



CORRECTED JUDGMENT

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2080 OF 2020

1. Suresh Devrao Gayakwad,
Age 52 years, Occ. Labour,
R/o Ganori, Tq. Phulambri,
Dist. Aurangabad
2. Sangita Suresh Gayakwad,
Age 42 years, Occ. Household,
R/o Ganori, Tq. Phulambri,
Dist. Aurangabad
3. Kiran Suresh Gaikwad,
Age 20 years, Occ. Education,
R/o Ganori, Tq. Phulambri,
Dist. Aurangabad
4. Suvarna Rameshwar Salunke,
Age 27 years, Occ. Household,
R/o Shirodi (Bk.), Tq. Phulambri,
Dist. Aurangabad

... **APPELLANTS**
(Original Claimants)

VERSUS

1. Sunil Murlidhar Bhosale,
Age 43 years, Occ. Driver,
R/o Plot No.12, Flat No.3,
Eden Plaza, Opp. of Sahara Vaibhav
Jatvada Road, Harsul,
At Post Tq. Dist. Aurangabad
Mob. No. 9403534185
2. Sunil Ramrao Chavan,
Age major, Occ. Owner,
R/o E, H.No.62/6, Mayur Nagar,
Hudco, N-11, Opp. SPI Sainiki School,
Aurangabad
Mob. No. 9890239555

R-1 & R-2 are serving at

New High School, Kingaon,
Tq. Phulambri, Dist. Aurangabad

3. The New India Assurance Co. Ltd.,
Through its Branch Manager,
Branch office at Adalat Road,
Aurangabad

... **RESPONDENTS**
(Original Respondents)

.....
Mr. S.B. Rajebhosale, Advocate for appellants
Mr B.V. Dhage, Advocate for respondents No.1 and 2
Mr. S.R. Bodade, Advocate for respondent No.3
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 26th July, 2024
Date of pronouncing judgment : 19th August, 2024

JUDGMENT (PER R.G. AVACHAT, J.) :

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (MV Act for short). The appellants are the original petitioners/ claimants in Motor Accident Claim Petition (MACP), No.603/2018. The appellants claim to be legal representatives of Kalyan (deceased). The appellants No.1 and 2 were the parents while appellants No.3 and 4 were unmarried brother and married sister respectively of deceased Kalyan.

2. It was the case of the appellants that, deceased Kalyan was 22 years of age. He was serving with Aakar Tools

Ltd., Unit-II, C-5/6, MIDC Industrial Area, Waluj, Aurangabad at a monthly salary of Rs.24,100/-.

3. On 23/5/2018 by 8.00 p.m., deceased Kalyan along with his colleague (deceased Amol Chavan) were returning on a motorbike from their work place after completing their duty. Amol was riding the motorbike while the deceased Kalyan was a pillion rider. A Hyundai Eon car bearing Registration No.MH-20/CH-6671 knocked them down. The car was driven in rash and negligent manner by respondent No.1. The car belonged to respondent No.2. The respondent No.3 Insurance Company had granted the car insurance cover for a period from 27/3/2018 to 26/3/2019.

4. The appellants (original claimants) made a claim for Rs.6 Crores, as compensation.

5. The claim was resisted by the respondents on many grounds. The respondent No.3 Insurance Company had raised the defence of a contributory negligence on the part of motorbike rider.

6. The appellants- petitioners to the claim petition

adduced the evidence. The Tribunal, on appreciation of the same, granted the petitioners compensation amounting to Rs.13,90,800/- with interest @ 9% p.a. from the date of filing of the petition till realization of the amount of compensation. The amount of compensation was even directed to be apportioned in terms of clause (3) and (4) of the operative part of the award. The amount of compensation was directed to be paid by the respondents No.2 and 3 jointly and severally.

7. Being aggrieved and dissatisfied with the quantum of compensation awarded under the impugned award, the appellants (original petitioners) have preferred this appeal.

