IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.319 OF 2017

1. Rekha Prakash Chitgopekar,
   Age : 47 years, Occ. Household

2. Raju s/o. Prakash Chitgopekar,
   Age : 23 years, Occ. Education,

3. Dattatraya s/o. Bapurao Chitgopekar,
   Age : 80 years, Occ. Retd. Education Officer,

4. Sushila Dattatraya Chitgopekar,
   Age : 72 years, Occ. Retired Teacher

Respondent nos.3 and 4 are deleted as per leave granted on 04.10.2024 by Hon'ble Court

All r/o. "Malhar", Shripad Colony,
Infront of Hotel Panchashil, Savedi,
Ahmednagar **..Appellants**

Vs.

1. Vasantrao Sadashiv Pralhad,
   Age Major, Occ. Business,
   r/o. S.no.45/4-A, Near Datta Mandir,
   Chandranagar, Pune 14

2. The Branch Managar,
   The United India Insurance Co. Ltd.
   Branch Hadapsar, Pune **..Respondents**

Mr.Yashodeep Deshmukh, Advocate h/f. Mr.Anand Kaware and Mr.H.A.Joshi, Advocates for appellants

Mr.Sudhir V. Kulkarni, Advocate for respondent no.2

CORAM	**:**	**R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.**
RESERVED ON	**:**	**OCTOBER 04, 2024**
PRONOUNCED ON	**:**	**OCTOBER 21, 2024**

JUDGMENT ***(Per R.G.Avachat, J.)*** **:-**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 ("M.V. Act", for short). The appellants herein are the original claimants in a Motor Accident Claim Petition, No.51 of 1999. It was a claim for compensation on account of death of Dr. Prakash Chitgopekar in a vehicular accident, that took place on 09.07.1998.

2. Original claimant nos.1 and 2 (appellant nos.1 and 2 herein) are the widow and son, respectively, of deceased Dr. Prakash. Original claimant nos.3 and 4 were age old parents of the deceased. Pending this appeal, both of them have passed away. The respondent – insurance company had deposited the entire amount of compensation under the impugned award. Same was allowed to be withdrawn. Nobody raised an issue as to bring on record the legal representatives of original claimant nos.3 and 4. Admittedly, the accident between a Maroti car, bearing registration no.MH16-E-917 and a goods-truck, bearing registration no.MH-12-QA-9738, took place on Ahmednagar-Pune road. In the said accident, both Dr.Prakash and his daughter lost their lives. At the time the deceased breathed his last, he was 42 years of age. He had done M.B.B.S. with post graduation (M.D.) in Ophthalmology. He would run

his own clinic. He was said to have purchased agricultural land, plots and even constructed bungalow at Ahmednagar and Jalna as well.

3. The Chairman, Motor Accident Claim Tribunal (M.A.C.T.), Ahmednagar, granted compensation to the appellants/original claimants amounting to Rs.35 Lakhs with interest thereon at the rate of 9% per annum from the date of the claim-petition to the date of realisation of the amount. Said award is under challenge in this appeal, mainly on three grounds. Learned counsel for the appellants/claimants would submit that the M.A.C.T. ought to have considered the income tax return for the year 1998-1999 for considering income of the deceased for grant of compensation. He would further submit that the M.A.C.T. did not award any compensation on account of future prospects. He relied on the judgment of the Constitution Bench of the Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others, (2017)16 SCC 680**. According to him, considering that the number of dependents are more than four, the Tribunal ought to have deducted 1/4th or 1/5th of the annual income towards the personal and living expenses of the deceased, for arriving at just compensation. He would further submit that for grant of such reliefs, the original claimants had preferred review application before the

M.A.C.T. itself. It took two years to decide the same. He submits that the appellants/claimants may not be deprived of interest for the said period of two years on the amount of compensation that may be enhanced in this appeal. Learned counsel would further submit that the respondent-insurance company had every opportunity to cross-examine claimant no.1 so far as the income of the deceased for the financial year 1998-99. It did not avail said opportunity. In support of his contention that the income tax return for the year in which the assessee died, ought to have been considered for grant of compensation, learned counsel relied on (i) Judgment of High Court of Punjab and Haryana at Chandigarh in the case of Kanishka Narang and anr. vs. Harbhajan Singh and ors., [FAO No.2350 of 2013 (O&M) with connected matters decided on 27.01.2022]; (ii) Apex Court Judgment in the case of Smt. Anjali and ors. Vs. Lokendra Rathod and ors., (2022)16 S.C.R. 661; and (iii) Judgment of Madras High Court in the case of New India Assurance Company Ltd. Vs. Mahamayee Ammal and ors., [C.M.A. (MD) No.1054 of 2015 with connected matters decided on 23.12.2021], to ultimately urge for allowing the appeal in terms of his submissions and the amount claimed in this appeal.

