IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2907 OF 2015

1] Dropadabai w/o. Narayan Awatirak,
Age 38 years, Occ. Household.

2] Ku. Aarti D/o. Narayan Awatirak
Age 17 years, Occ. Education,

3] Ku. Swati D/o. Narayan Awatirak,
Age 15 years, Occ. Education,

4] Ku. Jyoti D/o. Narayan Awatirak,
Age 13 years, Occ. Education,

5] Ku. Nikita D/o. Narayan Awatirak,
Age 11 years, Occ. Education,

6] Atmaram S/ok. Narayan Awatirak,
Age 9 years, Occ. Education.
[Appellants No. 2 to 6 are Minor
under guardianship of their
real mother i.e. appellant No.1]

7] Arjunrao S/o. Narayan Awatirak,
Age 73 years, Occ. Nil.

8] Kewalabai W/o. Arjunrao Awatirak,
Age 68 years, Occ. Nil.
All R/o. Pathrad (Railway Station)
Tq. Mukhed, Dist. Nanded.

.. APPELLANTS
[ORI. CLAIMANTS]

VERSUS

1] Manoharrao S/o. Vishwanathrao Bhosikar,
Age Major, Occ. Agri. & Business,
R/o. Panbhosi, Tq. Kandhar, Dist. Nanded.

2] New India Assurance Company Ltd.,

through its Divisional Manager,
Vazirabad, Nanded.

3] The Office of District Superintendent of Police, Through its Superintendent of Police, Vazirabad, Nanded. Tq. And Dist. Nanded.

4] Director of Insurance, 264, 1st Floor, Grahnirman Bhawan, Opp. Kalanagar, Bandra (East) Mumbai – 400 051.

[Respondents No. 3 & 4 are formal parties]

.. RESPONDENTS
[ORI. RESPONDENTS]

Mr. V.P. Sawant, Advocate and Mr. A.D. Hande, Advocate for the appellants
Mr. A.S. Osmanpurkar, Advocate for respondent No.2
Respondent Nos. 3 and 4 served.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON : 6th MAY, 2024.

<u>JUDGMENT :-</u>

1. The appellants – original claimants are impugning the judgment and award dated 27.9.2013 passed by the Motor Accidents Claim Tribunal, Nanded in MACP No. 104 of 2006 and seeking enhancement of compensation in this appeal filed u/s 173 of M.V. Act 1988.

2. Mr. A.D. Hande, learned advocate appearing for the appellants submits that the deceased Narayan died in the motor vehicular accident due to rash and negligent driving on the part of the driver of the tanker bearing Registration No. MH-26/B-3826. Consequently, claimants

suffered loss of dependency, hence filed application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 20 Lakhs, before the Tribunal at Nanded, against the owner and insurer of the vehicles involved in the accident. The Tribunal recorded evidence of the parties and concluded that the accident occurred due to the rash and negligent driving on the part of the tanker driver. The tribunal worked out compensation to the tune of Rs. 22,12,520/- as per para. No. 21 of the judgment. However, restricted the award to the amount claimed i.e. Rs. 20,00,000/- (twenty lakhs) which, according to him, is inconsistent with the principles of assessment of compensation. He would further submit that at the time of accident, deceased was employed with the police department and also holding agricultural land. However, the Tribunal assumed meager loss towerds agriculture income @ Rs. 1,000/- per month. He, therefore, submits that the compensation awarded by the Tribunal needs to be re-assessed and a just award needs to be passed.

3. Mr. A.S. Osmanpurkar, learned advocate for the respondent however, submits that if the compensation is assessed applying the principles laid down by the Supreme court of India in the matter of "***National Insurance Company Ltd. Vs. Pranay Sethi" reported in AIR 2017 SC 5157,*** the claimants would be entitled for compensation of Rs. 18.51,390/ only. He would invite attention of this court to Para. No. 21 of the judgment to contend that the Tribunal added 100% amount by way of future prospects. In fact, looking to the age of the claimants, at the most 50% of his income could have been added by way of future prospects. He would further submit that since there is loss of supervision only in relation to agricultural land, Tribunal has rightly added appropriate amount on that count. In fact, the award, whatever passed, is already excessive and exorbitant. However, the insurance company

satisfied the award by taking a pragmatic view of the matter. Hence he urges to maintain award as passed by Tribunal.

4. Having considered the submissions advanced by the learned advocates appearing for the respective parties and after going through the R. & P. of the case, it is apparent that the dispute in present appeal is only as regards the assessment of compensation. It is true that the Tribunal assessed the compensation at Rs. 22,52.520/- in para No.21. However, restricted the award to Rs. 20 Lakhs.

5. If the analogy as laid down by the Supreme Court of India in the matter of ***Nagappa vs. Gurudayal Singh reported in (2003) 2 SCC 274, as well as Ramala and other Vs. National Insurance Company reported in (2019) 2 SCC 192,*** is applied, at the first blush, the submission advanced on the behalf of the appellant seems attractive. The Supreme Court of India made it clear that the Tribunal has to assess just compensation, irrespective of the claim raised in the petition. At the most, the claimants can be asked to pay deficit Court fees, in case award is passed for amount more than claimed in the petition. In this background, it is necessary to consider the submissions advanced on behalf of the respondent/insurance company.

6. Coming back to submissions advanced by Mr. Osmanpurkar, he has rightly submitted that the assessment of compensation ought to have been made applying the settled principles of law. He submits that in case of **Pranay Sethi, (supra)** larger bench of the Supreme Court has declared the law that addition of future prospects is permissible to the extent of 50% of assessed income of victim for age group less than 40 years with salaried income. In the present case, the Tribunal added

100% amount towards future prospects. Mr. Osmanpurkar would also point out that even by adding enhanced compensation towards non pecuniary heads in terms of the judgment in the case of ***Magma General Insurance Co. Ltd. Vs. Nanuram reported in (2018) 18 SCC 130***, the assessment of compensation would not go beyond Rs. 18,51,319/-. He urge that assessment of compensation in para. 21 of the judgment is inconsistent with the settled principles of law.

6. If re-assessment of compensation is made by applying settled principles of law in facts of this case the award cannot be passed beyond Rs. 18,51,390/-. Although, Tribunal has passed award for Rs. 20,00,000/- insurer has acquiesced same. Therefore, if the submissions advanced on behalf of both the parties are balanced in tune with the settled legal position, no interference in the award is warranted.

7. In the result, appeal stands dismissed. In the circumstances, there shall be no orders as to costs.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-