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

FIRST APPEAL NO.1006/2012

1. Arun Pandurang Gadekar,
Aged about 58 years, Occ.-Service,
R/o. Shirbhate Layout, Chaitanya Colony, Amravati,
Tq. and Dist. Amravati.

2. Sau. Kokilabai w/o Arun Gadekar,
Aged about 48 years, Occ.-Household work,
R/o. Shirbhate Layout, Chaitanya Colony, Amravati,
Tq. and Dist. Amravati. ...APPELLANTS
(Ori. Petitioners)

VERSUS

1. Babalu Babanbhai Shekh,
Aged about 38 years, Occ.- Driver of Truck
bearing registration no.MP-09/KB-727,
R/o. Dawalwadi, Post Shelgaon,
Tq. Badanapur, Dist- Jalana.

2. Mohd. Iqbal s/o Haji Abdul Shakur,
Aged about Major, Occ.-Owner of Truck
bearing Regn. No.MP-09/KB-727,
R/o. Shanichar Bazar, Mutton Market,
Amla, Dist Betul [M.P.]

3. The Oriental Insurance Co. Ltd.
Through its Divisional Manager,
Office at Opp. Rajapeth Police Station, Amravati,
Tq. and Dist. Amravati. ...RESPONDENTS

Mr. D.P. Dapurkar, Advocate for the appellants.
Ms. Anita Mategaonkar, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 03-04-2023.

JUDGMENT

Heard finally with the consent of learned Counsel for the parties.

2. The appeal is preferred against the judgment and award passed by the MACT, Amravati in Claim Petition No. 186/2008 u/s 173 of the Motor Vehicles Act, 1988, for enhancement of the compensation.

3. The MACT in Claim Petition No.186/2008, by passing the award on 3-12-2010 awarded the compensation @ Rs 5 Lac along with the interest @ 7.5 % per annum from the date of application till realization.

4. Brief facts, which are necessary to decide the appeal are as under :-

Claimants namely Arun Pandurang Gadekar and Kokilabai Arun Gadekar are the parents of deceased Pankaj, who was driving Maruti Alto Car bearing registration No.MH 30/L 7943 from Nagpur to Aurangabad. At the relevant time, when his vehicle reached near Amarprit Dhaba on Aurangabad Ahemdabad Highway, one truck bearing registration no.MP 09/KB 727, came from the opposite direction in a rash and negligent manner and dashed against the Maruti Car of the deceased. Due to the said dash, the deceased succumbed to grievous injuries and died on the spot. The alleged accident took place when truck driver trying to take over the tractor and gave dash to the Maruti car. The accident took place due to the rash and negligent driving of the truck driver. Crime was registered against the truck driver at Newasa Police Station vide CR No.146/07 u/s 304-A, 279, 337, 338 and 427 of the IPC and 184, 134 (a) and (b) of the Motor vehicles Act. As per the contention of the claimants, the alleged accident took place due to the rash and negligent driving of respondent no.1 owned by respondent no. 2 and validly insured with respondent no.3, therefore, respondent nos. 1 to 3 are jointly and severally liable to pay the compensation to the claimants.

5. The claimants further contended that at the time of accident the deceased was their only son, who was 24 years age and serving as driver on the vehicle owned by Fruits and Vegetables Produce Development Society, Amravati and drawing salary of Rs 6000/- pm. The deceased was the only son of the claimants, due to the accidental death of the deceased, the claimants lost their only son as well as their earning hand. Therefore, they have claimed the compensation under the various heads.

6. The said application is strongly opposed by the respondent no.3 and denied the contention that the said accident took place due to the rash and negligent driving of the truck driver. The respondent nos. 1 and 2 failed to appear and not contested the claim.

7. Before the tribunal, the claimants have adduced the evidence by examining claimant no.1. Besides his oral evidence, he placed reliance on the police papers and insurance policy. To prove the income of the deceased, the claimants have examined PW 2- Kundan Anandrao Kalambe, who was the President of the Fruits and Vegetable Produce Development Society, who deposed that the deceased was getting Rs. 5000/- to Rs.8000/- per month as honorarium. On the basis of said evidence, the claimants claimed the compensation by taking into consideration the income of the deceased. On behalf of the respondents no evidence was adduced. The trial court while appreciating the

evidence accepted the rash and negligent driving of the truck driver. However, while calculating the compensation amount notional income of the deceased has been taken into consideration and applied the multiplier 13 by taking into consideration the age of the parents and awarded compensation of Rs 5 Lac along with the interest @ 7.5% per annum.

8. Being aggrieved and dis-satisfied with the judgment and award passed by the tribunal, the present appeal is preferred for enhancement of the compensation on the ground that the tribunal ought to have consider the income of the deceased as Rs.6000/- pm as deceased was working as a skilled driver. Moreover, the tribunal ought to have consider the multiplier of 18 considering the age of the deceased. Thus, the tribunal erroneously awarded the inadequate compensation to the claimants. The claimants are entitled to receive the compensation at the enhanced rate.

