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

FIRST APPEAL NO. 1611 OF 2004

United India Insurance Co. Ltd.,
Through it's Divisional
Manager and Authorized
Representative and Signatory,
Jalgaon Divisional Office,
Mansing Market, Opp. Atul Dairy,
Jalgaon.

… APPELLANT

1. Smt. Smita w/o. Shamkant Ahirrao
   Age 36 years, Occ. Household work.

2. Kumari Priyanka Shamkant Ahirrao,
   Age 16 years, Occ. Education,

3. Kumari Pooja Shamkant Ahirrao,
   Age 14 years, Occ. Education.

4. Pandit Shankar Ahirrao,
   (Died) (Pursis filed by Adv. Mayure)

5. Sau Indumati Pandit Ahirrao
   (Died) (Pursis filed by Adv. Mayure)

(Respondent No.2 and 3 being minor
children through their mother respondent No.1.) RESPONDENTS.

All respondents r/o. Plot No. 26,
Ganesh Nagar, Mohida Road,
Shahada, Tal. Shahada,
Dist. Nandurbar.

6. Sanjay Shivajirao Sawant,
   Age 26 YEARS, Occ. Trailor DRIVER,
   R/o. Jawala, Tal Sangoli,
   Dist. Solapur.

7. M/s. Fresh Express Logistics Pvt Ltd.,
Bedag, Tal Miraj, Dist. Sangli through its Manager.

(Dismissed as per Registrar's order dated 3.1.2023)
...
Mr. A.B. Gatne, Advocate for the applicant;
Mr. P.C. Mayure, Advocate for respondent Nos. 1 to 3.

WITH

CROSS OBJECTION NO. 2771 OF 2005

1. Smt. Smita w/o. Shamkant Ahirrao
Age 36 years, Occ. Household work.

2. Kumari Priyanka Shamkant Ahirrao,
Age 16 years, Occ. Education,

3. Kumari Pooja Shamkant Ahirrao,
Age 14 years, Occ. Education.

4. Pandit Shankar Ahirrao,
(Died) (Pursis filed by Adv. Mayure)

5. Sau Indumati Pandit Ahirrao
(Died) (Pursis filed by Adv. Mayure)

(Respondent No.2 and 3 being minor
children through their mother respondent No.1.) APPELLANTS.

All appellants r/o. Plot No. 26,
Ganesh Nagar, Mohida Road,
Shahada, Tal. Shahada,
Dist. Nandurbar.

VERSUS

United India Insurance Co. Ltd.,
Through it's Divisional
Manager and Authorized
Representative and Signatory,
Jalgaon Divisional Office,

Mansing Market, Opp. Atul Dairy,
Jalgaon.

2. Sanjay Shivajirao Sawant,
Age 26 years, Occ. Trailor Driver,
R/o. Jawala Tal Sangoli,
Dist. Solapur.

3. M/s. Fresh Express Logistrics Pvt. Ltd.
Bedag, Tal. Miraj, Dist. Sangli
Through its Manager. RESPONDENTS.

Mr. P.C. Mayure, Advocate for appellants
Mr. A.B. Gatne, Advocate for respondent No.1.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 13th FEBRUARY, 2024.
PRONOUNCED ON : 21st FEBRUARY, 2024.

JUDGMENT :-

1] The appellant-insurer/Original respondent NO.3 approaches this Court under Section 173 of the Motor Vehicles Act, 1988 thereby assailing the judgment and award dated 4.8.2004 passed by the Motor Accident Claims Tribunal, Shahada in MACP No. 38 of 2003, by which an award for Rs. 12,69,500/- has been passed in favour of the claimants under Section 166 of the Motor Vehicles Act. The respondents /original claimants have filed cross-objection in this appeal, seeking enhancement of compensation.

2] Respondent Nos. 1 to 5 had approached the Tribunal under Section 166 of the Motor Vehicles Act, thereby raising a claim for compensation of Rs. 15,00,000/ (Rs. fifteen lakhs) towards the accidental death of Shamkant. The claimants were dependent on his income. He was serving as a teacher in an Ashram School, drawing salary of Rs. 8,632/- p.m. at the time of his death. On the fateful day, he was returning to Shahada on his motorcycle which was dashed by the offending trailer bearing Registration No. MH-10/A-9894. It was owned by the original respondent No.2 and insured with the appellant. The respondent No.2 insurer, by filing written statement Exh.14, refuted the contentions of the claim petition and also raised statutory defences. The Tribunal, on consideration of the pleadings and evidence on record passed the impugned award holding original respondents liable to pay compensation of Rs. 12,69,500/- alongwith interest @ 9 % p.a.