8. Heard. The learned Advocate for the appellants would submit that, the deceased Kalyan was serving at a monthly pay of Rs.24,100/-. He died bachelor. He was the sole bread winner in the family of the appellants. The deceased was a graduate. He knew technical know-how. He had bright future. A salary certificate (Exh.39) issued by the employer was produced in evidence. A witness was also examined in proof of the same. The Tribunal ought to have relied on the said evidence and granted compensation with addition of 50% therein towards future prospects. According to

learned Advocate, the Tribunal did not award compensation under other conventional heads, such as loss of consortium, medical expenses, transportation expenses etc. He relied on the following authorities :

- (1) The New India Assurance Co. Ltd. Vs. Shweta Dilip Mehta & ors. [2010 (2) ALL MR 222]
- (2) Sanubanu Nazirbhai Mirza & ors. Vs. Ahmedabad Municipal Transport Service [2013 AIR (SCW) 5800]
- (3) National Insurance Company Limited Vs. Pranay Sethi AIR 2017 SC 5157
- (4) Royal Sundaram Alliance Insurance Company Ltd. Vs. Smt. Varsha Rajendra Pache & ors. (2018) 2 ALL MR 852]

9. The learned Advocate put on record his written arguments besides the abovesaid authorities.

10. The learned Advocate for the Insurance Companies too placed on record his written submissions.

11. The learned Advocate for the Insurance Company would submit that, the Tribunal has granted just and reasonable amount of compensation. The deceased died bachelor. The appellants did not place on record appointment

order of the deceased or any other document in the nature of Bank Passbook or salary slip indicating the so called employer was depositing/ transmitting the alleged quantum of salary to the Bank Account of the deceased every month. According to learned Advocate, the Tribunal has, therefore, rightly considered the annual income of the deceased notionally. Since the deceased died bachelor, 50% of his income has been deducted towards personal and living expenses. The Tribunal also granted 40% addition towards future prospects. The learned Advocate ultimately submitted for dismissal of the appeal.

12. Before the Tribunal, a defence of contributory negligence was raised by the Insurance Company. It has been answered in the negative by the Tribunal and the respondent Insurance Company has not preferred appeal against the award or Cross-Objection, therefore, the said defence no longer subsists for us to address.

13. The question in this appeal is, as to quantum of compensation. The tribunal granted the compensation assuming notional income of the deceased at Rs.9000/- per month. The F.I.R. lodged by father of the deceased contained

averments that both the deceased were on their way back home after duty with Aakar Tools Ltd., Unit-II, C-5/6, MIDC Industrial Area, Waluj, Aurangabad, was over. The deceased was riding pillion. The Tribunal granted the compensation under various heads as under :

Sr. No.	Compensation under Head		Awarded by Tribunal
A	Total income per year of the deceased Kalyan Gayakwad	Rs.9000 x 12 =	Rs.1,08,000/-
B	40% to be added in total income per year of the deceased towards future prospects	Rs.1,08,000 + 43,200/- =	Rs.1,51,200/-
C	50% deductions towards personal and living expenses of deceased as he was Bachelor	1,51,000 / 2 = 75,600/-	Rs.75,600/-
D	Pecuniary loss after applying multiplier of 18 as the deceased was above 22 years old	75,600 x 18 =	Rs.13,60,000/-
E	Add " Funeral expenses		Rs.15,000/-
F	Add: Loss of Estate		Rs.15,000/-
	Total sum payable to the claimants		Rs.13,90,800/-

14. The learned Advocate contended that, in view of directions of the Constitution Bench judgment of the Apex Court in case of National Insurance Company Ltd. Vs. Pranay Sethi (supra), the Tribunal ought to have added 50% of the annual income of the deceased towards future prospects. He would further submit that, considering the number of dependents, deduction towards personal and living expenses of the deceased ought to have been one third and not one half.

Relying on the judgment of Division Bench of this Court in case of New India Assurance Co. Ltd. Vs. Shweta Mehta (supra), he would submit that, loss of future income as a head of compensation applies to all persons, whether earning or not at the time. He would further submit that, the Tribunal/ Court has every jurisdiction to grant compensation in excess of what has been urged for in the petition when it finds the grant of excess compensation would be just and reasonable. Turning to the income of the deceased, and particularly the document at Exh.58, he would submit that, the employer of the deceased had issued the appellant salary details which were as under :

Basic salary	...	Rs. 9,176=00
Other Allowance	...	Rs.12,000=00
Conveyance allowance	...	Rs. 2,924=00

Total salary	...	Rs.24,100=00 p.m. Total Gross

15. According to him, an employee of the very Company was examined in proof of the said salary certificate, issued on 13/8/2018.

16. The Tribunal, in our view, assigned good reasons

for not relying on the said certificate. The Tribunal observed that the said certificate was issued three months after the death of Kalyan. It was issued on the request of the appellants. Neither the Bank Passbook of the deceased nor any other document was tendered in evidence to indicate the employer of the deceased would transfer each month's salary amount to the Bank Account of the deceased. No appointment letter, attendance register etc. were produced in evidence.

