so 50% is to be deducted for his personal expenses. After deducting 50% his yearly

income comes to Rs.53,694/-. After adding future prospects his yearly income comes to Rs.80,541/-. After application of multiplier the claimants are entitled to receive Rs.13,69,197/-. The claimants are also entitled to receive compensation under the conventional heads. Thus, the claimants are entitled to receive the compensation of Rs.40,29,751/-.

9. *Per contra*, Mrs. Mategaonkar, learned Counsel supported the judgment of the Tribunal and submitted that the Tribunal had considered all the aspects and awarded just compensation.

10. In support of her contention she placed reliance on :

(i) First Appeal No.105/2013 (The New India Assurance Co. Ltd. Vs. Smt. Sonali wd/o Vikram Sasode and ors.) decided on 06/07/2021

(ii) United India Insurance Co. Ltd. Vs. Satinder Kaur and ors., 2020 ACJ 2131.

11. Admittedly, the Insurance Company or the owner has not challenged the finding regarding the rash and negligent act of respondent No.2. The only limited issue in the present appeal is whether the claimants are entitled for enhanced amount of compensation. The evidence adduced by the claimants PW-1 shows that deceased was Electronic Engineer serving in an Electronic Company and

getting salary of Rs.10,000/- per month. Due to the accidental death, they have lost the support of their son. He has placed on record the salary slip of the month September, 2002 vide Exhibit 39. As per the said salary slip gross salary of deceased Rajesh was Rs.9710/-. After statutory deduction he was getting Rs.8949/-. The evidence regarding the salary slip is not challenged by the respondents. The PW-2 - Baswaraj who is a Senior Executive of the Electronica Company where the deceased was serving has proved the said salary slip. No evidence is brought on record to discard the evidence. Thus, the evidence on record sufficiently shows that the deceased was working as a Section Manager in Electronica Company and drawing net salary of Rs.8949/- per month. Admittedly, the claimants are entitled to receive the 'just compensation'. Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness and reasonableness. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. Though the discretion vested in the Tribunal is quite wide, yet it is obligatory on a part of the Tribunal to be guided by the expression, i.e., just compensation. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased.

12. The Constitution Bench of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi, 2017 (16) SCC 680*** has dealt with the aspect regarding the future prospects and by referring its earlier judgments the Hon'ble Apex Court held that we accept the principle of standardization there is really no rational not to apply the said principle to the self employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. The Hon'ble Apex Court further held that taking into consideration the cumulative factors namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc. an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years and at the age of 50 to 60 years would be reasonable.

13. In the light of the above principles, the claimants are entitled to receive the compensation by adding 40% towards the future prospects as deceased was 29 years old. Admittedly, the net salary of the deceased was Rs.8949/- at the time of his death. Deceased was unmarried. The yearly income of the deceased comes to Rs.1,07,388/-. After deduction of 50% towards personal expenses, the yearly income comes to Rs.53,694/-. 40% towards future prospects comes to Rs.21,477/-. After adding 40% towards future prospects the yearly income of the deceased comes to Rs.75,171/-. In view of the judgment of ***Sarla Verma (Smt) and ors. Vs. Delhi Transport Corporation and anr. (2009) 6 SCC 121*** the multiplier applied is to be 17. the amount comes to Rs.12,77,907/-. Besides this amount the claimant Nos.1 and 2 are entitled to receive the amount of Rs.15,000/- each under the head of loss of estate. The Tribunal has only awarded Rs.2000/- towards funeral expenses. The claimants are entitled to receive additional Rs.13,000/- towards funeral expenses. The claimant Nos.1 and 2 have lost their son in the alleged accident. The Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram, 2018 (18) SCC 130*** held by referring the judgment of Constitution Bench in *Pranay Sethi* (supra) wherein the Hon'ble Apex Court observed that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The

right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. The Motor Vehicles Act is a beneficial legislation with an object of providing relief to the victim or their family.

14. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their family, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

15. Here the claimant Nos.1 and 2 are the parents. They are entitled to receive the filial consortium of Rs.40,000/- each. Thus, the

claimants are entitled to receive the compensation Rs.14,00,907/- towards total compensation.

16. In view of the above discussion, the claimants are entitled to receive the enhanced amount of compensation. In view of that I proceed to pass the following order :

(i) First appeal is partly allowed.

(ii) The appellants are entitled to receive the amount of compensation of Rs.14,00,907/- after deducting the compensation awarded by the Tribunal along with the interest @ 7.5% per annum including the no fault liability.

(iii) The respondent Nos.1 and 2 shall jointly and severally pay the amount of compensation along with the interest within 10 weeks from the receipt of the copy of the judgment.

(iv) Appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*