3] The present appeal filed by the insurer takes exception to the quantum of the award being excessive, whereas, the claimants have filed cross-objection seeking enhancement of compensation. Mr. A.B. Gatne, learned advocate for the applicant would submit that the Tribunal has passed excessive and exorbitant award. He would submit that the deceased was working as a teacher in an Ashram School and he was not permitted to conduct private tuition. The Tribunal erroneously accepted his income from the private tuition. He would further point out that deceased was aged more than 40 years at the time of his death. The Tribunal added 50% amount towards future prospects, instead of 30% as would be permissible in terms of the law laid down by the Supreme Court in the matter of ***Sarla Verma and others Vs. Delhi Transport Corp. and anr. (2009) 6 SCC 121***, reiterated in ***National Insurance Co. Ltd. Vs. Pranay Sethi (2017)16 SCC 680.*** He would, therefore, submit that the award passed by the Tribunal needs to be appropriately modified in tune with the settled principles of law.

4] Mr. Mayure, learned advocate appearing for the respondents/claimants submits that the Tribunal has in fact passed inadequate award. While determining dependency of claimants on income of the deceased, his net salary is considered. Further, multiplier is wrongly applied. There were 5 dependents. Therefore, deduction of 1/4th amount only could have been considered for the personal and living expenses of the deceased, but Tribunal wrongly deducted 1/3rd amount under that caption, which has resulted into inadequate award. He would further submit that compensation awarded towards non-pecuniary heads is grossly inadequate.

5] Having considered the submissions advanced, after going through the evidence on record, it can be gathered that the claimants as well as respondent insurer are aggrieved by the quantum of compensation fixed by Tribunal. It is not in dispute that the deceased died in the accident at the age of 43 years leaving behind 5 dependents on his income, at the time of death. The Salary Certificate of the deceased is placed on record at Exh.30. It is for April, 2003. The gross salary of the deceased is shown as Rs. 9,856/- and net salary is worked out to Rs. 6,871/-. The Tribunal, relying upon the judgment of Supreme Court in the case of ***Asha and others Vs. United India Assurance Company Ltd. Reported in 2004 ACJ 448***, worked out the compensation taking the net salary of deceased @ Rs. 6,642/-. However, the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Indira Srivastava reported in (2008)2 SCC 763*** held that the deductions from salary of deceased employee towards the LIC, Housing Loan, GPF, Provident Fund, etc can not be applied while considering the dependency. Only statutory deduction towards Income-tax or Professional Tax, which are compulsory in nature, would not constitute income of the family, hence can be considered for deduction. Taking into consideration aforesaid propositions of law, the Tribunal appears have erred in working out compensation based on net salary.

6] Record indicates that Gross Salary of deceased for April, 2003 was Rs. 9,856/- and amount of Rs. 175/- would be compulsory deductible towards professional tax. Therefore, while considering the dependency of the claimants, monthly income of the deceased will have to be considered as Rs. 9,681/-. The deceased was aged 43 years at the time of his death. Therefore, considering the law laid down in the case of ***Pranay Sethi (supra)*** addition of 30% amount needs to be made towards future prospects. There were 5 dependents of the deceased hence, 1/4th amount will have to be deducted towards his personal and living expenses. Further, considering the age of the deceased, the multiplier of 14 would be applicable. The claimants are also entitled for compensation towards non pecuniary heads, however those additions must be considered as per valuation of money at the time of accident. Applying the aforesaid principles of assessment of compensation, claimants would be entitled to receive compensation as per the calculations as shown below :-

Sr. No.	Particulars	Amount
1.	Annual income on compulsory deduction towards Professional Tax Rs. 9,681 x 12	Rs. 1,16,172/-
2.	Add 30% future prospects 1,16,172 + 34851 Deduct 1/4th for personal expenses 1,51,023 – 37,755 = 1,13,268	Rs. 1,51,023/- Rs. 1,13,268/-
3.	Multiplier of 14	Rs. 15,85,752/-
4.	Add towards loss of consortium for all claimants. (Rs 10000 each)	Rs. 50,000/-
5.	Add towards funeral expenses and loss of estate	Rs. 15,000/-
	Total	Rs. 16,50,752/-

8] In view of the above, the award passed by the Tribunal needs to be modified. In Result, following order

O R D E R

1 The first appeal is dismissed with cost.

2. Cross objection is partly allowed with proportionate cost. The award passed by the Tribunal is modified as under :-

[a] Opponent Nos. 2 and 3 shall pay compensation of Rs. 16,50,752/- jointly and severally to the claimants with interest @ 6% p.a. from the date of application till realization.

[b] The amount of compensation paid/deposited in pursuance of the original award passed by the Tribunal be appropriated.

[c] Compensation amount, if any, deposited in this appeal be released in favour of the claimants. Deficit Court fees, if any, be recovered before making the award.

[d] Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-