9. Heard learned Advocate Mr. Dapurkar for the claimants/appellants. He reiterated the said contention and submitted that in view of the judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited vs Pranay Sethi and others, reported in (2017) 16 SCC 680**, the tribunal ought to have applied the multiplier by considering the age of the deceased. He further submitted that as deceased was a skilled worker i.e driver he was entitled to receive the Rs 6000/- pm. The oral evidence of PW-1-Kundan also discloses that the deceased was getting Rs 5000/- to 8000/- pm which is not considered by the trial court. The claimants are entitled to receive the compensation by adding the future prospects which is not considered by the tribunal and therefore claimants are entitled to receive the compensation at the enhanced rate.

10. Per contra, Ms Anita Mategaonkar, learned Advocate for the Insurance Company submitted that there is absolutely no evidence to show that the deceased was skilled driver. There is no evidence regarding the income of the deceased. On the contrary, the evidence of the father of the deceased shows that the deceased was taking education and attending the college, therefore the evidence of PW 1-Kundan is not acceptable. The compensation awarded by the trial court is proper and legal one and no interference is called for.

11. Heard both the sides. Perused the evidence and record with the able assistance of learned counsel for both the sides.

12. As the issue regarding rash and negligent driving is not under challenge in this appeal and the appeal is filed on the point of quantum, admittedly neither respondent nos.1 and 2 i.e. owner and driver nor respondent no. 3 challenged the issue regarding the rash and negligent act of truck driver. So the finding regarding rash and negligent driving is not required to be discussed in the present appeal. The only question pertains to this appeal is whether the claimants are entitled to receive enhanced amount of compensation. To substantiate the claim, claimant no.1-Arun Gadekar stepped into the witness box and deposed that his son was aged about 24 years and completed his education as B.Com. He was taking tuition classes and was also working as a driver with the Fruits and Vegetable Produce Development Society. He was earning Rs 6000/- pm and was spending the amount for the welfare of the family. Thus, he was contributing his income for the well being of the family. In spite of his contention, PW-1-Kundan is also examined vide Exh 31, who testified that, he was serving as a President of Fruits and Vegetable Produce Development Society. The deceased was working with the said society on contract basis as a driver and said society was paying Rs 5000/- to Rs 8000/- pm. The society has issued

the letter regarding the payment which is at Exh.42. On the point of income, both the witnesses are cross examined by the Insurance Company. During cross examination only suggestions were given that the deceased was not earning Rs 6000/- pm. During the cross examination of PW 1-Kundan nothing incriminating brought on record to falsify the version of PW-1 Kundan regarding the income of the deceased. The evidence on record shows that the deceased was working as driver and earning Rs.5000/- to Rs.8000/- p.m. as honorarium.

13. Learned counsel Mr. Dapurkar vehemently submitted that considering that the deceased was skilled driver his income of Rs.6000/- pm is to be taken into consideration then his yearly income comes to Rs 72,000/- per year and deceased was bachelor 50% is to be deducted towards the personal expenses then his early income comes to Rs 36,000/- after adding 40% of future prospects it comes to Rs. 36,000 +14,400/- = 50,400/-. As the deceased was only 24 years of age multiplier is to be applied 18 then the compensation amount comes to Rs.9,07,200/-. Besides that the claimants are entitled to receive consortium under the head of fillial consortium. The amount of Rs. 80,000/- is to be added as fillial consortium. the claimants are also entitled to receive Rs. 30,000/- towards the funeral expenses and loss of estate. Thus, the total amount of compensation comes to Rs. 10,17,200/- after deducting the amount of Rs. 5 lac which is awarded by the tribunal, the amount of compensation comes to Rs.5,17,200/- along with interest @ 7.5 per annum.

14. Heard rival submissions of the parties. Perused the evidence on record. It is well settled that just compensation is to be awarded to the legal representatives of the person who died in an accident or the injured who sustained the accidental injuries in the accident. The provision of compensation under the Motor Vehicles Act is

enacted to compensate the legal representatives whose near and dear one met with an accident or sustained injuries in an accident. The concept of just compensation should be on the basis of fairness reasonableness, simultaneously the compensation cannot be granted as a bonanza though the discretion vested in the Tribunal is wide. It is obligatory on the part of the Tribunal to be guided by the expression that just compensation. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter by applying the multiplier. The formula relating to multiplier has been determined in the case **Sarla Verma & Ors Vs. Delhi Transport Corporation and another, reported in (2009) 2 SCC (Civil) 770**. The duty of the Tribunal and the Court has also to see that just compensation is to be awarded by including addition of future prospects on the proven income at present.