4. The respondent-insurance company placed on record its written notes of arguments. We have also heard Sudhir V. Kulkarni, learned counsel for the respondent-insurance company. In the written submissions, he has raised very many points, such as, the offending truck to have had no fitness and permit and thus committed breach of conditions of the policy of insurance. There was case of contributory negligence on the part of deceased. He would submit that presently, the clinic of the deceased (Dr. Prakash) has been lent to Dr. Shelke to run the same. As such, there is no loss suffered by the appellants/claimants. He would further submit that the amount of compensation awarded by the M.A.C.T. is more than just and reasonable one. He, therefore, urged for dismissal of the appeal.

5. We have considered the submissions advanced. Perused the judgment delivered by M.A.C.T.

6. The submission made by learned counsel for the respondent-insurance company regarding breach of terms and conditions of the policy of insurance could not be taken into consideration for want of challenge to the award either by preferring appeal or cross-objection. We, therefore, prefer to ignore the same.

7. Now, the question for consideration in this appeal is only for enhancement of compensation, if any. Admittedly, the deceased was Post-Graduate in Medicine. He would run a clinic. He owned agricultural land and other real estate as well. Three income tax returns were relied on in proof of his income. Two of the three returns were for the years proceeding the year in which the deceased lost his life; while the third one was for the year in which Dr. Prakash breathed his last. As per Exh.41, i.e. income tax return for the year 1997-1998, the net income of the deceased was shown as Rs.3,19,298. The accident took place on 09.07.1998 and on the same day, the deceased lost his life, i.e. 3 months and 8 days after the financial year 1997-98 was over. It is, therefore, just difficult to assume that within three months, the income of the deceased was increased more than his income of the preceding twelve months. We, therefore, do not propose to rely on the income tax return for the year 1998-99 for calculating the amount of compensation.

8. The Apex Court in the case of **V. Subbulakshmi and ors. Vs. S. Lakshmi and anr., 2008 ACJ 936**, observed thus:-

> Evidence – Income tax returns – Appreciation of evidence – Whether income tax returns filed after death of the deceased can be relied upon for assessment of income of the deceased – Held: no.

It has been further observed in paragraph 17 as under :-

> 17. So far as the question in regard to the quantum of compensation awarded in favour of the appellants is concerned, we are of the opinion that the High Court has taken into consideration all the relevant evidences brought on record.
>
> The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997.
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> The income tax returns, Exh.P14, therefore, have rightly not been relied upon.

9. We have perused all the three judgments relied on by learned counsel for the appellants. The facts in the case of **Kanishka Narang** (supra) would indicate that the income tax return of the year 2009-10, in which the deceased had died, was relied on and an employee from the Income Tax Department was examined in proof thereof. It has been specifically observed that the respondent – Insurance company therein did not lead any evidence. So far as regards the income of the deceased, the income tax returns for the Assessment Years 2007-2008, 2008-2009 and 2009-2010 were filed. The income tax return for the year 2009-2010 was filed 9 months after the date of death of Rajnish Narang. The facts of the said case would further indicate that when opportunity was given before the Tribunal to lead the evidence during the pendency of the appeal, the

insurance company did not lead any evidence to rebut the earning, as shown in the income tax returns. Even, no cross-examination was conducted to dispute the earnings as shown in the I.T.Rs. This made all the difference, meaning thereby the insurance company admitted the income of the deceased shown in the last I.T.R.

10. Learned counsel further relied on the paragraph 9 of the judgment of the Apex Court in the case of **Smt. Anjali** (supra), which reads thus:-

> 9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:
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> > "10. …We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."
>
> Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.

