IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2555 OF 2016

1. Uma Ankush Uplanchewar
Age- 26 years, Occ. Household,
R/o. 107, Mangalwar Peth,
Behind Kamala Devi Hospital
Sidhi Balaji Heights, Flat No. 7,
3rd Floor, Pune-11.

2. Nimish S/o Ankush Uplanchewar
Age- 3 years, Occ. Nil,
U/g. Real mother appellant No. 1
R/o. As above.

3. Sunanda W/o Anand Uplanchewar
Age- 48 years, Occ. Household,
R/o. As above. ....APPELLANTS
[Orig. Claimants]

VERSUS

1. Jogindarsingh Guljarsingh Khaira
Age- Major, Occ- Business,
R/o. Dashmesh Nagar, Nanded,
Tq. & Dist. Nanded.

2. The Branch Manager,
United India Insurance Co. Ltd.
Dayawan Complex, Station Road,
Parbhani, Tq. & Dist. Parbhani. .....RESPONDENTS
[Orig. Respondents]

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Mr. P.N. Kalani, Advocate for appellants
Mr. A.B. Gatne, Advocate for respondent No. 2
Respondent No. 1 served.

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th AUGUST, 2024

ORAL JUDGMENT :

1. Admit. Heard finally.

2. By this appeal, claimants challenge judgment and award passed by Motor Accident Claims Tribunal, Parbhani, in Motor Accident Claim Petition No. 264 of 2013.

3. On 05.03.2013, Ankush s/o Anand Uplanchewar, (deceased) along with his parents, sister Ankita, aunt Shubhangi, uncle Tanuj and cousin sister Shweta were proceeding to Parbhani for the program of Dohal-jewan of Uma Uplanchewar in Omni car bearing registration No. MH-12-GR-6584. Father of deceased was driving the car. At about, 6.00 to 6.30 am, when their car reached near Panhera shivar on Pathri-Parbhani road, at that time, one truck bearing registration No. MH-26-H-6313 came from opposite direction in rash and negligent manner and gave severe dash to the car of claimants. Due to the accident, Anand, Ankush and Ankita and one more inmate in the car expired on the spot and rest of the occupants of the car were injured.

4. Claimants filed Motor Accident Claim Petition No. 264/2013 claiming compensation of Rs. 35,61,200/-.

The Tribunal after hearing the parties partly allowed the claim by awarding compensation of Rs. 23,72,000/- along with 7.5% interest per annum. Claimants are aggrieved by non grant of compensation under the head, 'future prospects'.

5. Heard learned advocate for claimants and learned advocate for respondent No. 2. Though served, none appears for respondent No. 1.

6. Learned advocate for claimants submits that the Tribunal has erred in denying compensation under the head future prospects. In view of decision in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and Another***, (2009) 6 SCC 121 and ***National Insurance Company Limited vs. Pranay Sethi and others***, (2017) 16 SCC 680, claimants are entitled for 50% addition towards future prospects.

7. Learned advocate for insurance company, on the other hand, strenuously opposed the said submission contending that deceased was on fixed salary and there is no evidence to show that there was possible increase of salary in future and therefore, Tribunal has rightly denied compensation under the head future prospects by relying on decision of this Court in ***New India Insurance Co. Vs. Alpa Rajesh Shah***, 2013 C.J. (Bom) 1623. In the alternate, he submits that, if at all this Court is

inclined to grant compensation under the head future prospects, claimants would be entitled for 40% addition and not 50%.

8. Perusal of record shows that accidental death of deceased is not in dispute. Claimant Sunanda is the eye witness to the accident. The Tribunal by relying on the version of claimant Sunanda and police papers has rightly held that accident has occurred due to rash and negligent driving of the truck.

9. In support of contention that deceased was serving as salesmen with Tribhovandas Bhimji Zaveri Ltd., and drawing salary of Rs. 19,000/- per month, PW 2 Subhash Panchal was examined who was accountant with the jeweler. He has deposed that deceased Ankush was drawing salary of Rs. 17,200/- and placed on record salary certificates Exhibit-39 and 45 to 47. Account statement of deceased was also filed at Exhibit-44.

10. The Tribunal held net salary of deceased at Rs. 17,000/- per month and assessed notional income at Rs. 2,04,000/-. By deducting 1/3rd amount towards personal expenses, assessed annual dependency at Rs. 1,36,000/-. The Tribunal further observed that "*as there is no evidence brought on record in respect of future prospectus in view of principle laid*

down in New India Insurance Co. Vs. Alpa Rajesh Shah (cited supra) claim in respect of future prospectus cannot be considered."

11. The Tribunal erred in placing reliance on the above ratio ignoring the fact that in this case deceased was in service and was drawing salary and he was not self-employed. The Tribunal has also ignored the ratio in Parany Sethi (supra) that;

> *"58. ------------. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept."*

12. Reliance is placed on paragraph 59.3 of Pranay Sethi (supra) by learned advocate for insurance company to contend that claimants may be entitled for 40% future prospects. Para 59.3 reads thus:

> *"59.3 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."*

13. Para 59.4 of this judgment reads thus:

> *"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 t0 50 years and 10% where the deceased was between the age of 50 t0 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

14. In view of observations in the above quoted paragraph, since deceased was on a fixed salary, an addition of 40% of the established income needs to be made as the deceased was below the age of 40 years. The established income of the deceased is Rs. 17,000/- per month and annual income is Rs. 2,04,000/-, in which 40% addition of Rs. 81,600/- needs to be made towards future prospects. Claimants are therefore entitled for following compensation.

Sr. No.	Heads	Amount (Rs.)
1	Notional Income Rs. 17,000+ future prospects @ 40% i.e. 6800/-	23,800/-
2	Annual Notional Income 23,800 x 12	2,85,600/-
3	Less 1/3rd Deduction i.e. Rs. (2,85,600 - 95200)	1,90,400/-
4	Annual Notional Income Multiplied by multiplier of 17	32,36,800/-

	(1,90,400 x 17= 32,36,800)	
5	Non Pecuniary damages awarded by Tribunal: i)Loss of Consortium and love and affection- 50,000/- ii) Funeral Expenses- 10,000/-	60,000/-
6	Total Compensation needs to be awarded	32,96,800/-
7	Compensation awarded by Tribunal	23,72,000/-
8	**Total Enhanced compensation (32,96,800 – 23,72,000)**	**9,24,800/-**

15. In the result, following order:

ORDER

(I) First Appeal is partly allowed with proportionate costs.

(II) Impugned judgment and award dated 29.12.2015, passed by Chairman, Motor Accident Claims Tribunal, Parbhani in M.A.C.P. No. 264/2013 is hereby modified.

(III) Respondents No. 1 and 2 are jointly and severally held liable to pay enhanced compensation of Rs. 9,24,800/- to the claimants.

(IV) Claimants shall be entitled for interest @ 7.5 per annum on the enhanced compensation from the date of filing of claim till realization.

V) Insurance Company shall deposit enhanced compensation along with accrued interest in the Tribunal within 12 weeks from the date of uploading of this judgment.

(VI) Claimants to pay additional Court fees on enhanced amount as per rules.

[NITIN B. SURYAWANSHI, J.]