15. It is well settled that just and reasonable compensation is to be awarded. In *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. AIR 1995 SC 755* wherein the Hon'ble Apex court held as follows :

> *"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."*

16. In another judgment in ***Divisional Controller, KSRTC Vs. Mahadeva Shetty and anr. (2003) 7 SCC 197*** in paragraph No.12, the Supreme Court has held that :

> *"Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."*

17. In the light of the above legal principles it has to be seen whether the appellants are entitled to enhanced compensation. The evidence of appellant no.1 as well as his witness is already discussed. It is not in dispute that the accident took place when deceased was driving his Maruti Car bearing No MH 30/ L 7943. The evidence of PW 1-Kundan sufficiently shows that the deceased was drawing honorarium of Rs.5000/- to Rs.8000/- pm, thus the exact monthly income is not come on record. But the evidence of PW-1-Kundan shows that the deceased was working as a driver and getting income in the range of Rs.5000/- to Rs.8000/- as a honorarium. Whether the said honorarium is awarded as a salary or Batta is not clear from the evidence. Admittedly, the evidence on record sufficiently shows that the deceased was a commerce graduate and was knowing driving the vehicle. The Insurance company has not raised any evidence regarding the deceased was not having valid driving licence. In absence of the evidence

admittedly the court has to take the assistance of the some guess work. It is therefore, difficult for any Court to lay down rigid test which should be applied in all situation. There are divergent views in some cases it has been suggested that some sort of hypothesis or guess work may be inevitable. In *Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd. 2011(7) ALL MR 774 (S.C.)* the Hon'ble Supreme Court has fixed the monthly income of the deceased as Rs.4500/- who died in an accident in 2004 who was labour. In the present case the accident occurred in the year 2006 i.e on 1-06-2006. The deceased was in a better position that he was serving as a driver. Even it is assumed that he was earning Rs 150/- to Rs 200/- per day by doing work as a driver, then also he would also get Rs 6000/- pm. Therefore, the contention of the claimants that he was earning Rs 6000/- pm can be taken into consideration by considering it as reasonable income. Admittedly, at the time of accident the age of the deceased was 24 years. The Hon'ble Apex Court in case of **National Insurance Company vs Pranay Sethi and others** (supra) in para 59.7 held that the age of the deceased should be the basis for applying the multiplier. In view of judgment of **Sarla Verma & Ors Vs. Delhi Transport Corporation and another** (supra), the multiplier applicable is 18.

18. The Hon'ble Apex Court has laid down the principal regarding the future prospects in the case National Insurance vs Pranay Sethi referred supra and held that :

> *"Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-*

> *employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc."*

19. By applying this principle, even if it is considered, that the deceased was working as a driver and earning Rs 6000/- pm and deceased was bachelor 50% is to be deducted towards his personal expenses and after deducting 50% his salary income comes to Rs. 36,000/- per annum. As the deceased was only 24 years of age 40% is to be deducted towards his future prospect which comes to Rs 14,400/- thus by calculating 36,000+14,400 yearly income comes to Rs.50,400/- and after applying the multiplier of 18 it comes to Rs 9,07,200/-.

20. Besides this, the claimants are also entitled to receive compensation towards the consortium. The aspect of consortium is considered by the Hon'ble Apex Court in the National Insurance Vs Pranay Sethi referred supra and in the judgment of *Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.* reported in (2018) 18 SCC 130, wherein the Hon'ble Apex Court has held, that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right of consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. 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 family and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Whereas consortium to the spouse would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.’.

21. In the light of the above principle laid down by the Hon'ble Apex Court, in the present case, the trial court has not considered this aspect and awarded inadequate compensation. The claimants are entitled to receive Rs 80,000/- towards fillial consortium besides that the claimants are entitled to receive the conventional amount of 15,000/- each towards the loss of estate and funeral expenses as the trial Court granted Rs. 2000/-. By calculating 36,000+14,400 yearly income comes to Rs.50,400/- and after applying the multiplier of 18 it comes to Rs 9,07,200/-. Thus, the total amount of compensation comes to Rs. 10,17,200/- after deducting the amount of Rs. 5 lac which is awarded by the tribunal, the amount of compensation comes to Rs.5,17,200/- along with interest @ 7.5 per annum. Hence, I proceed to pass the following order :

(i) Appeal is allowed.

(ii) The appellants are entitled to receive enhanced amount of compensation Rs.5,17,200/- on interest @ 7.5% per annum from the date of petition till realisation of the amount.

(iii) The appellants are directed the pay the deficit Court fee on the enhanced amount, if not paid.

(iv) The respondent/Insurance Company is directed to deposit the enhanced amount of compensation within two month from today.

(v) The appellants are entitled to withdraw the amount of compensation on due identification and verification.

(vi) The amount be apportioned equally in between the appellants no. 1 and 2.

(vii) Award be drawn accordingly.

(URMILA JOSHI-PHALKE, J.)

Deshmukh