The aforesaid observations would indicate that the Apex Court observed that reliance can be placed on Income Tax returns whereever available, for determining the annual income of the decease, while in the case of **Mahamayee Ammal** (supra), it has been observed thus:-

> "8. .... Normally, the Court will not entertain any income tax return filed after the demise of a person, provided, the same has not been filed within the time stipulated by the Income Tax Department.

10. As far as Exh.42, i.e. Income Tax return for the year 1998-1999, the total income of the deceased was shown as Rs.3,22,150/-, i.e. Rs.3,000/- more than the income of the preceding year, which was Rs.3,19,298/-. It is reiterated that the Apex Court has observed that the Income Tax returns may be considered. If we rely on Exh.42, that would show that the income of the deceased was Rs.3,000/- more than his preceding year's income. We observe so considering the fact that the preceding year's income of the deceased was for 12 months, while as per the income shown in Income Tax return Exh.42, the same is necessarily for three months only, i.e. the period during which the deceased was alive. So far as other income of the deceased from real estate is concerned, the

appellants/claimants could be said to have continued to receive the same. In view of this factual backdrop, we do not propose to rely on Income Tax return (Exh.42) and find the M.A.C.T. to have rightly considered Income Tax return (Exh.41), i.e. for the year 1997-98.

Future Prospects:-

11. The deceased was 42 years of age. He was self employed. In view of Clause 59.4 of the conclusions in **Pranay Sethi's** case (supra), the claimants are entitled to addition of 25% of the established income. The M.A.C.T. has not awarded anything towards future prospects. The relief of grant of addition of 25% in the established income of the deceased towards future prospects, therefore, needs to be granted.

Deduction towards personal and living expenses:-

12. The M.A.C.T. deduced 1/3rd of annual income of the deceased towards his personal and living expenses. The claimants were four in number before the Tribunal. Pending present appeal, two of them (parents of deceased) passed away. In the judgment of the Constitution Bench of the Apex Court in the case of **Pranay Sethi** (supra), it has recorded its conclusion in paragraph 59. The relevant conclusions for deciding this appeal are reproduced below:-

> 59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
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> 59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

13. In **Sarla Varma (Smt.) and ors. Vs. Delhi Transport Corporation and anr., (2009)6 SCC 121,** the Apex Court observed thus:-

> 30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.

15. In view of the observations made in paragraph 30 of the **Sarla Varma**'s case (supra), the original dependents were more than two, i.e. four, but, now, two only. We propose to deduct 1/4th of the annual income of the deceased towards the personal and living expenses. To this extent, interference with the impugned award is warranted.

Interest :-

16. There was delay of little over two years in preferring the present appeal. The appellants/claimants had filed a review application before the M.A.C.T. The remedy of review is creation of the statute. The M.V. Act does not provide for the remedy of review. Needless to mention, ignorance of law is no excuse. We are, therefore, not inclined to grant interest for the delayed period of two years in filing the present appeal.

17. In view of the above, the amount of compensation is determined as follows :-

Particulars	Figures in Rupees
Established annual income of the deceased	3,19,298
(+) After adding 25% amount towards future prospects (3,19,298 + 79824)	3,99,122

Applying multiplier of 15 in as the age of the deceased was 42 years, the amount would be (3,99,122 x 15)	59,86,830
After deducting 1/4th amount towards personal and living expenses of deceased (59,86,830 – 14,9)	44,90,123
Added Rs.4 Lakhs already awarded by M.A.C.T. to each claimant on account of loss of consortium/love and affection (44,90,123 + 4,00,000)	48,90,123

Thus, the amount of compensation payable to the appellants/claimants comes to Rs.48,90,123/-

18. In view of the above, the appeal is partly allowed. The award impugned herein is modified as follows:-

(i) The amount calculated in terms of this order, i.e. Rs.48,90,123/- minus the amount of Rs.35,00,000/- (awarded by the Tribunal), which comes to Rs.13,90,123/-, be paid to the appellants/claimants, with interest at the rate of 7% per annum, from the date of the petition to the date of the award and from the date of preferring present appeal to the date of actual payment, i.e. excluding the period of delay in preferring the present appeal.

(ii) The amount already paid by the respondent – Insurance company shall necessarily be given set off.

[NEERAJ P. DHOTE, J.] **[R.G. AVACHAT, J.]**

KBP