17. In our view, the Tribunal rightly did not rely on the salary certificate (Exh.58). We, therefore, called upon learned Advocate for the appellant and offered him opportunity to produce such documents as an additional evidence in appeal. He expressed his inability. According to him, the employer now may not issue such document. By passage of time, the documents may have not been in existence. Then he would submit that, the deceased was working as a contract labour.

18. When the F.I.R. recites that both the deceased were returning from their work place after having completed duty with Aakar Tools Ltd., Unit-II, C-5/6, MIDC Industrial Area, Waluj, Aurangabad and one of the appellant testified the same on oath, we do not find any reason to disbelieve their case that

the deceased was really in employment with the said Company. The question is, the quantum of salary of the deceased. At the cost of repetition, it is stated that, the same has rightly been discarded by the Tribunal. We, therefore, now propose to have recourse to rates of basic pay and special allowance for the period 1/1/2018 to 30/6/2018 (Revised Minimum Wages – Maharashtra which are as under.

The Rates of Basic Pay & Special Allowances for the period (01-01-2018 to 30-06-2018)

(REVISED MINIMUM WAGES – MAHARASHTRA)

			BASIC						Special Allowan-ces	Min. wage Unskilled		Min. wage Semi skilled		Min. wage skilled		Min. wage Highly skilled	
Sr. No.	Nature of Industries	Mode	Un-skilled	Semi-skilled	Skilled	Highly skilled			Per month	Per day	Per month	Per day	Per month	Per day	Per month	Per day	
1																	
2	Automobile repairing	P.M.	4800	5100	5500	0	+	4200	9000	346.154	9300	357.69	9700	373.08	0	0	

The same are produced on record and marked as Exhibit 'X' for identification. As per Item No.2 therein, the minimum wages for a skilled labour in Automobile repairing industry were Rs.9700/- per month. We, therefore, propose to take Rs.9700/- as monthly income/ salary of the deceased, instead of Rs.9000/- and propose to work out the compensation.

19. The directions given by the Constitution Bench of

the Apex Court in the case of Pranay Sethi (supra) were as under :

(i)

(ii)

(iii) 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 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.

(iv) 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.

(v) 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.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral

expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

20. In paragraph No.39 of the judgment in case of Pranay Sethi (supra), following are the observations of the Apex Court :-

39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, Sarla Verma lays down:-

“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 Chandra⁴, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 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 exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors,

normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non- earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

21. In view of the aforesaid legal position, we do find the Trial Court to have rightly deducted 50% of the income of the deceased towards his personal and living expenses. In this case, the claimants were parents and younger brother of the deceased. The deceased died bachelor is undisputed. The

father (appellant No.1) was just 52 years of age. He might have been earning. We do not propose to give further reasons in view of the aforesaid observations of the Apex Court. From reading of the impugned judgment and award, what can be seen to have been missed out is non-grant of compensation on the ground of consortium. The appellants No.1 and 2 being parents of the deceased, are entitled to Rs.40,000/- each under this head. A sum of Rs.15,000/- towards funeral expenses and loss of estate has rightly been granted. Now the amount of compensation is worked out considering the monthly income of the deceased to be Rs.9700/- per month, as under :-

$$\begin{array}{rcl}
 \text{Rs.9700} \times 12 & = & \text{Rs.1,16,400/-} \\
 + 40\% - \text{rs.46,560/-} & = & \text{Rs. 1,62,960/-} \\
 \text{minus } 50\% - \text{Rs.81,480/-} & = & \text{Rs. 81,480/-} \times 18 \\
 & = & \text{Rs.14,66,640/-} \\
 + \text{Loss of Consortium Rs. 40,000/-} \times 2 & = & \underline{\text{Rs. 80,000/-}} \\
 \text{Total sum payable to the claimants:-} & & \text{Rs.15,46,640/-} \\
 \text{minus amount awarded by Tribunal} & & \underline{= \text{Rs.13,90,800/-}} \\
 \text{(if already paid)} & & \\
 & = & \text{Rs. 1,55,840/-}
 \end{array}$$

22. The amount which is in excess of the one awarded by the Tribunal be paid to the appellants No.1 to 3 in the ratio

of 5 : 3 : 2 with interest @ 9% p.a. from the date of claim petition to the date of realization.

Appellant No.4 is married sister of the deceased. No amount of enhanced compensation is, therefore, directed to be paid to her.

23. The First Appeal is partly allowed in above terms.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-